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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 410

RIN 3206–AF99

Training

AGENCY: Office of Personnel Management.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations which were published in the **Federal Register**, Tuesday, December 17, 1996, (61 FR 66189). The regulations related to the requirements for training Government employees subject to chapter 41 of title 5 of the United States Code.

EFFECTIVE DATE: January 1, 1999.

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

SUPPLEMENTARY INFORMATION:

Background

The regulations subject to this correction affect the training of Federal employees. Because a word is missing, the subsection on requirements for continued service agreements, § 410.309(b)(2), contains an inaccurate statement. The correction adds the missing word.

Need for Correction

As published in the **Federal Register**, Tuesday, December 17, 1996, (61 FR 66189), the final regulations contain an error which may prove to be misleading and needs to be corrected.

List of Subjects in 5 CFR Part 410

Education, Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

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

PART 410—TRAINING

1. The authority citation for 5 CFR part 410 continues to read as follows:

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

§ 410.309 [Corrected]

2. In § 410.309 paragraph (b)(2), in the first sentence, after the word ''after,'' add the word ''training''.

[FR Doc. 98–34395 Filed 12–30–98; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI48

Prevailing Rate Systems; Lead Agency Responsibility

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule that will change the lead agency responsibility for certain Federal Wage System (FWS) appropriated fund wage areas from the Department of Veterans Affairs (VA) to the Department of Defense (DOD). VA requested that OPM designate DOD as the lead agency in all of the wage areas where VA currently has lead agency responsibility. This change will make DOD the lead agency in all FWS wage areas and will make more efficient use of the resources devoted by agencies to determining FWS pay rates.

DATES: This final rule is effective on January 1, 1999, except that VA will retain lead agency responsibility for the Roanoke, Virginia, wage area until the next wage schedule for that wage area is established on January 17, 1999.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins at (202) 606–2848, or send an email message to jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On November 2, 1998, the Office of Personnel Management (OPM) published a proposed rule (63 FR 58659) to transfer lead agency responsibility for the New Haven-Hartford, Connecticut; Miami, Florida; Tampa-St. Petersburg, Florida; Champaign-Urbana, Illinois; Chicago, Illinois; Cedar Rapids-Iowa City, Iowa; Des Moines, Iowa; Augusta, Maine; Boston, Massachusetts; Southwestern Michigan; Minneapolis-St. Paul, Minnesota; New York, New York; Rochester, New York; Asheville, North Carolina; Charlotte, North Carolina; Cincinnati, Ohio; Cleveland, Ohio; Southwestern Oregon; Pittsburgh, Pennsylvania; Eastern Tennessee; Houston-Galveston-Texas City, Texas; Roanoke, Virginia; and Milwaukee, Wisconsin, FWS wage areas from the Department of Veterans Affairs (VA) to the Department of Defense (DOD).

The proposed rule provided a 30-day period for public comment, during which OPM received one comment from a labor organization, which requested that OPM pursue enactment of appropriations legislation that would specifically designate funds for VA to conduct local FWS wage surveys. However, the commenter recognized that under present conditions there is no acceptable alternative but to make the proposed changes in lead agency responsibility effective. The possibility of requesting that Congress appropriate funds to VA specifically for conducting FWS wage surveys was raised and considered by the members of FPRAC. However, the Committee did not adopt this suggestion (which is outside the scope of our regulatory authority) as part of its recommendation to OPM.

Under 5 U.S.C. 5343(a)(2), OPM is responsible for designating lead agencies in Federal Wage System (FWS) wage areas. Lead agencies are responsible for conducting surveys of private sector employers to establish wage schedules for FWS employees based on local prevailing rates. The Department of Defense (DOD) is the lead agency in 110 FWS wage areas, and the Department of Veterans Affairs (VA) is the lead agency in 23 FWS wage areas. VA is currently the lead agency in the New Haven-Hartford, Connecticut; Miami, Florida; Tampa-St. Petersburg, Florida; Champaign-Urbana, Illinois; Chicago, Illinois; Cedar Rapids-Iowa

City, Iowa; Des Moines, Iowa; Augusta, Maine; Boston, Massachusetts; Southwestern Michigan; Minneapolis-St. Paul, Minnesota; New York, New York; Rochester, New York; Asheville, North Carolina; Charlotte, North Carolina; Cincinnati, Ohio; Cleveland, Ohio; Southwestern Oregon; Pittsburgh, Pennsylvania; Eastern Tennessee; Houston-Galveston-Texas City, Texas; Roanoke, Virginia; and Milwaukee, Wisconsin, FWS wage areas.

VA requested that OPM designate DOD as the lead agency in the wage areas where VA is currently designated as the lead agency. Since the establishment of the FWS in 1972, VA has played a key role in the administration of the pay program for FWS employees. However, during the past few years, VA has experienced reductions in overall employment in the human resources management areas both in field and headquarters activities. At the headquarters level, two out of three experienced specialists assigned to oversee FWS wage surveys are no longer available to work in that area because of retirements and reassignments. VA believes a consolidation of the FWS survey function within one agency will be more efficient and will provide a level of consistency in the survey process that will strengthen the FWS program nationwide. DOD expressed its willingness and indicated its ability to assume lead agency responsibility in the wage areas where VA is currently assigned lead agency responsibility.

The proposed change was reviewed by the Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters that affect the pay of FWS employees. The management members of FPRAC proposed this change because diminishing staff resources within VA headquarters make it very difficult for VA to accomplish its wage survey work in an effective manner, and because DOD expressed its ability and willingness to assume lead agency responsibility in all FWS wage areas. After considering all possible alternatives, the Committee recommended approval of the change in lead agency by majority vote. All Committee members voted for the proposal except for the National Federation of Federal Employees, which abstained. The remaining labor members of FPRAC supported the proposed change with reservations, stating that although no reasonable alternative exists, they are concerned about the placement of Governmentwide FWS wage determinations within a single agency.

Pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists to make this regulation effective in less than 30 days. This regulation is being made effective in less than 30 days because of the recommendation of FPRAC that DOD assume lead agency responsibility for all FWS wage areas where practical at the start of the calendar year.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix A to Subpart B of Part 532 [Amended]

2. Appendix A to subpart B is amended for the New Haven-Hartford, Connecticut; Miami, Florida; Tampa-St. Petersburg, Florida; Champaign-Urbana, Illinois; Chicago, Illinois; Cedar Rapids-Iowa City, Iowa; Des Moines, Iowa; Augusta, Maine; Boston, Massachusetts; Southwestern Michigan; Minneapolis-St. Paul, Minnesota; New York, New York; Rochester, New York; Asheville, North Carolina; Charlotte, North Carolina; Cincinnati, Ohio; Cleveland, Ohio; Southwestern Oregon; Pittsburgh, Pennsylvania; Eastern Tennessee; Houston-Galveston-Texas City, Texas; Roanoke, Virginia; and Milwaukee, Wisconsin, wage areas by revising the lead agency listings from ''VA'' to ''DOD''.

[FR Doc. 98–34394 Filed 12–30–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AH63

Pay Administration (General); Collection by Offset From Indebted Government Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to make changes in the salary offset regulations to comply with the Debt Collection Improvement Act of 1996. The principal changes relate to the roles played by disbursing officials and debt collection centers with respect to salary offset. Also included are new expedited salary offset procedures for certain types of recent or small-amount debts.

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2858, FAX: (202) 606–0824, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: On April 16, 1998, the Office of Personnel Management (OPM) published regulations proposing changes in the salary offset regulations to comply with the Debt Collection Improvement Act of 1996. The principal changes relate to the roles played by disbursing officials and debt collection centers with respect to salary offset. Also included are new expedited salary offset procedures for certain types of recent or small-amount debts. Comments were received from one labor organization and four Federal agencies.

The labor organization requested clarification regarding the effect of these changes on Federal Aviation Administration (FAA) employees. FAA has informed OPM that, under the authority of section 347 of the 1996 Department of Transportation Appropriations Act, FAA employees are no longer covered by the provisions of title 5 of the United States Code and related regulations. FAA has established policies paralleling the provisions of title 5 of the United States Code in many areas. One such area is salary offset under 5 U.S.C. 5514. FAA is considering whether or not to adopt as FAA policy the amendments made by this rule.

The labor organization's first recommendation was that Federal agencies should be directed to enter into appropriate bargaining with their respective unions over this change. We believe it would be inappropriate for

our regulations to require agencies to bargain over the implementation of these regulations. That decision is a matter more appropriately resolved by management and the exclusive representatives.

Secondly, the labor organization recommended that the decision about whether a flat amount or a percentage of the indebtedness is deducted from the employee's pay should be the employee's choice. Under the salary offset law (5 U.S.C. 5514), the creditor agency establishes the repayment schedule; however, the employee may request a hearing regarding the terms of the repayment schedule. The decision to use a flat dollar amount or a percentage-based offset is simply one aspect of the repayment schedule.

An agency asked for clarification of the new section 550.1108 regarding who would determine the amount to be offset (collected) from an employee's salary payments. Section 550.1108 deals with centralized administrative offset by disbursing officials, such as those in the Department of the Treasury. In applying centralized administrative offsets, disbursing officials follow the instructions of the creditor agency. The creditor agency is responsible for determining the debt repayment schedule (i.e., the schedule of salary offsets) and for providing notice to the employee. (See section 550.1104(b)(2)(ii) and (d)(3).) A creditor agency may also authorize a debt collection center to act in its behalf in establishing the terms of the repayment schedule, subject to any rules or conditions established by the creditor agency. (See section 550.1110 and the definition of ''debt collection center'' in section 550.1103.) We are making some minor clarifying language changes in section 550.1108 of these final regulations, including changes in the fourth sentence. As originally drafted in the proposed rule, the wording of this sentence implied that only a single payment is available for offset. The revised sentence references plural payments.

Two agencies commented that the regulations should provide that the decision of a hearing official in a salary offset proceeding concerning the existence or the amount of an employee's indebtedness is binding on the agency as well as on the employee for all purposes. After careful review, we have decided not to include such a provision in the final regulations. The position reflected in the proposed regulations is in accord with well-reasoned decisions of the Comptroller General, who concluded that under the express terms of 5 U.S.C. 5514(a), as amended by the Debt Collection Act of 1982, Pub. L. No. 97–365, section 5, 96 Stat. 1749 (1982), a hearing official's determination concerning the existence or the amount of an indebtedness in a salary offset proceeding is made only for purposes of determining whether to allow a salary offset. The creditor agency remains legally responsible for administering the program under which the debt arose. Thus, a hearing official's determination does not supersede the finding by the creditor agency that a debt is owed and does not affect the Government's ability to recoup the indebtedness through alternative collection methods. See Comptroller General decisions Secretary of Energy, B–211626, December 19, 1984, and Alfred H. Varga, B–260909, December 17, 1996.

The Department of Defense (DOD) made two comments. First, that under the modification of the definition of ''agency'' in the proposed regulation, DOD would constitute one agency for salary offset purposes, including the designation of hearing officials. Under the current regulatory definition of ''agency,'' there are four agencies within DOD: the Department of Defense (which encompasses the DOD agencies other than the military services), the Department of the Army, the Department of the Navy, and the Department of the Air Force. Thus, the current regulations allow one military department to provide a hearing official for another military department or a Defense agency. If the proposed change in the definition of ''agency'' were to be made final, DOD would have to make other arrangements for hearing officials, which would create an otherwise unnecessary and undue administrative burden on DOD. In response to this comment, we have revised the definition of ''agency'' to make clear that, for the purposes of this subpart, a military department will be treated as a separate agency.

DOD also proposed that, while not affected by the proposed rule, the provisions of 5 CFR 550.1104(d)(11) should be changed. This section requires that agency letters notifying the debtor of the agency's intent to collect through salary offset include a statement that any knowingly false or frivolous statements, representations, or evidence may subject the employee to disciplinary procedures, penalties under the False Claims Act, or criminal penalties. DOD stated the view that because most of the agency's debts are administratively established, the use of this unnecessarily harsh language in debt letters should be within the discretionary authority of the agency. This raises a new issue not mentioned in the proposed rule. As the public has not had a chance to comment, we are unable to make such a change in this final rule. We note this recommendation and will consider it for possible later action.

Covered agencies are required to make necessary conforming changes in their agency salary offset regulations. Under 5 CFR 550.1105(b), significant proposed changes in creditor agency regulations must be submitted to OPM for review and approval. However, as long as these changes in agency regulations are made merely to conform with the changes made in our regulations, no OPM review will be required.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 550 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart K—Collection by Offset From Indebted Government Employees

1. The authority citation for subpart K of part 550 continues to read as follows:

Authority: 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2–1 of E.O. 12107.

2. In § 550.1102, paragraph (b) is revised to read as follows:

§ 550.1102 Scope.

* * * * *

(b) *Applicability.* This subpart and 5 U.S.C. 5514 apply in recovering certain debts by administrative offset, except where the employee consents to the recovery, from the current pay account of the employee. Because salary offset is a type of administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations should be consistent with the provisions of the Federal Claims Collections Standards (FCCS) (dealing with administrative offset generally) and 31 CFR part 285 (dealing with centralized administrative

offset under 31 U.S.C. 3716). Section 550.1108 addresses the use of centralized administrative offset procedures to effect salary offset. Generally, the procedures under § 550.1109 should apply only when centralized administrative offset cannot be accomplished.

(1) *Excluded debts.* The procedures contained in this subpart do not apply to debts arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*) or the tariff laws of the United States or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) *Waiver requests.* This subpart does not preclude an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt, in the manner prescribed by the head of the responsible agency. Similarly, this subpart does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

3. In § 550.1103, the definitions of *agency, creditor agency, disposable pay,* and *FCCS* are revised, and the definition of *debt collection center* is added in alphabetical order, to read as follows:

§ 550.1103 Definitions.

* * * * *

Agency means an executive department or agency; a military department; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation.

Creditor Agency means the agency to which the debt is owed, including a debt collection center when acting in behalf of a creditor agency in matters pertaining to the collection of a debt (as provided in § 550.1110).

* * * * *

Debt collection center means the Department of the Treasury or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with parts 581 and 582 of this chapter). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in § 581.105(b) through (f) of this chapter.

* * * * *

FCCS means the Federal Claims Collection Standards published in 4 CFR parts 101 through 105.

* * * * *

4. Section 550.1104 is amended, in paragraph (d), in the second sentence of the introductory text, by removing ''or his designee'' and adding in its place ''(or authorized designee)''; in paragraph (d)(4), by adding ''as defined in § 550.1103'' after ''FCCS''; in paragraph (d)(6), by removing ''(4 CFR 102.2(e))'' and adding in its place ''(see the FCCS)''; in paragraph (e)(1), by adding the word ''creditor'' before the second appearance of the word ''agency''; in paragraph (g)(2), by removing ''4 CFR 102.3(c)'' and adding in its place ''the FCCS''; in paragraph (m), by removing ''4 CFR 102.3'' and adding in its place ''the FCCS''; in paragraph (n), by removing ''4 CFR 102.13'' and adding in its place ''the FCCS''; and by revising paragraphs (c) and (d)(3) to read as follows:

§ 550.1104 Agency regulations.

* * * * *

(c) *Exception to entitlement to notice, hearing, written responses, and final decisions.* In regulations covering internal collections, an agency must except from the provisions of paragraph (b) of this section—

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(d) * * *

(3) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

* * * * *

§ 550.1106 [Amended]

5. Section 550.1106 is amended by removing ''4 CFR 102.3(b)(3)'' and adding ''the FCCS as defined in § 550.1103'' in its place.

§ 550.1107 Obtaining the services of a hearing official.

6. Section 550.1107 is amended, in paragraph (a), by removing ''4 CFR 102.1'' and adding ''the FCCS as defined in § 550.1103'' in its place; in paragraph (b), by removing ''4 CFR 102.1'' and adding ''the FCCS'' in its place; and by adding a new paragraph (c) to read as follows:

* * * * *

(c) The determination of a hearing official designated under this section is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. A creditor agency may make a certification to the Secretary of the Treasury under § 550.1108 or a paying agency under § 550.1109 regarding the existence and amount of the debt based on the certification of a hearing official. If a hearing official determines that a debt may not be collected via salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the debt through other means, such as offset of other Federal payments, litigation, etc.

7. Section 550.1108 is redesignated as § 550.1109 and is amended by removing the ''(b)'' after ''5514'' in paragraph (a)(3), adding ''claim'' after the first appearance of ''debt'' in paragraph (b)(2), removing ''creditor agency's'' in paragraph (b)(3), and adding introductory text at the beginning of the section to read as follows:

§ 550.1109 Requesting recovery from the paying agency.

When possible, salary offset through the centralized administrative offset procedures in § 550.1108 should be attempted before applying the procedures in this section.

* * * * *

7a. New § 550.1108 is added to read as follows:

§ 550.1108 Requesting recovery through centralized administrative offset.

Under 31 U.S.C. 3716, creditor agencies must notify the Secretary of the Treasury of all debts that are delinquent as defined in the FCCS (over 180 days) so that recovery may be made by centralized administrative offset. This includes those debts the agency seeks to recover from the pay account of an employee of another agency via salary offset. The Secretary of the Treasury and other Federal disbursing officials will match payments, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payments will be offset to collect the debt. Prior to offset of the pay account of an employee, an agency must comply with the requirements of 5 U.S.C. 5514, this subpart, and agency regulations issued thereunder. Specific procedures for notifying the Secretary of the Treasury of a debt for purposes of collection by centralized administrative offset are contained in 31 CFR part 285 and the FCCS. At its discretion, a creditor agency may notify the Secretary of the Treasury of debts that have been delinquent for 180 days or less, including debts the agency seeks to recover from the pay account of an employee via salary offset.

8. A new § 550.1110 is added to read as follows:

§ 550.1110 Debt collection centers.

A debt collection center may act in behalf of a creditor agency to collect claims via salary offset consistent with this section, subject to any limitations on its authority established by the creditor agency it represents or by the U.S. Department of the Treasury.

(a) A debt collection center may be authorized to enter into a written agreement with the indebted employee regarding the repayment schedule or, in the absence of such agreement, to establish the terms of the repayment schedule.

(b) A debt collection center may make certifications to the Secretary of the Treasury under § 550.1108 or to a paying agency under § 550.1109 based on the certifications it has received from the creditor agency or a hearing official.

(c) A debt collection center responsible for collecting a particular debt may not act in behalf of a creditor agency for the purpose of making determinations regarding the existence or amount of that debt.

(d) A debt collection center responsible for collecting a particular debt may arrange for a hearing on the existence or amount of the debt or the repayment schedule by an administrative law judge or, alternatively, another hearing official not under the supervision or control of the head of the creditor agency or the debt collection center.

[FR Doc. 98–34396 Filed 12–30–98; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 52, 53 and 54

[Docket Number LS–98–13]

Processed Fruits and Vegetables and Regulations Governing the Grading and Certification of Livestock, Meats, Prepared Meats, and Meat Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting Amendments.

SUMMARY: The Livestock Market News (LMN) Branch and the Meat Grading and Certification (MGC) Branch of the Agricultural Marketing Service (AMS) are amending certain regulations to update them and to correct minor errors. This action is being taken to improve the accuracy and clarity of the regulations.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: John E. VanDyke, Chief, LMN Branch, telephone 202–720–6231, or Larry Meadows, Chief, MGC Branch, telephone 202–720–1246.

SUPPLEMENTARY INFORMATION:

Background

AMS has discovered that certain errors exist in the codified regulations. This document corrects those errors.

In part 52, section 52.1843, paragraphs (e)(i) and (ii) should be classified as (e)(1) and (2), respectively.

In the **Federal Register** of June 30, 1998 (63 FR 35500), AMS published a final rule entitled ''Removal of U.S. Standards and Other Selected Regulations.'' The final rule revoked Subpart B (7 CFR Parts 53 and 54). However, in issuing the rule, the agency inadvertently neglected to remove the cross-reference to Subpart B in parts 53 and 54, Subpart A—Regulations. Therefore, this action is being taken to correct these inadvertent omissions.

Need for Correction

The regulations codified in the Code of Federal Regulations and published in the **Federal Register** (63 FR 35500) contain errors which may prove to be misleading and need to be clarified.

List of Subjects

7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, vegetables.

7 CFR Part 53

Cattle, Hogs, Livestock, Sheep.

7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

Accordingly, 7 CFR parts 52, 53 and 54 are corrected by making the following amendments:

PART 52—[AMENDED]

1. The authority citation for 7 CFR part 52 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 52.1843 [Amended]

2. In § 52.1843, paragraphs ''(e)(i)'' and ''(e)(ii)'' are corrected to read ''(e)(1)'' and ''(e)(2)'', respectively.

PART 53—LIVESTOCK (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for 7 CFR part 53 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 53.1, is amended by revising paragraph ''Grade'' (2) and the definition for ''Standards'' to read as follows:

§ 53.1 Meaning of words.

* * * * *

Grade. (1) * * *

(2) As a verb, this term means to determine the class, grade, or other quality of livestock according to applicable standards for such livestock.

* * * * *

Standards. The standards of the Department contained in Official United States Standards for Grades of: Carcass Beef; Veal and Calf Carcasses; Lamb, Yearling Mutton, and Mutton Carcasses; and, Pork Carcasses.

* * * * *

3. In § 53.4, the first sentence is revised to read as follows:

§ 53.4 Kind of service.

Grading service under the regulations shall consist of the determination and certification and other identification, upon request by the applicant, of the class, grade, or other quality of livestock under applicable standards. * * *

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for 7 CFR part 54 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 54.1, is amended by revising paragraph ''Grade'' (2) and the definition for ''Standards'' to read as follows:

§ 54.1 Meaning of words.

* * * * *

Grade. (1) * * *

(2) As a verb, this term means to determine the class, grade, or other quality of a product according to applicable standards for such product.

* * * * *

Standards. The standards of the Department contained in Official United States Standards for Grades of: Carcass Beef; Veal and Calf Carcasses; Lamb, Yearling Mutton, and Mutton Carcasses; and, Pork Carcasses.

* * * * *

3. Section 54.4 is revised to read as follows:

§ 54.4 Kind of service.

(1) Grading service under the regulations shall consist of the determination and certification and other identification, upon request by the applicant, of the class, grade, or other quality of products under applicable standards. Class, grade, and other quality may be determined under said standards for meat of cattle, sheep, or swine in carcass form only, except upon approval by the Director upon his determination of good cause and provided that the meat can be identified in conformance with the standards.

(2) Certification service under the regulations shall consist of the determination of the conformity of products to specifications approved by the Director or Chief and the certification and other identification of such livestock or products in accordance with specifications, upon request by the applicant. Determination as to product compliance with specifications for ingredient content or method of preparation may be based upon information received from the inspection system having jurisdiction over the products involved.

(3) The Carcass Data Service, under the regulations, shall consist of the evaluation of carcass characteristics, in accordance with applicable official United States Standards of carcasses of animals identified with the official eartag as shown in § 54.17, the recording of such data, and transmittal of the data to, or as directed by, the applicant for the service.

(4) The Contract Verification Service, under the regulations, provides wholesale buyers of noncertified commodity products a method of determining whether procurement(s) met contractually specified requirements.

(5) The Quality Systems Certification Program, under the regulations, provides meatpackers, processors, producers, or other businesses in the livestock and meat trade the ability to have special processes or documented quality management systems verified.

4. Section 54.13 is amended by revising the first sentence in paragraph (b) to read as follows:

§ 54.13 Accessibility and refrigeration of products; access to establishments.

(a) * * *

(b) Grading service will only be furnished for meat that a USDA grader determines is chilled so that grade factors are developed to the extent that a proper grade determination can be made in accordance with the official standards. * * *

5. In § 54.16, the first sentence is revised to read as follows:

§ 54.16 Marking of products.

All products for which class and grade under the standards are determined under the regulations, or the immediate and shipping containers thereof, shall be stamped, branded, or otherwise marked with an appropriate official identification: *Provided,* That except as otherwise directed by the Chief, such marking will not be required when an applicant only desires official certificates. * * *

Dated: December 22, 1998.

Robert L. Leverette,

Acting Deputy Administrator, Livestock and Seed Program.

[FR Doc. 98–34755 Filed 12–30–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1728

Electric Overhead Distribution Lines; Specifications and Drawings for 24.9/14.4 kV Line Construction

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is revising its bulletin of specifications and drawings for 24.9/14.4 kV overhead distribution line construction. RUS is separating the bulletin into 19 sections. Each section contains an index, construction specifications, and a group of similar drawings of construction assemblies, which perform a common function. RUS is changing the drawing number on each drawing to conform to a new, functional format. RUS is also making certain technical changes to the drawings so that construction assemblies conform to current RUS construction requirements and specifications. Where applicable, the drawings show allowable loading limits and reference to new tables, which show maximum line angles. Existing specifications, such as pole setting depths, are not being modified, however, they are being moved to the section that contains wood poles. RUS is renumbering and reformatting this bulletin in accordance with its new publications and directives system.

EFFECTIVE DATE: February 1, 1999. The incorporation by reference of the publication listed in the role is approved by the Director of the Federal Register February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. James L. Bohlk, Electrical Engineer, Distribution Branch, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1569, Washington, DC 20250–1569. Telephone: (202) 720–1967. Fax: (202) 720–7491.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS loans and loan guarantees to governmental and non-governmental entities from coverage under this order.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in Sec. 3. of the Executive Order. In addition, all state and local laws and regulations that are in conflict

with this rule will be preempted, no retroactive effort will be given to this rule, and in accordance with § 212(c) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(c)), appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule will not have significant impact on a substantial number of small entities defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and therefore, the Regulatory Flexibility act does not apply to this rule.

Information Collection and Recordkeeping Requirements

This rule contains no reporting or recordkeeping provisions requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

Background

Pursuant to the Rural Electrification Act of 1936 as amended (7 U.S.C. 901 *et seq.*), the Rural Utilities Service (RUS) is amending 7 CFR Chapter XVII, Part 1728, Electric Standards and Specification for Materials and Construction, by revising RUS Bulletin 50–5 (D–803), Specification and Drawings for 14.4/24.9 kV Line Construction, and renumbering it as RUS Bulletin 1728F–803. RUS maintains a system of bulletins that contains construction standards and specifications for materials and equipment. These standards and specifications apply to system facilities constructed by RUS electric and telecommunications borrowers in accordance with the RUS loan contract, and contain standard construction units, material, and equipment units commonly used in RUS electric and telecommunication borrowers' systems.

RUS Bulletin 50–5 provides dimensioned drawings of standard assembly units and specifications for the construction of 24.9/14.4 kV overhead electric distribution lines. RUS is changing the bulletin number from RUS Bulletin 50–5 to RUS Bulletin 1728F–803. The change in the bulletin number and reformatting is necessary to conform to RUS' new publications and directives system. This bulletin is incorporated by reference in 7 CFR part 1728.97. It may be purchased from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7954.

The major changes in the bulletin are described below.

The bulletin has been separated into 19 different sections or categories. Each section generally contains construction specifications related to the category, an index of drawings in the section and several similar construction drawings of assemblies that are designed to perform a similar function. The revised bulletin also contains an overall index and general construction specifications. Also added to the bulletin are additional new tables displaying maximum line angles and soil classifications.

The drawing numbers on all the modified drawings have been slightly changed. The drawing number on each new and modified drawing is in a new, uniform format based on the original RUS numbering scheme and format in which each character in the number has a functional meaning related to the contents of the drawings.

Approximately 64 of the 154 construction drawings in previous bulletin 50–5 have been deleted in the revised bulletin. Each drawing was eliminated for one or more of the following reasons:

(a) There is a conflict in the permissible line angles between the primary conductor supports and the neutral conductor supports;

(b) The assembly is comprised of materials no longer contained in Information Publication 202–1, ''List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers'';

(c) The assembly or assemblies have been renumbered and reorganized and included in the revised bulletin as a new drawing;

(d) The assembly design is no longer acceptable as a RUS construction standard for mechanical strength or clearance reasons;

(e) The drawing is redundant of another similar drawing and thus not needed or useful;

(f) The assembly design is no longer preferred or commonly used; or

(g) The drawing contains construction instructions or details that are no longer applicable to RUS construction standards.

Corrections or modifications were made to the approximately 90 remaining drawings of the bulletin. Each revised drawing contains one or more of the following changes:

(a) Each drawing was given a new, shorter, simpler, and more uniform drawing title or name;

(b) The primary system voltage of ''24.9/14.4 kV'' and the number of primary phases were drawn in a uniform place in the title block on each drawing where this information is relevant;

(c) The number (quantity) of locknuts is shown in the material list of all the drawings that have these items;

(d) The revised drawings specify that crossarms be generally installed 1 foot, 6 inches from the top of the pole to utilize the new predrilled hole arrangement in the new RUS standard pole drilling guide;

(e) The new drawings depict the use of 4¼-inch primary deadend insulators instead of 6-inch deadend insulators as shown on the previous drawings;

(f) New technical information, defined as ''design parameters'' was added to the title blocks on most of the drawings. These design parameters include maximum line angles (referenced to the new tables), maximum longitudinal, transverse or unbalanced loads, maximum working load, or maximum holding power. This new technical information defines and usually limits the physical applications of the assembly units shown on the drawings; and

(g) Several of the revised drawings contain new advisory notes, technical information, and references to other drawings.

There are approximately 84 new drawings. Many of these new drawings are of construction assemblies from the

previous bulletin that have been modified as appropriate, renumbered, and reorganized. Other new drawings were added to exhibit one or more of the following:

(a) The application of post-type insulators;

(b) Construction guides and design details;

(c) New equipment and new design; and

(d) Details of subassembly units.

A few new drawings were added to replace, with modifications as required, needed drawings or assemblies that were deleted from the previous bulletin for the reasons previously given.

Comments

On August 26, 1997, RUS published a proposed rule in the **Federal Register**, Vol. 62, No. 165. Comments were received from two parties.

The first party, a distribution borrower of RUS, made three comments. The first comment pointed out a minor technical error on one of the drawings that RUS subsequently corrected. The second comment pointed out the absence of platforms for large transformer banks which is not a RUS standard and has not been a standard for over 30 years. The final comment regarded a preference size of conduit on a service entrance drawing. Since this third comment refers to a guide drawing and not a RUS specification, no changes are necessary to accommodate the preference of the commenter.

The second set of approximately 30 comments was received from a consulting engineering firm. Four comments were general in nature regarding the National Electrical Safety Code, the size of the openings on clevises, crossarm loading and grounding assemblies. No response for the above comments were called for nor needed.

The commenter pointed out minor technical, drafting, or typographical errors or improvements on several drawings. As a result of these comments the following 21 drawings were corrected:

VA4.1	VD2.91L	E3.1
VB4.1	VD4.1	E4.1L
VC1.41L	VD4.1L	F1.XX
VC2.52L	E1.1	F2.XX
VC4.1	E1.01	F3.XX
VC4.2L	E2.1	F6.6
VC5.11G	E2.3G	VQ.41

Based on the comments given, drawing M2.1G was eliminated.

This commenter suggested the addition of notes on several drawings, where relevant, regarding maximum transverse loading for conductors, clearances from poles of conductors on swing angles, separation of conductors on double-circuit assemblies, helix sizes, torques and depths on anchor drawings, right-of-way clearing details, and lead lengths on surge arresters. The commenter also suggested the addition of logs anchors, elimination of rock anchors, replacement of swamp anchors, and minor design changes on certain oil circuit recloser, auto-transformer and switch drawings. Each of the above comments was thoroughly reviewed and considered. RUS determined that each of the suggestions immediately above, which describe the commenter's construction preferences on some assembly units, are technically correct. Likewise, the RUS version of the assemblies is technically sound. In the interest of staying consistent with previous RUS standard assembly units, RUS did not change any of these drawings as suggested.

The commenter also suggested that drawing VD6.91 was technically wrong, that ''silts'' should be eliminated from some soil classifications in Table F, and that the ground connections on two of the transformer/meter connection schematics was incorrect. RUS reviewed these comments very carefully and determined that the RUS drawings are correct and that the comments were incorrect. Thus, no changes were made to these drawings.

List of Subjects in 7 CFR Part 1728

Electric power, Incorporation by reference, Loan programs-energy, Rural areas.

For reasons set out in the preamble, RUS is amending 7 CFR part 1728 as follows:

PART 1728—ELECTRIC STANDARDS AND SPECIFICATIONS FOR MATERIALS AND CONSTRUCTION

1. The authority citation for part 1728 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 1921 *et seq.*; 6941 *et seq.*).

2. Section 1728.97(b) is amended by removing the entry for Bulletin 50–5 and adding to the list of bulletins, in numerical order, the entry for Bulletin 1728F–803, to read as follows:

§ 1728.97 Incorporation by reference of electric standards and specifications.

* * * * *

(b) *List of Bulletins.*

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Bulletin 1728F–803, Specifications and Drawings for 24.9/14.4 kV Line Construction (October 1998).

* * * * *

Dated: December 18, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–34493 Filed 12–30–98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 77 and 91

[Docket No. 92–076–2]

RIN 0579–AA53

Tuberculosis in Captive Cervids

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning tuberculosis and the interstate movement of animals by adding provisions regarding testing, identification, and interstate movement of captive cervids, such as deer and elk. We are also amending the regulations concerning exportation of animals and animal products to require that, to be eligible for export, captive cervids be accompanied by a certificate stating that they have tested negative for tuberculosis within 90 days prior to export. Captive cervids have been determined to be a source of tuberculosis infection. These amendments are necessary to help prevent the spread of tuberculosis and facilitate the eradication of tuberculosis in livestock in the United States.

EFFECTIVE DATE: The incorporation by reference of the publication listed in the rule is approved by the Director of the Federal Register February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph VanTiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737–1231, (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis.* It affects cattle, bison, deer, elk, and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal.

The regulations in 9 CFR part 77 restrict the interstate movement of cattle and bison to help prevent the interstate

spread of bovine tuberculosis. On April 4, 1996, we published in the **Federal Register** (61 FR 14982–14999, Docket No. 92–076–1) a proposal to amend the regulations by dividing 9 CFR part 77 into two subparts: ''Subpart A—Cattle and Bison'' and a new ''Subpart B—Captive Cervids.'' As proposed, ''Subpart A—Cattle and Bison'' contained the regulations currently in part 77 plus a new § 77.7, ''Cleaning and disinfection of premises, conveyances, and materials,'' regarding the cleaning and disinfection of premises, conveyances, and materials used in the interstate movement of tuberculous cattle or bison. Proposed ''Subpart B—Captive Cervids'' added provisions concerning testing, identification, and interstate movement of captive cervids to help prevent the interstate spread of tuberculosis and facilitate the eradication of tuberculosis in livestock in the United States.

The regulations in 9 CFR part 91 concern exportation of animals and animal products. We proposed to amend part 91 to require that captive cervids test negative for tuberculosis within 90 days prior to export.

We solicited comments concerning our proposal for 60 days ending June 3, 1996. We received 15 comments by that date. They were from industry associations, veterinarians, wildlife associations, deer and elk producers, a State animal health commission, and other individuals. One comment supported the proposal without change, two comments opposed the proposed rule, and 12 comments, while generally supportive, requested specific changes to the proposed rule. All of the comments concerned the proposed new subpart B to part 77. The comments are discussed below by topic.

Overview of Proposed Regulations

As stated previously, our proposed ''Subpart B—Captive Cervids'' covered testing, identification, and interstate movement of captive cervids. The purpose of the proposed regulations was to help prevent the interstate spread of tuberculosis and facilitate the eradication of tuberculosis in livestock in the United States.

Generally, we proposed that a captive cervid could not be moved interstate unless it had tested negative to an official tuberculosis test, or was being moved directly to slaughter or to be necropsied. We proposed to require a permit for the interstate movement to slaughter or necropsy. We also proposed procedures for applying and interpreting official tuberculosis tests, procedures for cleaning and disinfecting conveyances and materials used to move tuberculous captive cervids interstate, and procedures for the quarantine of herds considered to be at high risk for tuberculosis (for example, herds found to contain a captive cervid that responds to an official tuberculosis test, that shows lesions suggestive of tuberculosis at slaughter, that is found to be infected with tuberculosis, or that has been exposed to tuberculosis).

In addition, we proposed to establish a herd accreditation program for captive cervid herds, similar to the one we have for cattle and bison herds. Under that program, participating herd owners would be subject to progressively less restrictive requirements for moving their captive cervids interstate, as long as regular testing of their entire herd at prescribed intervals continued to show no evidence of tuberculosis in the herd. The reduced restrictions were based on the captive cervids coming from a herd with a history of testing negative for tuberculosis. The main purpose of the proposed herd accreditation program was to provide a systematic approach towards eradication of tuberculosis from U.S. captive cervid herds.

In general, we proposed three classes of herds under the herd accreditation program. We explained in the proposed rule that participation in the program would be voluntary. However, interstate movement would be easier for an animal from a participating herd. A captive cervid could be moved interstate from a non-participating (unclassified) herd, or a herd that had not yet achieved classification under the program, only if: (1) The captive cervid had tested negative to two official tuberculosis tests conducted no less than 90 days apart; (2) the second test was conducted within 90 days prior to the date of movement; and (3) the captive cervid was isolated from all other animals during the testing period (from the time of the first test to interstate movement).

The three classes of herds we proposed were accredited, qualified, and monitored herds. Accredited herd classification indicated the greatest assurance of a herd's freedom from tuberculosis. To be classified as an ''accredited'' herd, all captive cervids in the herd eligible for testing must have tested negative to at least three consecutive official tuberculosis tests, conducted approximately annually. Once the herd was classified as accredited, it could maintain that status if all captive cervids eligible for testing in the herd tested negative to an official tuberculosis test conducted approximately every 2 years. Captive cervids from accredited herds would not have to be tested individually prior to interstate movement. Before reaching accredited herd status, a herd could be classified as a ''qualified'' herd if all captive cervids eligible for testing in the herd tested negative to one official tuberculosis test. Captive cervids from qualified herds would have to test negative to one official tuberculosis test within 90 days prior to interstate movement. ''Monitored'' herd classification was included in the proposal mainly to accommodate captive cervid herds that are difficult to test on a whole herd basis because of their size or the conditions of their captivity (such as captive cervids raised under range conditions). We proposed that a herd could be classified as a monitored herd if slaughter records were sufficient to ensure that tuberculosis infection at a prevalence level of 2 percent or more would be detected with a confidence level of 95 percent. As with captive cervids from qualified herds, captive cervids from monitored herds would have to test negative to one official tuberculosis test within 90 days prior to interstate movement.

This final rule makes numerous changes to the proposed rule in response to the comments received. However, the basic structure of the proposed regulations, as outlined above, has not been changed. In the remainder of this preamble, we will discuss each section of the proposed regulations in more detail and the changes this final rule makes to those proposed sections.

First, we would like to give some background on some of the changes made in this final rule based on public comments concerning recommendations made by the United States Animal Health Association (USAHA) Tuberculosis Committee (the Committee).

In the preamble to the proposed rule we stated that the proposed subpart B for captive cervids was modeled after the regulations in part 77 for cattle and bison, and after the Uniform Methods and Rules—Bovine Tuberculosis Eradication (UMR for tuberculosis). The UMR for tuberculosis sets forth the tuberculosis eradication program for cattle and bison and is incorporated by reference into part 77 of the Code of Federal Regulations. On May 15, 1994, the Animal and Plant Health Inspection Service (APHIS) approved an addendum to the UMR for tuberculosis (the addendum) that included the provisions for interstate movement of captive cervids. These UMR addendum provisions covering interstate movement of captive cervids were contained in our proposed rule. The Committee and other interested parties periodically review the UMR for

tuberculosis in cattle and bison and the addendum for captive cervids and will recommend changes to these documents to APHIS. APHIS evaluates all recommended changes to the UMR for tuberculosis and will adopt recommendations that further program goals and objectives.

Since publication of the proposed rule, APHIS has adopted a number of changes recommended by the Committee and has incorporated them into the addendum for captive cervids. In fact, APHIS has adopted all of the recommendations proposed by the Committee in 1995 and 1996, with one exception, a recommendation concerning surveyed herd status (discussed later in this document). These adopted recommendations have been incorporated into the May 20, 1997, UMR addendum for tuberculosis in captive cervids.

Some commenters specified certain Committee recommendations that they suggested be included in this final rule. A number of commenters requested that all such recommendations be included in the final rule. APHIS concurs in large part with these suggestions. Since the drafting of the addendum, many captive cervid herd owners have been voluntarily complying with the provisions in the addendum for captive cervids concerning testing and interstate movement. Changes to the addendum are based on experience in using the official tuberculosis tests in these captive cervid herds as well as experience in applying the quarantines and testing protocols for interstate movement. These changes to and applications of the addendum have proven to be very effective and valuable. Accordingly, in order to incorporate the most current understanding of tuberculosis in captive cervids into the applicable provisions, this final rule will include changes based on those recommendations of the Committee in 1995 and 1996 that have been adopted by APHIS for the UMR addendum for tuberculosis in captive cervids.

In addition, we proposed to incorporate by reference the addendum for tuberculosis in captive cervids in the definition of ''Uniform Methods and Rules—Bovine Tuberculosis Eradication'' in § 77.1. Incorporating the addendum by reference into 9 CFR part 77 would give the provisions in the addendum the force and effect of regulations. However, in this final rule, we are not incorporating the addendum by reference into the regulations. As stated previously, the addendum has been modified each year since publication of the proposed rule. APHIS is again in the process of revising the addendum to add changes based on recommendations by the Committee and other interested parties since 1996. Since APHIS is continuing to evaluate changes to the addendum, we do not believe it is appropriate at this time to incorporate the addendum by reference. As revisions to the addendum are completed, we will reevaluate the benefits of incorporating the addendum for tuberculosis in captive cervids by reference in 9 CFR part 77. Copies of the current edition of the UMR for tuberculosis and the addendum for tuberculosis in captive cervids can be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Changes to the Proposed Rule

Following is a discussion of all changes we are making to the proposed rule. The changes are discussed by section. Most changes are based on comments; a few are to improve clarity and consistency. The basis for each change is indicated.

Section 77.8 Definitions

We proposed § 77.8 to establish definitions of terms used throughout the subpart for captive cervids. We are making a number of changes to these definitions, as follows.

Definition of Accredited Herd

In proposed § 77.8, an accredited herd was defined as one that has tested negative to at least three consecutive official tuberculosis tests conducted at 10–14 month intervals. Commenters said that the Committee recommended that we revise the proposed testing schedule to allow the tests to be conducted at 9–15 month intervals in order to give herd owners more leeway in determining when to conduct their whole herd tests. This recommendation was made because a more flexible testing schedule is necessary to accommodate the seasonal cycles of cervids. Captive cervid owners should be given the flexibility to ensure they are not testing female captive cervids that are in the late stages of pregnancy, risking harm to the fetus. This means the best time to test females is usually December and January (after breeding, but still early in the pregnancy). However, the best time to test male captive cervids is usually April or May, after they have lost their antlers. This minimizes injuries and deaths during their handling. We agree that a 9–15 month interval for testing for accredited herd status would be beneficial for herd owners, and would not compromise the integrity of the whole herd test. Therefore, in this final rule, the definition for accredited herd states that tests for herd accreditation may be conducted at 9–15 month intervals. We have made the same change in § 77.12, which concerns interstate movement from accredited herds.

We are also making another related change in § 77.12, which contains the provisions for accredited herd status. Proposed § 77.12, paragraph (d), stated that, to maintain accredited herd status, the herd must test negative to an official tuberculosis test within 22–26 months from the anniversary date of the third consecutive test with no evidence of tuberculosis disclosed. For the same reasons discussed above for changing the testing schedule to achieve accredited herd status, we are revising the testing schedule in paragraph (d) for maintaining accredited herd status. We will require instead that the herd test negative to an official tuberculosis test within 21–27 months from the anniversary date of the third consecutive test.

Definition of Accredited Veterinarian

We proposed to include a definition in § 77.8 for ''accredited veterinarian.'' The proposed definition was consistent with the definition for accredited veterinarian in § 77.1 of the regulations. The proposed definition was, however, inconsistent with the definition for accredited veterinarian in 9 CFR part 160, ''Accreditation of Veterinarians and Suspension or Revocation of Such Accreditation.'' The definition of accredited veterinarian in part 160 is the correct definition. Therefore, we are changing the definition in § 77.8 to be consistent with the definition in part 160. We are also similarly revising the definition in § 77.1. The definition will read as follows:

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of subchapter J to perform functions specified in subchapters B, C, and D of this chapter.

Definition of Captive Cervid

We are making a change to the definition in § 77.8 of ''captive cervid.'' A few commenters said that it is unclear exactly what animals are covered under the term ''cervid.'' The proposed definition of ''captive cervid'' states that a cervid would include all species of deer, elk, and moose. In response to comments, the definition of captive cervid in this final rule clarifies that all members of the family Cervidae will be considered cervids under this rule.

We are also making a related change to the rest of subpart B. A few commenters stated that parts of the

proposed regulations could be read to apply to wild cervids. The intention of the proposal was that the regulations apply only to captive cervids. A captive cervid was defined in proposed § 77.8 as being ''All species of deer, elk, and moose raised or maintained in captivity for the production of meat and other agricultural products, for sport, or for exhibition. . . .'' In addition, we believed that we used the term ''captive cervid'' throughout the proposed rule as often as necessary to make it clear that the rule only applied to captive cervids. However, we did not use the word ''captive'' every single time we used the word ''cervid.'' To be certain that our intention is understood, we are replacing the term ''cervid'' with the term ''captive cervid'' every time that it appears.

We are also revising the definition of ''captive cervid'' in 9 CFR part 50, concerning indemnity for animals destroyed because of tuberculosis. In an interim rule published in the **Federal Register** on June 24, 1998 (63 FR 34259–34264, Docket No. 98–033–1), we stated that we were considering adding a definition of captive cervid to part 77, and that if we did, we proposed to revise the definition of captive cervid in part 50 to be consistent with part 77. We received two comments on the interim rule, and neither one objected to the proposal to revise the definition of captive cervid in part 50. Therefore, this final rule revises the definition of captive cervid in part 50 to make it the same as the definition this final rule adds to part 77.

Addition of Definition for Designated Tuberculosis Epidemiologist

In several places throughout the proposed rule, we delegated to the State and/or regional tuberculosis epidemiologist the authority to make decisions concerning the use and interpretation of diagnostic tests and the management of affected herds. The Committee recommended that we add a provision for a designated tuberculosis epidemiologist (DTE) who is specially trained in tuberculosis epidemiology, and that these authorities be delegated to the DTE.

In response to this recommendation, we have incorporated provisions for a DTE into our tuberculosis eradication program by identifying epidemiologists who are trained in tuberculosis epidemiology as DTE's. A DTE is responsible for determining the scope of epidemiological investigations, assisting in developing individual herd plans, and coordinating tuberculosis surveillance and eradication programs within a particular geographic area.

Previously, we relied primarily on the regional tuberculosis epidemiologists, who are specially trained in tuberculosis epidemiology, to perform these responsibilities. We currently have only four regional tuberculosis epidemiologists. Because the volume of responsibilities is high, we proposed that State epidemiologists share these responsibilities. State epidemiologists may not be specially trained in tuberculosis epidemiology, but typically have more general knowledge. We agree with the Committee that authorizing DTE's identified by APHIS as having expertise in tuberculosis epidemiology will help ensure that there is an adequate number of epidemiologists to perform the required responsibilities. Regional tuberculosis epidemiologists (employed by APHIS) are now also DTE's for their region. Some States have additional DTE's (employed by the State) due to the volume of responsibilities in that State.

We also agree that the authority to make decisions concerning the use and interpretation of diagnostic tests and the management of affected herds should be given to the DTE. In this final rule, we are adding a definition for the DTE to read as follows:

Designated tuberculosis epidemiologist (DTE). An epidemiologist designated by APHIS to make decisions concerning the use and interpretation of diagnostic tests and the management of affected herds under this subpart.

We are also replacing ''State and/or regional tuberculosis epidemiologist'' with ''DTE'' each time it appeared in the proposed rule. In one place, § 77.11(b)(4)(iii), the proposed rule gave test interpretation authority to cooperating State or Federal animal health officials. This final rule gives that authority to the DTE. Further, in § 77.11(a)(2), we are adding a provision for the DTE to make judgments concerning the interpretation of the single cervical tuberculin (SCT) test. In § 77.16(e), we are adding a provision for the DTE to make judgments concerning further testing of a herd that has received captive cervids from an affected herd. These changes are discussed later in this document.

Definition of Exposed Captive Cervid

The proposed rule included a definition in § 77.8 of ''exposed captive cervid'' to mean any captive cervid that has been exposed to tuberculosis by reason of associating with tuberculous captive cervids, cattle, or bison. One commenter said that we should also consider a captive cervid exposed to tuberculosis by reason of associating with any species of tuberculous livestock. We agree with the commenter that livestock other than captive cervids, cattle, or bison can transmit tuberculosis to captive cervids. Further, captive cervids in mixed herds (including noncervids, such as antelopes, llamas, or other species) are at a risk of contracting tuberculosis from types of animals other than captive cervids, cattle, or bison. Therefore, this final rule defines ''exposed captive cervid'' as any captive cervid exposed to tuberculosis by reason of associating with tuberculous captive cervids, cattle, bison, or other livestock. In conjunction with this change, we have changed the requirements for additions to classified herds in proposed §§ 77.12(c)(4), 77.13(c)(4), and 77.14(c)(4). The proposed rule stated that a captive cervid to be added to a classified herd must not have been exposed during the 90 days prior to its movement to a captive cervid from a herd with a lower classification status than its own. This final rule adds that the captive cervid to be added must also not have been exposed to any tuberculous livestock during the same 90 day period. We are also adding a definition of ''livestock'' to § 77.8. This is discussed below.

We are also making another change to the definition of exposed captive cervid for clarity. The proposed definition of exposed captive cervid used the term ''tuberculous.'' The definition of tuberculous, as revised later in this document, includes the concept of exposed livestock. Therefore, using the word ''tuberculous'' in the definition of exposed cervid is misleading. We are removing the word ''tuberculous'' from the definition of exposed captive cervid. In this final rule, the definition will read that an exposed captive cervid is any captive cervid that has been exposed to tuberculosis by reason of associating with captive cervids, cattle, bison, or other livestock from which *M. bovis* has been isolated.

Addition of Definition of Livestock

We are adding a definition of livestock to the new subpart B in part 77. In an interim rule effective and published in the **Federal Register** on July 24, 1995 (60 FR 37804–37810, Docket No. 94–133–1), we added a definition of livestock to 9 CFR part 50, ''Animals Destroyed Because of Tuberculosis.'' In an interim rule effective and published in the **Federal Register** on February 23, 1998 (63 FR 8837–8840, Docket No. 97–062–1), we added the same definition of livestock to § 77.1 (subpart A under this final rule), concerning cattle and bison. The definition we added to parts 50 and 77 reads:

Livestock. Cattle, bison, cervids, swine, dairy goats, and other hoofed animals (such as llamas, alpacas, and antelope) raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition.

Because of the addition of livestock to the definition of ''exposed captive cervid,'' and to be consistent with the regulations in part 50 and subpart A of part 77, for cattle and bison, we are adding this same definition to subpart B, § 77.8, concerning captive cervids.

We are making a related change to the proposed definition of ''herd.'' Specifically, § 77.8 of the proposed rule defined ''herd'' to mean ''A group of captive cervids or a group of captive cervids and other hoof stock maintained on common ground, or two or more groups of captive cervids and other hoof stock under common ownership or supervision that are geographically separated but that have movement of animals between groups without regard to health status. (A group means one or more animals.)'' For consistency, we are changing this definition by replacing the term ''hoof stock'' with the term ''livestock.'' We believe the intent is the same, and that the change is necessary in order to be consistent with the terminology used in part 50 and part 77, subpart A, for cattle and bison.

Definition of Moved Directly

In the proposed rule, we defined the term ''moved directly'' to mean ''(m)oved without unloading en route if moved in a means of conveyance, or without stopping if moved in any other manner, and without stopover or diversion to assembly points of any type.'' We defined this term because we proposed to require throughout the subpart that captive cervids be ''moved directly'' to slaughter, or ''moved directly'' from a classified herd, for example. Requiring in these instances that the captive cervids be moved directly, as described above, would minimize the risk of the tuberculous captive cervids spreading the disease, and would minimize the risk of healthy captive cervids becoming diseased en route to their destination through contact with tuberculous animals. Several commenters were concerned that the ''moved directly'' requirement would unduly restrict the ability for owners to ship captive cervids long distances, especially for herd additions to classified herds. Captive cervids may need to be unloaded for feeding and rest if they are being moved over an extended period of time. We agree with commenters that the definition for moved directly is unnecessarily restrictive. As long as the captive cervids are isolated so that they cannot mingle with any livestock other than the ones with which they are being moved (such as at assembly points where livestock are assembled for sale), they may be safely unloaded en route to their destination. Therefore, the definition of ''moved directly'' has been changed to read as follows in this final rule:

Moved directly. Moved without stopping or unloading at livestock assembly points of any type. Captive cervids being moved directly may be unloaded from the means of conveyance while en route only if they are isolated so that they cannot mingle with any livestock other than those with which they are being shipped.

Definition of Negative

The proposed rule defined a negative captive cervid to mean a captive cervid that shows no response to an official tuberculosis test or is classified negative for tuberculosis by the testing veterinarian based upon history, supplemental tests, examination of the carcass, or laboratory results. One commenter suggested we be more specific about ''laboratory results.'' Another commenter said that a negative classification based on anything other than no response to an official tuberculosis test should always be based, in part, on laboratory results. We agree with the commenters. The laboratory analysis we require for determining the existence of *M. bovis* is histopathology and culture of selected tissues. Histopathology involves studying selected tissue samples under a microscope; culture involves attempting to grow *M. bovis* from selected tissues samples. In response to these comments, we are changing the definition of negative captive cervid by removing the phrase ''or laboratory results'' and replacing it with the phrase ''and negative histopathology and culture of selected tissues.''

Definition of Reactor

In the proposed rule, a reactor captive cervid was defined to mean ''Any cervid that shows a response to an official tuberculosis test and is classified a reactor by the testing veterinarian; or any suspect cervid that is classified a reactor upon slaughter or necropsy by the USDA or State veterinarian performing or supervising the necropsy.'' We proposed to reclassify a suspect as a reactor if evidence of tuberculosis was found upon slaughter or necropsy. This would allow the owner of the captive cervid to collect reactor indemnity for the slaughter of a reactor animal. One commenter recommended that a suspect only be reclassified as a reactor if the slaughter or necropsy included laboratory follow-up. It was our intention to only allow reclassification if the slaughter or necropsy were followed by histopathology and/or culture of selected tissues. It can take several months to receive results of culture examination, while histopathology results are often available within a week. For this reason, we would not necessarily require culture results before we would reclassify a captive cervid as a reactor. In response to this comment, we have revised the definition of reactor in § 77.8 to make it clear that a suspect may only be reclassified as a reactor upon slaughter or necropsy after histopathology and/or culture of selected tissues.

Several commenters stated that they agreed with the provision for reclassifying suspect captive cervids as reactors in order that owners may receive reactor indemnity. They pointed out, however, that the same provision is not included in the definition in part 77 for reactor cattle and bison. We are considering this comment. However, because the standards are different for cattle and bison, we are not making any changes to the regulations in response to this comment. If we determine a similar provision appears appropriate for cattle and bison, we will propose it in a separate document.

Definition of Suspect

We proposed to define a suspect as a captive cervid that ''is not negative to any official tuberculosis test and that is not classified as a reactor by the testing veterinarian.'' One commenter pointed out to us that classification using the blood tuberculosis (BTB) test is different than for other official tuberculosis tests. For this reason, we are defining suspect in this final rule as a captive cervid that is not negative to the single cervical tuberculin (SCT) test or the comparative cervical tuberculin (CCT) test, or that is classified by the testing laboratory as equivocal to the BTB test, and that is not classified as a reactor by the testing veterinarian. We are also revising the definitions for ''reactor'' and ''negative'' to reflect the classifications based on the BTB test. We are adding that, when using the BTB test, captive cervids are classified as reactors based on an ''*M. bovis* positive'' classification from the testing laboratory, and captive cervids are classified as negative based on an ''avian'' or ''negative'' classification from the testing laboratory. These classifications are consistent with the provisions for interpreting the BTB test in § 77.11(c).

Definition of Tuberculous

The proposed rule defined ''tuberculous'' to mean ''(I)nfected with, exposed to, or having lesions indicative of tuberculosis, or identified as a suspect or reactor based on an official tuberculosis test.'' However, this definition is inconsistent with the intended meaning of tuberculous as used throughout the proposed rule and this final rule. There is no place in this final rule where we use the word tuberculous with the intention of including suspects; and, there is only one place where we use the word tuberculous with the intention of including reactors (discussed below). The proposed definition of tuberculous to include such animals was overly inclusive and incorrect. We also believe it would be more precise to clarify that by ''exposed to'' we mean ''from a herd in which *M. bovis* has been isolated'' (i.e., an affected herd). Captive cervids from affected herds are considered exposed to tuberculosis. This final rule, therefore, defines tuberculous to mean having lesions indicative of tuberculosis, infected with tuberculosis based on the isolation of *M. bovis,* or being from a herd in which *M. bovis* has been isolated.

One place where the proposal used the word ''tuberculous'' with the intention of including reactor animals is in the proposed regulations concerning cleaning and disinfection of premises, conveyances, and materials. These regulations are in proposed § 77.18 for captive cervids; we also added the same requirements to the regulations for cattle and bison in proposed § 77.7. These sections propose, in part, that all conveyances and associated equipment, premises, and structures that are used in connection with the interstate movement of captive cervids, cattle, or bison and that are determined by cooperating State and Federal animal health officials to be contaminated because of occupation or use by *tuberculous* captive cervids, cattle, or bison must be cleaned and disinfected under the supervision of the cooperating State or Federal animal health officials. We intended tuberculous, in this case, to include reactor animals. Under the UMR for tuberculosis, we have always required cleaning and disinfection of premises, conveyances, and materials when they have been used in connection with the interstate movement of reactor cattle and bison because reactors carry a significant risk of actually being infected with tuberculosis. We do not require cleaning and disinfection when the premises, conveyances, and materials have been used in connection with the interstate movement of suspects because suspects are less likely to actually be infected with *M. bovis*. In light of the revised definition of ''tuberculous'' in this final rule, and to ensure that conveyances, premises, materials, and equipment used in the handling of reactors are properly cleaned and disinfected, we are changing §§ 77.7 and 77.18 to refer to ''tuberculous or reactor'' animals.

We are also making a change to §§ 77.7 and 77.18 in connection with the addition of the word ''livestock'' to the definition of ''exposed captive cervid'' and the addition of a definition for ''livestock'' to § 77.8. As discussed earlier, one commenter was concerned that livestock other than captive cervids, cattle, and bison can transmit tuberculosis to captive cervids. For this reason, we have added the word ''livestock'' to the definition of exposed captive cervid and have added a definition of livestock to § 77.8. For the same reason, we are changing §§ 77.7 and 77.18 to require the cleaning and disinfection of all conveyances and associated equipment, premises, and structures that are used in connection with the interstate movement of captive cervids, cattle, or bison and that are determined to be contaminated because of occupation or use by any tuberculous or reactor *livestock*.

Section 77.9 General Restrictions

We proposed in § 77.9 to establish general requirements for interstate movement of captive cervids to apply to all captive cervids, regardless of their herd's classification status.

In proposed § 77.9, paragraph (a) stated that no captive cervid may be moved interstate unless it had been tested with an official tuberculosis test. One commenter was concerned that this requirement was contrary to the provisions that allow movement of captive cervids from accredited herds without additional testing. In response to this comment, we are adding a phrase to § 77.9(a) to state that the testing requirement does not apply to interstate movements from accredited herds.

In § 77.9(c), we proposed to require that each captive cervid or shipment of captive cervids to be moved interstate must be accompanied by a certificate issued before the movement by a State or Federal animal health official or an accredited veterinarian. We are adding a requirement that the certificate must be issued within 30 days of the movement. This should have appeared in the proposed rule, and is necessary in order to ensure that the information appearing on the certificate is current and accurate.

We are changing a reference in § 77.9(d) to the American Association of Zoological Parks and Aquariums (AAZPA). This association has changed its name to the American Zoo and Aquarium Association (AZA).

Section 77.10 Testing Procedures for Tuberculosis in Captive Cervids

The proposed rule specified three official tuberculosis tests—the single cervical tuberculin (SCT) test, the comparative cervical tuberculin (CCT) test, and the blood tuberculosis (BTB) test. Proposed § 77.10 set forth testing procedures to be followed when using these official tuberculosis tests.

Paragraph (a) of proposed § 77.10 stated that, with some exceptions, official tuberculosis tests may only be administered by a veterinarian employed full-time by the State in which the test is administered or by a veterinarian employed full-time by the U.S. Department of Agriculture (USDA). Commenters cited the Committee recommendation that we remove the requirement that a testing veterinarian be employed ''full-time'' by the State or by USDA. The Committee believes that requiring testing veterinarians to be employed full-time by the State or USDA would place too great a restriction on the number of veterinarians eligible to perform official tuberculosis tests. We agree, and we do not believe it is necessary to require that they be employed full-time. Therefore, in this final rule, we have removed the ''full-time'' requirement in § 77.10(a), and in each place throughout the remainder of the rule where we proposed to require a testing State or USDA veterinarian to be employed ''full-time.''

The Texas Veterinary Medical Center at Texas A&M University in College Station, TX, was specified in proposed § 77.10(b) as the only laboratory to which test samples for the BTB test could be sent. One commenter said that the Texas Veterinary Medical Center should not be the only laboratory approved for analysis of BTB samples. The commenter requested that we revise the rule to allow samples to be sent to ''any laboratory approved by APHIS to conduct the BTB.'' At the present time, the Texas Veterinary Medical Center is the only laboratory in the United States equipped to conduct the test. Other laboratories that conduct the BTB test are outside the United States, and we have not evaluated their capability. In response to the comment, we are revising paragraph (b)(2) to read: ''The following laboratories are approved to perform the BTB: Texas Veterinary Medical Center laboratory at Texas A&M

University in College Station, Texas.'' This revision will allow APHIS to add other laboratories to the list of approved laboratories as they become equipped and approved to conduct the BTB test.

Paragraph (c) of proposed § 77.10 stated that ''(a)ny captive cervid tested with an official tuberculosis test must be individually identified by an official eartag at the time of the official tuberculosis test.'' The Committee recommended that we additionally allow captive cervids to be identified by other types of identification, such as a tattoo. For example, some herd owners prefer a tattoo identification because it is permanent and cannot be pulled off or lost like an eartag. APHIS has approved this recommendation, and § 77.10(c) of this final rule includes provisions for identifying captive cervids with a device other than an official eartag. As discussed above, a common alternate form of identification is a tattoo. However, there are other types of identification available, and still others may be developed. Our only criteria is that the identification must be unique and traceable. Therefore, we will require that use of any identification device or method other than an official eartag must first be approved by the Administrator as being unique and traceable. Written requests for approval must be sent to National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231. In the remainder of the rule, each time a reference is made to an eartag identification, we are adding a reference to other approved identification that is unique and traceable.

We are also revising proposed § 77.10(c) to clarify it. The proposed paragraph states that each captive cervid tested with an official tuberculosis test must be individually identified ''at the time of the official tuberculosis test.'' This wording could be read to mean that a captive cervid must be reidentified each time it is tested. Practically speaking, this could be the case with an official eartag, since eartags do come off. However, the intention of the requirement was that each captive cervid must bear official identification at the time of the test so that the identification number can be recorded. If a captive cervid still bears its original official eartag, it does not have to be eartagged again. If the tattoo on a captive cervid is still legible, the captive cervid does not have to be tattooed again. To avoid confusion, we are revising § 77.10(c) to state that each captive cervid tested with an official tuberculosis test ''must bear individual identification in the form of an official eartag, or another unique and traceable identification device or method approved for use by APHIS, at the time of the official tuberculosis test.''

Paragraph (d) of proposed § 77.10 concerned reporting of official tuberculosis tests, and stated that test reports must include the following information: The official eartag number; the age, sex, and breed of each captive cervid tested; a record of all responses; the size of each response (if appropriate for that test); and the test interpretation. The Committee recommended that reports on the BTB test also include a summary of data supporting the test interpretation, and that full supporting data be submitted by the testing laboratory on a case-by-case basis at the request of cooperating State and Federal animal health officials. This information would assist State and Federal animal health officials in evaluating the tuberculosis status of a herd tested with the BTB test. We agree with this recommendation, and have added this requirement to § 77.10(d) in this final rule for the BTB test.

We are making another change to proposed § 77.10(d) for consistency. Proposed paragraph (d) stated that the testing veterinarian must submit a report to cooperating State and Federal animal health officials for all official tuberculosis tests. Paragraph (c)(5) of proposed § 77.11 set forth requirements for conducting the BTB test, and stated that BTB test results must be submitted by the testing laboratory to the person, firm, or corporation responsible for the management of the herd, cooperating State and Federal animal health officials of the State in which the captive cervid is tested, and the testing veterinarian. We realize that these two sets of requirements conflict. For this reason, we are placing the requirements in proposed § 77.10(d) into a new paragraph, § 77.10(d)(1), that will apply only to the SCT and CCT official tuberculosis tests. We are also placing the requirements for reporting BTB test results that are in proposed § 77.11(c)(5) into a new paragraph, § 77.10(d)(2), that will apply only to the BTB official tuberculosis test.

We are also making a clarification in § 77.10(d) concerning reporting of responses to the SCT and CCT tests. We proposed that reports on the SCT test and the CCT test must include, among other things, ''the size of each response (if appropriate for that test).'' The SCT test is not interpreted based on a measured response; therefore, reporting the size of the response would not be appropriate for the SCT test. The CCT test is interpreted based on a measured response. To make this more clear, we have revised this requirement to state that the report must include ''the size of each response for the CCT test.''

Paragraph (f) of proposed § 77.10 stated that testing of captive cervids for classification must include all captive cervids 1 year of age or over and any captive cervids other than natural additions (captive cervids born into the herd) under 1 year of age. Further, proposed paragraph (f) provided that all natural additions under 1 year of age must be individually identified by an official eartag and recorded in the test report as members of the herd at the time of the herd test, even though they are not tested. One commenter said that the advantage in not testing captive cervids under 1 year of age is that the handling required for testing is too stressful on young captive cervids and could result in a high rate of mortality. The commenter said that the handling required for identifying captive cervids carries the same risk to young captive cervids as testing, and that captive cervids under 1 year of age that are exempted from testing should also be exempted from being individually identified.

We agree that captive cervids under 1 year of age are highly excitable and fragile, and this was part of the reason for exempting natural additions under 1 year of age from testing. We also agree that it makes sense, therefore, to exempt these animals from the identification requirement, as well. Therefore, we are removing the proposed requirement in § 77.10(f) that natural additions under 1 year of age must be individually identified by an official eartag and recorded in the test report as members of the herd at the time of the herd test.

Section 77.11 Official Tuberculosis Tests

Proposed § 77.11 described each of the three official tuberculosis tests (the SCT test, the CCT test, and the BTB test), when each may be used, and the classification the testing veterinarian would have to confer depending upon a captive cervid's response to each test. As discussed previously in this document, in conjunction with the addition of the DTE to this final rule, we are adding a provision in § 77.11(a)(2) for the DTE to make judgments concerning the interpretation of the SCT test. In the proposed rule, paragraph (a)(2) stated that, in affected herds and in herds that have received captive cervids from an affected herd, each captive cervid that responds to the SCT test must be classified as a reactor. We are adding a provision in this final rule that, in such herds, the DTE may judge that captive cervids responding to the SCT test should be classified as

suspects. This provision is necessary in some circumstances where previous tests have given a degree of certainty that the prevalence of tuberculosis in the herd is low. For example, § 77.16(d) of this final rule requires that affected herds must be quarantined until the herd has tested negative to three whole herd tests in succession. After two or three SCT tests in which reactors show no evidence of tuberculosis on necropsy, the DTE may determine that captive cervids in the herd that respond on subsequent SCT tests should be classified as suspects. Classifying the captive cervids as suspects allows herd owners to send the responding captive cervids to slaughter, where they would be able to recoup some money for the loss of the animal. However, the suspect captive cervid will still be slaughter inspected. If evidence of tuberculosis is found after histopathology and/or culture of selected tissues, the captive cervid will be reclassified as a reactor. This provision is consistent with similar provisions throughout the final rule that allow the DTE to make judgments concerning interpretation of official tuberculosis tests.

We are also making changes to the test interpretation guidelines for the CCT test that appear in § 77.11(b). In the proposed rule, paragraph (b) described the interpretation of the CCT test as follows: Any captive cervid with a response to bovine PPD tuberculin that is less than 1 mm would be classified as negative. Any captive cervid with a response to the avian PPD tuberculin that is greater than the response to the bovine PPD tuberculin would be classified as negative. Any captive cervid with a response to the bovine PPD tuberculin which is 2 mm or greater and that is equal to the response to the avian PPD tuberculin would be classified as a suspect, unless the testing veterinarian determines that the captive cervid should be classified as a reactor. Any captive cervid with a response to the bovine PPD tuberculin that is 2 mm or greater and that is at least 0.5 mm greater than the response to the avian PPD tuberculin would be classified as a reactor. Animals classified as suspects on two successive CCT tests would be classified as reactors.

The Committee recommended slight changes to these interpretation guidelines for the CCT test that we believe will result in a more accurate interpretation of the CCT test. Therefore, in this final rule, we are revising the proposed requirements for CCT test interpretation as follows: Any captive cervid with a response to the bovine PPD tuberculin that is less than 1 mm will be classified as negative. Unless the testing veterinarian determines that the captive cervid should be classified as a reactor due to possible exposure to a tuberculous animal, a captive cervid tested with the CCT test will be classified as a suspect if it has a response to the bovine PPD tuberculin that is greater than 2 mm and that is equal to the response to the avian PPD tuberculin, or it has a response to the bovine PPD tuberculin that is equal to or greater than 1 mm and equal to or less than 2 mm, and that is equal to or greater than the response to the avian PPD tuberculin. A captive cervid tested with the CCT test will be classified as a reactor if it has a response to the bovine PPD tuberculin that is greater than 2 mm and that is at least 0.5 mm greater than the response to the avian PPD tuberculin, or it has been classified as a suspect on two successive CCT tests. Any exceptions to reactor classification under these conditions must be justified by the testing veterinarian in writing and have the concurrence of the DTE.

We are also making a clarification in § 77.11(b). In the proposed rule, paragraph (b) stated that the CCT test may be used in affected herds only after the herd has tested negative to two whole herd SCT tests, and only with the prior written consent of cooperating State or Federal animal health officials. Because of the addition of the DTE (discussed previously in this document), this final rule requires that written consent must be given by the DTE. We are also revising this requirement to state that the CCT test may be used in affected herds only after the herd has tested negative to *at least* two whole herd SCT tests. This was our intended meaning, and will allow the DTE to require the application of additional SCT tests before the CCT test is used, if warranted.

Section 77.12 Interstate Movement From Accredited Herds

Proposed §§ 77.12 through 77.14 contained the provisions for testing and interstate movement for herds participating in the herd accreditation program. Proposed § 77.12 concerned accredited herds, the highest classification under the herd accreditation program. The section described testing necessary to be recognized as an accredited herd, how to maintain accredited herd status, including regular testing of captive cervids in the herd and testing of captive cervids being added to the herd, and how captive cervids can move interstate from accredited herds.

Paragraph (a)(1) of proposed § 77.12 stated that, to be recognized as an accredited herd, all captive cervids in the herd eligible for testing must have tested negative to at least three consecutive official tuberculosis tests. In accordance with proposed § 77.10(f), eligible animals include all captive cervids 1 year of age and over and any captive cervids other than natural additions (captive cervids born into the herd) under 1 year of age. The Committee recommended that, for accredited herd recognition, we additionally provide that captive cervids under 1 year of age that are not natural additions do not have to be tested if they were born in and originate from an accredited herd. Testing is very stressful to captive cervids, and particularly to young captive cervids. We agree that this change would save herd owners from having to test some captive cervids under 1 year of age without compromising the integrity of the testing for accredited herd recognition. We are adding this provision in this final rule.

Paragraph (c) of proposed § 77.12 set forth conditions under which captive cervids may be added to an accredited herd. Under proposed paragraph (c)(4), if the captive cervid to be added is not being moved directly from an accredited or qualified herd, the captive cervid would have to be isolated from all members of the receiving accredited herd until it tests negative to an official tuberculosis test conducted at least 90 days following the date of arrival at the premises of the accredited herd. Such herd additions would not receive status as members of the accredited herd until they have tested negative and been released from isolation. This also means that herd additions from accredited or qualified herds would receive status as members of the receiving accredited herd without having to be isolated for at least 90 days and without testing negative for tuberculosis.

One commenter was concerned that exempting herd additions from qualified herds from the testing described above will reduce the level of assurance that captive cervids from an accredited herd are free of tuberculosis. Further, given the reduced assurance of freedom from tuberculosis, the commenter saw this exemption as a loophole that will lower the incentive for herd owners to do the testing required to achieve accredited herd status and then to maintain it. The commenter said that captive cervids from qualified herds to be added to an accredited herd should also be isolated for at least 90 days and test negative for tuberculosis before they can be considered members of the accredited herd.

We agree with the commenter. Requiring testing of any herd addition to an accredited herd that is not moved directly from another accredited herd will provide the highest level of assurance that captive cervids from accredited herds are free of tuberculosis, and in turn, will support our goal of eradicating tuberculosis in captive cervid herds. In order to add the testing requirement for herd additions from qualified herds to accredited herds, this final rule reorganizes paragraph (c) from what was proposed. We are removing proposed paragraph (c)(4), and proposed paragraph (c)(5) will become (c)(4). We are adding requirements to paragraph (c)(2) and (c)(3), which concern herd additions from qualified and monitored herds and from unclassified herds, to require that these herd additions must be isolated from all members of the receiving accredited herd until they test negative to an official tuberculosis test conducted at least 90 days following the date of arrival at the premises of the accredited herd. Such herd additions will not receive status as members of the receiving accredited herd until they have tested negative and been released from isolation.

Section 77.13 Interstate Movement from Qualified Herds

Proposed § 77.13 concerned qualified herds under the herd accreditation program. As in proposed § 77.12 for accredited herds, proposed § 77.13 described the testing required for a herd to achieve and maintain qualified herd status and how captive cervids can move interstate from qualified herds.

Paragraph (a)(1) of proposed § 77.13 stated that, to be recognized as a qualified herd, all captive cervids in the herd eligible for testing must have tested negative to one official tuberculosis test. In accordance with proposed § 77.10(f), eligible animals included all captive cervids 1 year of age and over and any captive cervids other than natural additions under 1 year of age. For the same reason discussed above for accredited herds, the Committee recommended that, for qualified herd recognition, we additionally provide that captive cervids under 1 year of age that are not natural additions do not have to be tested if they were born in and originated from an accredited, qualified, or monitored herd. We agree with this change, and are adding this provision in this final rule.

The Committee further recommended that the official tuberculosis test for recognition of a herd as a qualified herd must be administered to all captive cervids in the herd eligible for testing within a 7-month period. We believe that this testing schedule would allow herd owners time to test all their animals, while ensuring that results of the test are an accurate reflection of the herd's current tuberculosis status. We have added this provision to § 77.13(a)(1) in this final rule.

Paragraph (b) of proposed § 77.13 stated that a captive cervid from a qualified herd may be moved interstate only if the captive cervid is not known to be infected with or exposed to tuberculosis and is accompanied by a certificate that states, among other things, that the captive cervid has tested negative to an official tuberculosis test conducted within 90 days prior to the date of movement. The Committee recommended that we exempt captive cervids under 1 year of age from this testing requirement, for the same reason discussed above for testing of herds for accredited and qualified herd status. We agree that testing is stressful to captive cervids under 1 year of age, and we believe that exempting young captive cervids from testing for interstate movement is consistent with the exemptions discussed above for testing under §§ 77.12(a)(1) and 77.13(a)(1). Therefore, we are adding a paragraph (b)(3) to § 77.13 in this final rule to allow captive cervids under 1 year of age that are natural additions or that were born in and originated from a classified herd to be moved interstate from a qualified herd without testing if they are accompanied by a certificate stating that they originated from the qualified herd or were born in and originated from a classified herd and have not been exposed to captive cervids from an unclassified herd.

Paragraph (d) of proposed § 77.13 stated that, to maintain qualified herd status, the herd must test negative to an official tuberculosis test within 10–14 months from the anniversary date of the first test with no evidence of tuberculosis disclosed. Previously in this document, we discussed an extension of the intervals for testing to achieve and maintain accredited herd status, based on the Committee's recommendation that we allow more time for testing to accommodate the seasonal cycles of captive cervids. For the same reason, this final rule will require instead that, to maintain qualified herd status, the herd must test negative to an official tuberculosis test within 9–15 months from the anniversary date of the first test.

Section 77.14 Interstate Movement From Monitored Herds

Proposed § 77.14 concerns monitored herds under the herd accreditation program. As discussed previously, monitored herd classification was included in the proposal mainly to accommodate captive cervid herds that are difficult to test on a whole herd basis because of their size or the conditions of their captivity (such as captive cervids raised under range conditions). We proposed to allow herds to be monitored for tuberculosis according to their slaughter records. Proposed § 77.14 also described how to maintain monitored herd status, including submission of slaughter records and testing of captive cervids being added to the herd, and how captive cervids can move interstate from monitored herds.

In proposed § 77.14, paragraph (a) set forth qualifications that must be met in order for a herd to be recognized as a monitored herd. Among other things, paragraph (a)(1) stated that identification records must be maintained by the person, firm, or corporation responsible for the management of the herd on all captive cervids in the herd that are slaughtered, inspected, and found negative for tuberculosis at an approved slaughtering establishment or necropsied at an approved diagnostic laboratory. The Committee recommended that we also allow records for monitored herd qualification to include records on captive cervids from the herd that are tested for interstate movement. We agree with this recommendation. Herd owners would be able to receive credit for monitored herd status based on negative testing animals, in addition to slaughter inspected animals, allowing more herd owners to achieve monitored herd status. Therefore, this final rule adds a provision to § 77.14(a)(1) that identification records kept as part of the monitored herd qualification may also include records on captive cervids from the herd that tested negative for tuberculosis in accordance with requirements for interstate movement. To maintain the reliability of these records in reflecting a herd's tuberculosis status, we will require that at least one half of the captive cervids on which records are kept be slaughter inspected. We are also changing the remainder of § 77.14 as appropriate to reflect the change in paragraph (a)(1).

We are also making a change to proposed § 77.14(a)(2) in conjunction with allowing records on captive cervids tested for interstate movement. Proposed paragraph (a)(2) required that a ''sufficient number of cervids in the herd must be slaughtered * * * to ensure that tuberculosis infection at a prevalence level of 2 percent or more will be detected with a confidence level of 95 percent.'' Proposed paragraph

(a)(2) stated that this will require a maximum number of 148 captive cervids slaughtered over a 3-year period, no matter the size of the herd. However, testing provides a lower level of detection of tuberculosis in captive cervids than inspections at slaughter because infection with *M. bovis* can only be determined with certainty after laboratory analysis of samples taken from a slaughtered animal. Therefore, in order to ensure that testing and slaughter records will enable tuberculosis infection to be detected at a prevalence level of 2 percent or more with a confidence level of 95 percent, a maximum of 178 captive cervids, rather than 148 captive cervids, must be slaughter inspected or tested for interstate movement over a 3-year period, no matter the size of the herd. We have made this change in § 77.14(a)(2).

There is a footnote in § 77.14(a)(2) which states that a chart can be obtained from APHIS that would show the minimum number of captive cervids that must be slaughtered in order to achieve this confidence level.

We are also changing the definition of ''monitored herd'' in § 77.8 to reflect the allowance of records on captive cervids tested for interstate movement.

Paragraph (b) of proposed § 77.14 stated that a captive cervid from a monitored herd may be moved interstate only if the captive cervid is accompanied by a certificate that states, among other things, that the captive cervid has tested negative to an official tuberculosis test. We are adding a provision to § 77.14(b) to allow captive cervids under 1 year of age that are natural additions or that were born in and originated from a classified herd to be moved interstate from a monitored herd without testing if they are accompanied by a certificate stating that they originated from the monitored herd or were born in and originated from a classified herd and have not been exposed to captive cervids from an unclassified herd. We are adding this provision for monitored herds for the same reasons discussed previously for adding this provision for captive cervids under 1 year of age in qualified herds.

We are also making a clarification in proposed § 77.14(d). Paragraph (d) stated that, in order to maintain monitored herd status, an annual report must be submitted to cooperating State or Federal animal health officials giving, among other things, the number of captive cervids from the herd *over 1 year of age* identified, slaughtered, and inspected at an approved slaughtering establishment or necropsied at an approved diagnostic laboratory during the preceding year. (As explained previously in this document, under this final rule, we will also allow the annual report to include captive cervids that have tested negative for tuberculosis in accordance with interstate movement requirements.) For accuracy, we are revising the phrase ''over 1 year of age'' to read ''1 year of age and older.'' This is consistent with provisions that exempt captive cervids under 1 year of age from the testing requirements.

Section 77.15 Interstate Movement from Unclassified Herds

The regulations in proposed § 77.15 for unclassified herds would apply to captive cervids from herds not participating in the herd accreditation program, herds that have not yet achieved classification as accredited, qualified, or monitored, or herds that have lost classification status because the requirements of §§ 77.12, 77.13, or 77.14 for maintaining classification were not met.

Proposed § 77.15 stated that for a captive cervid to be moved interstate from an unclassified herd, the captive cervid must have tested negative to two official tuberculosis tests conducted no less than 90 days apart, and that the captive cervid must have been isolated from all other animals during the testing period (the period beginning at the time of the first test and ending at the time of interstate movement). Several commenters asked if this meant that each individual captive cervid in a group would have to be isolated individually in separate holding pens. They said that this would be a considerable burden on captive cervid owners, both because of the cost of providing facilities with separate holding pens, and because of the stress to the captive cervids from being held in isolation for up to 180 days (most movements would require an official tuberculosis test 90 days after movement to a new herd, requiring another 90 day isolation).

It was not our intention to require that each individual captive cervid be isolated in a separate holding facility. If a group of captive cervids are moving together from an unclassified herd to the same destination, we would allow them to be isolated as a group. The isolation would only have to be such that the captive cervids being tested did not come in contact with any other animals, including captive cervids from the unclassified herd that are not moving as part of the group. In response to the comments, we are adding a sentence to § 77.15(a)(3) stating that, if a group of captive cervids is being moved together to the same destination, the entire group must be isolated from all other animals, but captive cervids in the group need not be isolated from each other, during the testing period. We are making the same clarification in other parts of the regulations that refer to isolation of captive cervids during testing: § 77.12(c)(2) and (c)(3), § 77.13(c)(3), and § 77.14(c)(3).

Several commenters had questions concerning types of herds that do have tuberculosis monitoring, but would not be able to conform to the definitions of accredited, qualified, or monitored herds. For example, one commenter asked that certain isolated free-ranging reindeer herds be recognized as monitored herds. The commenter stated that the reindeer are not identified because of difficulty in herding them, but the number slaughtered annually exceeds the proposed requirements for monitored herd status. Commenters asked that different interstate movement requirements be established to accommodate this type of industry. In response to these comments, we are adding a new paragraph to § 77.15, ''Interstate movement from unclassified herds,'' that would allow APHIS to evaluate the unique conditions of captive cervid herds that do not conform to the requirements of classified herds, but that do have a level of monitoring or isolation that would warrant different interstate movement requirements from those required for unclassified herds. The new paragraph will state that ''The Administrator may, with the concurrence of the cooperating State animal health officials of the State of destination, and upon request in specific cases, permit the movement of captive cervids not otherwise provided for in this subpart, which have not been classified as reactors and are not otherwise known to be affected with tuberculosis, under such conditions as the Administrator may prescribe in each specific case to prevent the spread of tuberculosis. The Administrator shall promptly notify the appropriate cooperating State animal health officials of the State of destination of any such action.'' This paragraph is identical to current provisions in § 77.6 for cattle and bison.

Section 77.16 Other Interstate Movements

This section was proposed to regulate the interstate movement of captive cervids from herds considered to be at the highest risk for tuberculosis. These include herds that contain reactors, suspects, or exposed captive cervids, or that are found to contain a captive cervid that shows lesions suggestive of tuberculosis at slaughter, or that are

found to be infected with tuberculosis, or that have been identified as the possible source of a tuberculous captive cervid, or that are newly assembled on premises where a tuberculous herd has been depopulated. This section also prescribed testing to be administered under those circumstances. In most cases, we proposed that a herd would be ''quarantined'' until the results of tests are known. Quarantine was defined in proposed § 77.8 to mean ''a prohibition from any interstate movement, except for interstate movement to slaughter or necropsy in accordance with § 77.17.'' As proposed, herds described in § 77.16 could also be subject to State quarantines, which could prohibit captive cervids from being moved intrastate.

We are making a change to several places in proposed § 77.16, and throughout the rule, for clarity. Throughout the proposed rule, we referred to determining the tuberculosis status of a captive cervid upon slaughter. For example, in § 77.16(a)(2), we stated ''Any herd containing a suspect to an official tuberculosis test must be quarantined until * * * the suspect is slaughtered and found negative for tuberculosis.* * *'' As another example, § 77.16(b)(2) contains the phrase, ''If upon slaughter or necropsy any reactors exhibit lesions compatible with or suggestive of tuberculosis.* * *'' For accuracy, this final rule refers instead to ''slaughter inspected'' or ''inspection at slaughter'' (as grammatically appropriate) wherever the rule refers to determining the tuberculosis status of a captive cervid upon slaughter. This was our intention, but we believe the change is necessary to make it clear that inspection of the captive cervid at slaughter is required. Other changes to proposed § 77.16 are discussed below by paragraph.

Section 77.16(a) Herds Containing a Suspect

Proposed § 77.16(a) set forth provisions for testing and interstate movement for herds found to contain a suspect. We are making a clarification to proposed § 77.16(a)(1)(i). Proposed paragraph (a)(1)(i) stated that a captive cervid classified as a suspect on the SCT test must be quarantined until it is retested by the CCT test or the BTB test and found negative for tuberculosis. Proposed paragraph (a)(2), regarding disposition of the remainder of the herd containing a suspect, contained provisions for the remainder of the herd based on results of slaughter inspection or necropsy of the suspect. However, we mistakenly failed to include slaughter as an option for the disposition of suspects in paragraph (a)(1)(i). We have revised the paragraph in this final rule to state that a captive cervid classified as a suspect on the SCT test must be quarantined until it is slaughtered or retested by the CCT test or the BTB test and found negative for tuberculosis.

We are making an editorial change to proposed § 77.16(a)(1)(i)(B), which concerned the testing of suspects with the BTB test. The paragraph recommended that the sample for the BTB test be taken within 30 days following the SCT test. For accuracy, the paragraph should read ''within 30 days following the *injection* for the SCT test.'' We have made the change in this final rule.

As stated above, proposed § 77.16(a)(1)(i) required that a captive cervid classified as a suspect on the SCT test (the primary test) would have to be quarantined until retested with the CCT test or the BTB test (the supplementary tests) and found negative for tuberculosis (this final rule adds that the suspect may also be slaughtered). Under proposed § 77.16(a)(1)(ii)(B), if a captive cervid is classified as a suspect on the first BTB test following the SCT test, it must be quarantined until retested with a second BTB test 30–60 days after the first BTB test and found negative for tuberculosis. The Committee recommended that we remove the requirement that the suspect be retested with a second BTB test 30–60 days after the first BTB test, and instead require that the suspect be retested with a second BTB test within 60 days following the *injection* for the SCT test and after the first BTB test. Our experience in using the BTB test has shown that results are more accurate if the retest is given within 60 days of the injection for the SCT. Therefore, we have made the change in § 77.16(a)(1)(ii)(B) of this final rule. We have also clarified that the retest must be within 60 days following the *injection* for the SCT test, as opposed to 60 days following observation and palpation of the injection site (which is done approximately 72 hours following the injection of the tuberculin).

Paragraph (a)(2) of proposed § 77.16 concerned quarantine of a herd containing a suspect, and stated that any herd containing a suspect to an official tuberculosis test must be quarantined until the suspect is tested and found negative for tuberculosis or the suspect is slaughtered or necropsied and found negative for tuberculosis. One commenter recommended that we specify that the slaughter or necropsy would include laboratory follow-up. It was our intention that a suspect would only be declared negative for tuberculosis upon slaughter or necropsy if the necropsy or slaughter inspection were followed by both histopathology and culture of selected tissues. Therefore, we are revising proposed § 77.16(a)(2) to make it clear that a suspect may only be found negative upon slaughter inspection or necropsy after histopathology and culture of selected tissues.

Section 77.16(e) Herds That Have Received Captive Cervids From an Affected Herd

Paragraph (e) of proposed § 77.16 concerned herds that have received exposed captive cervids from an affected herd, and set forth provisions for release from quarantine of the receiving herd depending on the response of the exposed captive cervids to official tuberculosis tests. The proposed provisions were inconsistent with recommendations made to APHIS by the Committee. We received one comment specifying inconsistencies of the proposed language with Committee recommendations that have been approved by APHIS. In this final rule, we are changing proposed § 77.16(e) to make its provisions consistent with the Committee recommendations, as approved by APHIS. The changes, and our reasons for approving them, are discussed below.

Under proposed § 77.16(e), if a herd has received captive cervids from an affected herd, the captive cervids from the affected herd now in the receiving herd would be considered exposed to tuberculosis. The exposed captive cervids in the receiving herd and the rest of the receiving herd would be quarantined, and the exposed captive cervids in the receiving herd would have to be either slaughtered, necropsied, or tested with the SCT test (the BTB test could be used simultaneously).

Proposed paragraph (e)(1) stated that, if any exposed captive cervid tests positive to the SCT test or the BTB test, it must be classified as a reactor and will be considered as part of the affected herd of origin for further testing purposes. This statement is misleading. The intention of the proposal was that the exposed captive cervids in the receiving herd would always be considered part of the affected herd of origin for quarantine and further testing purposes (but not for herd status classification). However, because exposed captive cervids that test positive to the SCT test or the BTB test are classified as reactors, they must be destroyed and slaughter inspected or necropsied, making the proposed requirement in paragraph (e)(1) that

they be considered part of the affected herd of origin for further testing purposes unnecessary. Therefore, this final rule states instead that only exposed captive cervids in the receiving herd that test negative will be considered as part of the affected herd of origin for further testing purposes. We are adding a phrase to paragraph (e) for clarification to require that any exposed captive cervid in the receiving herd that tests positive to the SCT test or the BTB test must be classified as a reactor and must be slaughter inspected or necropsied.

Proposed § 77.16(e)(1) further stated that, if any exposed captive cervids are classified as reactors, the receiving herd would be subject to the provisions of § 77.16(b), which concern herds that contain a reactor. We are removing this proposed requirement since it is not necessary. The remainder of proposed paragraph (e) sets forth testing protocols for the receiving herd depending on the slaughter inspection or necropsy results from the exposed captive cervids that were classified as reactors. The proposed testing protocols in the remainder of paragraph (e) are discussed below in detail. They are more stringent than the testing protocols in § 77.16(b). Section 77.16(b) concerns herds that are found to contain a captive cervid that is a reactor to an official tuberculosis test but that is not known to be exposed to tuberculosis. Whereas, § 77.16(e) concerns herds that are found to contain an exposed captive cervid that is a reactor to an official tuberculosis test. Thus, paragraph (e) concerns an exposed captive cervid that is a reactor known to have been exposed to tuberculosis and is, therefore, far more likely to actually be infected with tuberculosis. For this reason, the testing requirements for the receiving herd containing an exposed captive cervid that is a reactor are more stringent than for herds containing an animal reacting to a tuberculosis test that is not also an exposed animal (as in § 77.16(b)). Therefore, our proposal in § 77.16(e)(1) that the receiving herd be subject to the provisions of § 77.16(b) is not necessary, since the receiving herd will be subject to the more stringent testing protocols in paragraph (e). Therefore, we are removing the proposed requirement that, if any exposed captive cervids are classified as reactors, the receiving herd will be subject to the provisions of § 77.16(b). We are also adding a statement to § 77.16(b) to clarify that herds that have received captive cervids from an affected herd will be quarantined and tested in accordance with the requirements in § 77.16(e).

Proposed § 77.16(e)(1)(i) stated that, if bovine tuberculosis is confirmed in any of the exposed captive cervids by bacterial isolation of *M. bovis,* the receiving herd will be classified as an affected herd and will be subject to the provisions for affected herds in § 77.16(d). This requirement is consistent with Committee recommendations approved by APHIS, and we are retaining this requirement in § 77.16(e)(1) of this final rule.

Proposed § 77.16(e)(1)(ii) stated that, if any of the exposed captive cervids are found to exhibit lesions compatible with or suggestive of tuberculosis, found by histopathology, without the isolation of *M. bovis,* the receiving herd will be subject to the provisions of § 77.16(c), concerning herds found to have only lesions of tuberculosis. We are removing the requirement that such herds will be subject to § 77.16(c). The Committee recommended, and we agree, that, in cases when the exposed captive cervids are found to exhibit lesions compatible with or suggestive of tuberculosis without the isolation of *M. bovis,* the DTE should be given the authority to determine the appropriate testing schedule. This change is found in § 77.16(e)(2) of this final rule.

Proposed § 77.16(e)(2) required that, if all the exposed captive cervids test negative for tuberculosis, the receiving herd will be released from quarantine, and will return to the herd classification in effect before the herd was quarantined. In addition, we proposed that the receiving herd be retested with the SCT test 1 year after release from quarantine in order for captive cervids from the herd to continue to be moved interstate. The Committee recommended to APHIS that the receiving herd be given a whole herd test and be found negative before it can be released from quarantine. We have approved this recommendation. The official tuberculosis tests for captive cervids were designed to be most effective when used on a whole herd basis, and, as discussed in the preamble to the proposed rule, they are not guaranteed to detect tuberculosis in every infected animal. Even though the exposed captive cervids in a receiving herd test negative for tuberculosis, they may have the disease, and may have transmitted it to the other captive cervids in the receiving herd. Therefore, § 77.16(e)(3) of this final rule requires that, if all the exposed captive cervids in the receiving herd test negative for tuberculosis, the entire receiving herd must still be given a subsequent whole herd test and be found negative for tuberculosis before it may be released from quarantine.

Section 77.16(f) Source Herds

In proposed § 77.16, paragraph (f) concerned herds suspected of being the source of tuberculous captive cervids based on a slaughter traceback investigation.

We are making a clarification in the introductory text of proposed § 77.16(f). The introductory text stated that a herd suspected of being the source of tuberculosis based on a slaughter traceback investigation must be quarantined, and a *whole herd test* must be scheduled. In this final rule, we will only require that a *herd test* be scheduled. This change is necessary because, in the case of suspected source herds, the entire herd would not necessarily be tested initially (the test may include only adult animals 2 years of age and over). On the other hand, if initial testing showed evidence of tuberculosis, the whole herd may have to be tested.

Proposed paragraph (f)(1) stated that, if a herd is positively identified as the source of animals having lesions of tuberculosis and *M. bovis* has been confirmed by bacterial isolation from the slaughter animal, the herd will be considered an affected herd and will be subject to the provisions for affected herds in §§ 77.11(a)(2) and 77.16(d). Comments pointed out that this is inconsistent with recommendations made to APHIS by the Committee and approved by APHIS. The Committee recommended that such a herd not be considered an affected herd, but that we require instead that all captive cervids in such a herd that respond to the SCT test be classified as reactors. If none respond, the herd should be released from quarantine and return to the classification status in effect before the herd was quarantined, unless the DTE determines that additional testing is appropriate to ensure the herd's freedom from tuberculosis.

We agree with these recommendations for the following reasons. Considering such a herd an affected herd would be inconsistent with the level of certainty that can be achieved regarding whether tuberculosis is present in the herd. Identifying a herd as the source of a captive cervid from which *M. bovis* was isolated means there is a high degree of likelihood, but not absolute certainty, that the captive cervid came from that herd. Identification of source herds in the course of a slaughter traceback investigation can, on occasion, be inexact. For example, depending on the practices of the slaughtering establishment, the identification tag of the captive cervid can be occasionally

separated from the carcass before the captive cervid is identified during slaughter as having lesions consistent with tuberculosis. If *M. bovis* is isolated from the lesioned captive cervid, APHIS veterinarians may not be able to definitely determine the specific source herd, but may identify several herds that sent captive cervids to slaughter that day as being possible sources of the tuberculous captive cervid.

In contrast, the proposed quarantine and testing requirements for affected herds in § 77.16(d) are intended for specific herds that are already known to contain, or that have contained, one or more captive cervids infected with *M. bovis.* Here, we know with certainty that a specific herd contains or has contained a captive cervid infected with *M. bovis* because the captive cervid is in that specific herd when it is tested, classified as a reactor by a State or Federal veterinarian, and slaughter inspected or necropsied, with tissue samples sent to the National Veterinary Services Laboratory for bacterial isolation. Under these circumstances, the identification of the captive cervid as originating from a particular herd is definitive.

Furthermore, at the time the proposed rule was published in April 1996, our knowledge of the prevalence level of tuberculosis in the U.S. captive cervid population was not as complete as it is today, and we suspected a higher prevalence level than was in fact the case. We believed that a high prevalence of tuberculosis in captive cervid populations warranted a high degree of scrutiny of herds identified as source herds in slaughter traceback investigations. We now know that the prevalence of tuberculosis in captive cervids is lower than we believed it to be at the time of the proposal. Therefore, we now believe we can reduce some of the testing burden on herds identified as source herds in slaughter traceback investigations because these herds are at a relatively low risk of actually containing or having contained a captive cervid that is positive for *M. bovis.*

The testing schedule required by this final rule for herds identified as the source of tuberculous captive cervids based on a slaughter traceback investigation is appropriate to the level of certainty that tuberculosis has been present in that herd, and we believe it is adequate to detect tuberculosis in the herd if it is present. The more stringent testing schedule that is required for affected herds is not necessary for source herds, since, as explained above, the level of certainty that identified source herds are in fact the source of tuberculous captive cervids is not as definitive as with affected herds. Therefore, we have removed the proposed requirement that, if a herd is identified as the source of a captive cervid having lesions of tuberculosis and *M. bovis* is isolated from the captive cervid, the herd will be considered an affected herd. In this final rule, § 77.16(f)(1) requires instead that all captive cervids in such a herd that respond to the SCT test be classified as reactors. If none respond, the herd may be released from quarantine and returned to the classification status in effect before the herd was quarantined, unless the DTE determines that additional testing is appropriate to ensure the herd's freedom from tuberculosis. In addition, in order to represent the identification of source herds accurately, we are removing the phrase ''positively identified'' from proposed § 77.16(f) and referring instead to herds ''identified'' as source herds.

In the proposed rule, § 77.16(f)(2) stated that, if a herd is identified as the source of captive cervids that exhibit lesions compatible with or suggestive of tuberculosis, found by histopathology, without the isolation of *M. bovis,* the herd will be subject to the provisions of § 77.16(c), concerning herds found to have only lesions of tuberculosis. The Committee recommended that we not require such a herd to be subject to the provisions of § 77.16(c), but that we require instead that captive cervids in such a herd that respond to the SCT test be classified as suspects and supplemental tests be applied. As discussed above with respect to paragraph (f)(1), we agree that the proposed testing schedule is not necessary in light of the level of certainty that a lesioned animal originated from a specific herd. This situation warrants different testing and quarantine standards for source herds than we require for herds in which the origin of the animal is known with certainty. Therefore, paragraph (f)(2) is changed in this final rule to reflect this situation.

In conjunction with the change to § 77.16(f)(1), we are also changing the proposed definition of affected herd. The proposed rule defined an affected herd as a herd of captive cervids that contains, or that has been positively identified as the source of, one or more captive cervids infected with *M. bovis* and that has not tested negative to the required tests for release from quarantine. The proposed definition included the phrase ''or that has been positively identified as the source of'' to be consistent with proposed § 77.16(f)(1). As already explained, because of a difference in the level of certainty, we believe it is inappropriate to consider an identified source herd exactly the same as an affected herd. The definition for an affected herd that is more appropriate is a herd that contains or that has contained one or more captive cervids infected with *M. bovis* and that has not passed the required tests for release from quarantine. We believe this definition is more accurate than the proposed definition. This definition was also recommended to APHIS by the Committee. Therefore, this final rule defines an affected herd, with some clarifications, as follows:

Affected herd. A herd of captive cervids that contains or that has contained one or more captive cervids infected with *Mycobacterium bovis* (determined by bacterial isolation of *M. bovis*) and that has not tested negative to the three whole herd tests as prescribed in § 77.16(d) of this subpart.

Section 77.16(g) Newly Assembled Herds

One commenter pointed out that we did not include a provision for determining the herd classification status of a newly assembled herd. The Committee recommended that we classify newly assembled herds as follows: A newly assembled herd will be classified as having the herd status of the herd from which the captive cervids originated. If the herd is assembled from captive cervids from more than one herd, it will be classified as having the herd status of the originating herd with the lowest status. A newly assembled herd will also assume the testing schedule of the herd status it is given. Captive cervids in the herd must have no exposure to captive cervids from a herd of lesser status than the herd of origin determining the status of the newly assembled herd. We agree with this recommendation.

Proposed § 77.16(g) established testing requirements for herds newly assembled on premises where a tuberculous herd has been depopulated. In this final rule, we have put these provisions in a new paragraph (g)(2), and have added the provisions described above for any newly assembled herd in a new paragraph (g)(1). We are also adding in paragraph (g)(1) that captive cervids in the newly assembled herd must have no exposure to any tuberculous livestock.

Section 77.17 Procedures for and Interstate Movement to Necropsy and Slaughter

We are changing § 77.17(b)(1). This paragraph contains requirements for

moving reactors, suspects, and exposed captive cervids interstate to necropsy or slaughter. One requirement is that the captive cervid be accompanied by a permit, and proposed paragraph (b)(1) listed the information that must appear on the permit, including the animal's identification, the owner's name and address, and the purpose of the movement. We neglected to include the classification of the captive cervid (i.e., reactor, suspect, or exposed) on the list of information that must appear on the permit. It is important that this information be on the permit for public health reasons so that meat inspectors at the slaughtering establishment will be informed and know how to inspect and dispose of the carcass. We have added this to paragraph (b)(1) in this final rule.

Responses to Comments Not Resulting in Changes to Proposed Rule

In the preamble to the proposal, we said that we modeled the proposed subpart B for captive cervids after the regulations in part 77 for cattle and bison, and after the UMR for Tuberculosis for cattle and bison. One commenter stated that it is inappropriate and misguided to apply science developed for cattle to deer. Two other commenters said that the SCT and CCT tests require considerable handling of the animal being tested and result in stress to captive cervids. The commenters said that these tests were not designed for cervids and have been less than adequate.

We are not making any changes in response to these comments. The SCT and CCT tests are basic tuberculin tests used to detect tuberculosis in all species, including humans. While it is true that the SCT and CCT tests in particular were originally developed for use on cattle and bison, the proposed provisions for applying these tests to cervids have been modified to account for the way cervids respond to the tests. Further, we proposed to apply these testing procedures only after considerable experience using these tests on captive cervids had shown that they were effective in determining the tuberculosis status of captive cervids.

We agree with commenters that the SCT and CCT tests result in stress to captive cervids because they require considerable handling of the animals. Some captive cervid owners prefer to use the BTB test for this reason, as the BTB test only requires a single handling of the captive cervid to obtain a blood sample. This final rule does include the option for using the BTB test with captive cervids in place of the CCT test as a supplement to the SCT test.

Section 77.11(b) describes the use of the CCT test, and states, in part, that the ''CCT test may be used in affected herds only after the herd has tested negative to two whole herd SCT tests.'' One commenter asked if the CCT test could be used as a *primary test* in affected herds after having tested negative to two whole herd SCT tests. Our response is that the CCT test is always a secondary test and cannot be used as a primary test. The scientific basis for interpreting the CCT test requires that the CCT test be performed following an initial injection of bovine tuberculin for the SCT test. If bovine tuberculin had not already been introduced into the captive cervid's system, the CCT test could cause a different and unpredictable response. Under the conditions described above, an affected herd is first tested with a primary test (the SCT test) at least twice before a secondary test (the CCT test) may be applied. It is necessary to test the herd with the SCT test at least twice because, as discussed below, the SCT test is more sensitive than the CCT test. Using the SCT test at least twice before using the CCT test will give the most accurate assurance that tuberculosis is detected in the herd if it is present.

In proposed § 77.11, paragraphs (b)(2), (b)(3), and (b)(4) set forth the circumstances under which a captive cervid tested with the CCT test *must be* classified as negative, a suspect, or a reactor. One commenter said that the phrase ''must be classified'' should be changed to ''should be classified'' in each of these paragraphs. The commenter did not state a reason for this suggestion, but we assume it is intended to give the testing veterinarian more flexibility if some additional knowledge (such as testing history of the herd or whether or not the captive cervid may have been exposed to a tuberculous animal) would make the testing veterinarian judge that the captive cervid should be classified differently. We are not making any changes in response to this comment. Paragraphs (b)(3) and (b)(4), concerning suspect and reactor classification, already contain a provision for the testing veterinarian to use his or her judgment in classifying a captive cervid. Paragraph (b)(2), concerning negative classification, does not contain any such provision. We do not believe any deviation from the classification criteria would be appropriate in classifying a captive cervid as negative.

One commenter claimed that there is no data to support a statement in the preamble to the proposed rule that the SCT test is more sensitive than the CCT test or the BTB test. The commenter went on to say that, with its lack of specificity, the SCT test is clearly ineffective unless used in conjunction with the CCT test or the BTB test. We are making no changes based on this comment. The commenter is referring to a discussion in the preamble to the proposed rule that explained why a captive cervid from a herd of unknown status that responds to the SCT test (the primary test used) should be classified as a suspect until retested with a supplementary test (either the CCT test or the BTB test). We explained that testing with a supplementary test would be necessary because the SCT test is more sensitive. We believe the commenter misunderstood our use of the word sensitive. What we intended to convey was that, while the SCT test is more likely than other tuberculosis tests to respond to *M. bovis* in a captive cervid, it is also more likely to respond to other mycobacterial diseases or immune stimulants that are not *M. bovis*. So, while the SCT test is more sensitive than the CCT or the BTB tests, it is also, as the commenter points out, less specific. This can sometimes lead to ''false positive'' reactions when using the SCT test. It is for this reason that, in herds of unknown tuberculous status, this final rule requires the use of the SCT test in conjunction with the CCT test or the BTB test to determine whether or not a captive cervid should be classified as a reactor.

Another commenter said that, due to the admitted sensitivity of the SCT test, captive cervids responding to the SCT test should not be classified as reactors until additional testing is accomplished. We agree in most cases. This final rule requires that captive cervids in herds of unknown tuberculous status that respond to the SCT test be classified as suspects until they are retested with a supplementary test. However, captive cervids in affected herds responding to the SCT test must be classified as reactors. As we explained in the preamble to the proposed rule, this deviation is necessary when testing a captive cervid in an affected herd because it is known that the captive cervid has been exposed to tuberculosis. Therefore, it is more likely that a response to the SCT test indicates an animal with tuberculosis. This rule also allows testing veterinarians the discretion to classify a captive cervid as a reactor based on an SCT test response if the veterinarian determines that is appropriate. If the testing veterinarian is a designated accredited veterinarian, we will require that he or she obtain the concurrence of a DTE to classify a captive cervid as a reactor based on an

SCT test response. Allowing this discretion is necessary because the circumstances under which an animal is being tested (for example, captive cervids from high-risk herds, such as suspected source herds or a herd recently released from quarantine for tuberculosis) may make it more likely that a response to the SCT test indicates an animal with tuberculosis.

The commenter was further concerned that classifying a captive cervid as a reactor based on a response to the SCT test will result in unnecessary quarantines, tracebacks, and slaughter of reactors and other captive cervids in the herd. We have acknowledged the possibility of false positives when using the SCT test. As explained previously, it is for this reason that, under routine circumstances, supplemental tests will be used. We believe, however, that in herds where there is a higher likelihood of captive cervids in the herd having tuberculosis (such as affected herds), the risk of false positives is outweighed by the risk of not immediately identifying captive cervids that have tuberculosis. Therefore, we are making no changes to the rule based on this comment.

One commenter said that the assertion in the proposed rule that the SCT and the CCT tests provide results as reliable as the BTB test ''has been proven to be unfounded due to incidence of false positives.'' Of the three official tuberculosis tests, the SCT test is the most sensitive. The disadvantage of this sensitivity is that it can result in false positives. The advantage of this sensitivity is that, while we are more likely to get false positives, we are also more likely to find all the captive cervids that actually have tuberculosis. Some of these tuberculous captive cervids would not react to a less sensitive test. Because of the possibility of false positives, however, supplemental tests will normally be used. The CCT and the BTB tests were proposed to be used as supplemental tests. When we stated in the proposed rule that the SCT and CCT tests provide results ''as reliable'' as the BTB test, we meant that using the BTB test as a supplemental test will not result in finding more captive cervids in the herd with tuberculosis than we would find using the SCT and CCT tests. Because results from supplementing the SCT test with the CCT test or the BTB test are equally reliable, we proposed to give captive cervid owners the choice of using either the CCT or the BTB tests as supplemental tests. The incidence of false positives on the SCT test is not relative to this decision, and the high degree of sensitivity that causes the false positives is crucial to the SCT test's effectiveness. Therefore, we are not making any changes to the rule in response to this comment.

One commenter expressed concern that the proposed interval between a positive SCT test and a CCT test is not long enough, and that a loss of sensitivity on the CCT will result. We proposed that captive cervids classified as suspects on the SCT test must be retested with the CCT test either within 10 days following the SCT test or not until 90 days after the SCT test. The commenter said that USDA's own data reflects that testing with the CCT test too soon after testing with the SCT test (within 10 days) reduces the effectiveness of the testing program.

We are making no changes to the proposed rule based on this comment. The commenter is correct that the injection of the USDA bovis tuberculin for the SCT test suppresses the animal's ability to respond to subsequent tuberculin tests administered prior to a 90 day waiting period. After 90 days, the suppressing effect of the tuberculin is markedly reduced, and responses to subsequent tuberculin tests are stronger and easier to read. However, prior to 10 days following application of the SCT test, a captive cervid will not yet have become so desensitized that a subsequent test may not be applied. Responses may not be as strong, but they will be adequately strong to be considered reliable. Further, the provisions in this final rule under which the CCT test is to be applied and interpreted are appropriate for testing either within 10 days of the SCT test or at least 90 days after.

The proposed rule provided that, with two exceptions, official tuberculosis tests may only be given by a veterinarian employed full-time by the State in which the test is administered or by a veterinarian employed full-time by USDA (as discussed previously in this document, we are removing the ''full-time'' requirement). One exception to this provision is that a designated accredited veterinarian may conduct the SCT test for routine testing of herds of unknown tuberculous status, and any accredited veterinarian may conduct the BTB test. One commenter said that these requirements are unnecessarily restrictive, and that any licensed veterinarian should be able to administer a tuberculosis test and classify a captive cervid based on the results, with test results confirmed in consultation with an official State veterinarian. We are not making any changes to the proposed rule based on this comment. Classifying an animal as potentially having tuberculosis could necessitate further serious regulatory actions, including quarantine, traceback, or the slaughter of affected animals. We believe that, considering the consequences to a herd owner of having tuberculin responding animals in a herd, it is imperative that the testing and classifying veterinarian be as knowledgeable and objective as possible. Allowing any licensed veterinarian to test and classify animals could result in situations where there may be a conflict of interest, and would also reduce oversight of the eradication program by regulatory officials.

Our proposal included a definition for ''depopulate'' to mean the destruction of all captive cervids in a herd by slaughter or by death otherwise. One commenter said we should revise the definition for ''depopulate'' to include the slaughter of all livestock in the herd other than captive cervids that are deemed by the tuberculosis epidemiologist to be exposed. We are making no changes based on this comment. At the present time, to ensure success of the tuberculosis eradication program and to provide incentive for owners to depopulate an entire affected herd, the regulations require that all livestock in a herd must be depopulated if the owner wishes to receive indemnity for the cattle, bison, or captive cervids destroyed (see 9 CFR part 50). We do not at present have a tuberculosis eradication or indemnity program for species other than cattle, bison, and captive cervids. Therefore, we do not currently believe it is appropriate to require in part 77 that all livestock in a herd must be depopulated.

One commenter had questions about what kinds of cervid herds would be considered captive. The proposed rule defined a captive cervid as a cervid ''raised or maintained in captivity for the production of meat and other agricultural products, for sport, or for exhibition. * * *'' The commenter says that in some areas of the United States white-tailed deer are enclosed by deer-proof fences as a wildlife management tool. In Texas, for example, over 1 million acres of rangeland are enclosed by deer-proof fences, and the enclosed deer herds are defined by Texas statute as wild deer populations. The commenter says it is ambiguous whether or not such enclosed deer herds would be considered captive under our definition of captive cervid. Similarly, the commenter also said that State and Federal fish and wildlife agencies sometimes restore wild cervid populations through interstate trap and transplant operations. The commenter asked if it is our intent to include such operations under the scope of this rule.

We do not intend to include deer populations enclosed for wildlife management purposes within the scope of this rule. Wild deer enclosed for management purposes are obviously not enclosed for the purpose of using them for exhibition or as a commodity, but to keep them out of grazing land, crop fields, or developed areas. We do not consider such cervid herds to be captive. Neither do we intend to include deer that are part of any other wildlife management projects under the scope of this rule. Therefore, we have not made any changes in response to this comment.

We proposed that, to move a captive cervid interstate for slaughter or necropsy, a permit for such movement must be issued by a representative of APHIS, a State representative, or an accredited veterinarian. We also proposed that captive cervids moving interstate for any reason other than slaughter or necropsy must be accompanied by a certificate for such movement issued by a State or Federal animal health official or an accredited veterinarian. One commenter said that in some States the State fish and wildlife agency has responsibility for regulating captive cervid herds, and not the State department of agriculture. The commenter asked which State agency would be responsible for issuing interstate movement permits and certificates under the proposed rule. The commenter is concerned that no unfunded mandates be placed on State fish and wildlife agencies.

Whichever agency is responsible for management of captive cervid herds in a State will be the cooperating State agency under this rule responsible for issuing permits and certificates when necessary for the interstate movement of captive cervids. The costs for issuing such permits and certificates are minimal. Therefore, we will not provide any funds to the States for this service. In most cases, the State veterinarian (regardless of what State agency the veterinarian works for) will be the primary cooperator with APHIS under this program. The State veterinarian would already be cooperating with APHIS in conducting the interstate movement program for tuberculosis in cattle and bison. Thus, the States should not encounter significant additional expenses because of this program.

One commenter asked why we did not propose to regulate wild cervids as well as captive cervids, if tuberculosis is truly a threat. We are concerned, along with the commenter, that tuberculosis can be transmitted from captive cervids to wild cervids and vice versa. Because of our concern, we are assisting State wildlife agencies in monitoring tuberculosis in wild animal populations and in developing possible methods for controlling tuberculosis in those populations. However, it is not feasible at this time for us to develop a tuberculosis eradication program for wild cervids or other wild animals similar to those proposed for captive cervids. We have made no changes to the rule in response to this comment.

Another commenter asked why we did not propose to regulate bovidae other than bison (such as African and Asian antelope, American pronghorn, and various species of wild sheep and goats) for tuberculosis. We are making no changes based on this comment. We have considered regulating bovidae other than cattle and bison for tuberculosis. However, at this time, we are focusing on the species of primary epidemiologic importance. Cattle, bison, and captive cervids have the most impact on the spread of tuberculosis among livestock. We recognize that, especially in mixed herds, bovidae other than cattle and bison are capable of transmitting the disease to cattle, bison, and captive cervids, and this is of concern to us. If, in the future, we decide to regulate other livestock for tuberculosis, we will publish a proposed rule in the **Federal Register**.

One commenter was concerned with our explanation in the preamble to the proposed rule regarding why we proposed regulations for a monitored herd status for captive cervid herds. We said in the preamble that the provisions for monitored herds have been included mainly to accommodate very large cervid herds raised under range conditions. The commenter said that this explanation could be construed to mean that monitored herds would include wild cervid herds. We are making no changes to the regulation based on this comment. The term ''monitored herd'' is defined in § 77.8, ''Definitions,'' to mean: ''A herd on which identification records are maintained on *captive* cervids inspected for tuberculosis at an approved slaughtering establishment or an approved diagnostic laboratory, and which meets the standards set forth in § 77.14 of this subpart'' (emphasis added). We believe that this definition makes it clear that only captive cervid herds will be eligible to be considered monitored herds. Further, as stated previously in this document, we have added the word ''captive'' before the word ''cervid'' each time it appears throughout the regulations. We believe this will be sufficient to ensure that it is clear that the rule, including the provisions for monitored herds, only applies to captive cervids.

In the Regulatory Flexibility Analysis portion of the proposed rule, we stated that the cost of routine testing with the SCT test will be borne by the owner of the captive cervid herd. We estimated that this will cost about $25–30 per cervid, based on a herd of about 200 captive cervids over 6 months of age. One commenter, in regard to this, stated that the public should bear the cost of this test, and not the individual herd owner. APHIS does in fact provide the tuberculin free to private veterinarians. By doing this, veterinarians do not have to charge herd owners for the cost of the tuberculin. APHIS also pays the cost of all testing for high-risk herds (for example, affected herds and herds that have received a captive cervid from an affected herd). Further, States usually provide cost-free testing when the testing is required by the State for surveillance purposes. Our intent is that owners of captive cervids pay for routine testing that allows them to move their animals in interstate commerce.

Another commenter disputed our estimate of the cost of routine testing at $25–$30 per cervid. We explained in the analysis that approximately two-fifths of this estimated cost would be for additional labor needed to assist in testing (rounding up the herd, holding animals for injection, etc.), and three-fifths of this estimate would be for a veterinarian's professional services. The commenter said that veterinarians charge only about $2 per head to test cattle for tuberculosis, and do not charge significantly more to test captive cervids (our estimate assumed a minimum charge of $15—three-fifths of $25). The commenter also said that roundup and handling costs for captive cervids are not normally more than the costs for such labor when testing cattle, and asked that we revise the analysis to state that testing of captive cervids for tuberculosis will be no more expensive than testing of cattle. The purpose of our discussion of testing costs in the proposed rule was to determine whether or not the rule would have a significant economic impact on a substantial number of small entities. Analysis of this is required under the Regulatory Flexibility Act. Based in part on our estimate of testing costs, we determined that the proposed rule would not have a significant economic impact on a substantial number of small entities. We believe that in some circumstances testing and labor costs will be greater than what the commenter estimates. Even so, there will be no change in our determination of no significant economic impact if testing costs prove

to be lower than we estimated. Therefore, we have made no changes to the analysis in response to this comment.

In the proposed rule, we stated that zoological parks that are accredited by the American Zoo and Aquarium Association (AZA) and that have captive cervids are exempt from the proposed regulations when the captive cervids are moved directly interstate between AZA member facilities. One commenter said that exempting AZA member facilities from the regulations means that AZA members are held to a standard lower than those established for the agriculture industry, even though there exists an equal or greater risk of spreading the disease between such facilities. We are making no changes based on this comment. As we stated in the proposed rule, the AZA holds its member facilities to a high animal health standard. All member facilities monitor their animals for tuberculosis and other diseases, and interstate movement between the parks would not involve contact with animals that are not in the respective parks. Given these standardized precautions, we believe that movement of captive cervids between AZA member facilities poses no more risk of spreading tuberculosis than if the captive cervids were moving under the provisions of this rule. However, zoos that are not AZA members will be able to move captive cervids or receive captive cervids only in accordance with the provisions of this rule. Likewise, zoos that are AZA members will be able to move captive cervids to a non-AZA facility only in accordance with the provisions of this final rule.

The proposed rule provided that all captive cervids in a herd that are eligible for testing must test negative to at least three consecutive official tuberculosis tests conducted at 9–15 month intervals in order for the herd to become an accredited herd. The UMR for cattle and bison requires that, to achieve accredited herd status, all cattle and bison in the herd must test negative to at least two consecutive official tuberculosis tests. Several commenters said that requiring three tests for captive cervid herd accreditation is an unfair burden on captive cervid owners, when cattle and bison herds only require two tests for accreditation. We are making no changes based on this comment. We stated in the preamble to the proposed rule that livestock industry associations have requested that we require three official tuberculosis tests to qualify a captive cervid herd as an accredited herd because of a lack of testing history and the present seriousness of the tuberculosis situation concerning captive cervids. One commenter said that, since a greater percentage of captive cervids are currently tested than cattle, the regulations should be relaxed as data is accumulated. This seems reasonable. However, we believe that we must continue to be more restrictive until data establishes that the risk of transmission of tuberculosis in captive cervids is at a level equivalent to that in cattle populations. Bovine tuberculosis can have an incubation period of a decade or more. Captive cervids have a life span substantially longer than cattle or bison (captive cervids can live on average 30 years, while the life span for cattle averages only 6 to 7 years). Further, our surveillance of captive cervids is not adequately developed to always detect tuberculous herds in a timely manner. These factors will extend the period needed to establish data on realistic risk comparisons between captive cervids and cattle and bison.

One commenter said that the proposal did not include a provision for ''surveyed herd status,'' which the commenter said was recommended by the Committee for inclusion in the addendum. We are making no changes based on this comment. The Committee recommended that we add an additional herd classification, surveyed herds, to the herd accreditation program. The recommendation called for surveyed herds to be classified based only on records of captive cervids tested for interstate movement. As discussed previously, we have incorporated this concept into the provisions for achieving monitored herd status by allowing interstate movement testing to be counted towards meeting the requirement for monitored herd status.

To maintain monitored herd status, we proposed that the person, firm, or corporation responsible for management of the herd must submit an annual report to cooperating State or Federal animal health officials to give the number of captive cervids currently in the herd and the number of captive cervids from the herd over 1 year of age identified, slaughtered, and inspected at an approved slaughtering establishment or necropsied at an approved diagnostic laboratory. One commenter asked if APHIS will provide the forms for the reporting of this information. We will not. It will be the responsibility of the person, firm, or corporation responsible for the management of the monitored herd to maintain records and submit the annual report to State or Federal animal health officials. APHIS does not currently have a special form for the reporting of this information. However, we recognize the need for uniform reporting, and are considering guidelines to clarify the recordkeeping requirements in order to ensure that consistent information is maintained on monitored herds.

One commenter said that the proposed testing schedules will result in undue stress and death of captive cervids. The commenter claimed that deaths due to stress from testing could exceed problems caused by tuberculosis. We are not making any changes based on this comment. We are aware of the stress to captive cervids caused by handling and testing. Captive cervids are much more excitable animals than cattle or bison and can be difficult to handle. They are also more fragile than many other livestock and, in particular, can suffer bone injuries when being handled. However, we do not believe that deaths due to stress from testing could possibly exceed the problems caused by tuberculosis if the disease is left unchecked. Left unrestricted, tuberculosis would assuredly destroy the captive cervid industry in the United States. Captive cervids also have been known to transmit tuberculosis to cattle and other livestock, and to humans. We believe the importance of controlling tuberculosis in the captive cervid population far outweighs any risk of injuring or causing the death of a very limited number of animals due to handling during testing. The testing schedules in this final rule are necessary to ensure detection of tuberculosis in captive cervid herds.

In the preamble to the proposed rule, we explained that, at this time, the tuberculosis status of captive cervids will not affect the tuberculosis status of a State (as it does in the tuberculosis eradication program for cattle and bison). One commenter asked that we confirm this in the rule itself. We are making no changes based on this comment. The proposed rule contains no provisions for changing the tuberculosis status of a State in relation to the tuberculosis status of captive cervid herds. We do not believe that it is necessary to state in the rule that the tuberculosis status of a captive cervid herd will not affect the tuberculosis status of a State. We believe it is clear in part 77 that the status of a State is dependent on the incidence of tuberculosis in cattle and bison herds and not in captive cervid herds, unless tuberculosis is found in a herd of captive cervids also containing cattle or bison. Further, as we also discussed in the preamble to the proposed rule, the regulations we proposed will be subject to future review. We anticipate that, in

the near future, we will revise part 77 to make the tuberculosis status of captive cervids or other livestock affect the tuberculosis status of a State, as it currently does with cattle and bison. Until that time, a State's tuberculosis status will continue to be based on the presence or absence of tuberculosis in cattle or bison in herds within the State.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal 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. The 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.

Breeding and production of captive deer, elk, and other *Cervidae* (cervids) has taken place in the United States since at least the 1930's. The first owners were ranchers who kept these animals as novelties. While captive cervids continue to be raised for their aesthetic value, most herds also earn income for their owners in the venison and antler markets. U.S. production of captive cervids has increased over the decades and is expected to continue to grow. In a 1990 survey of existing herd owners, over 70 percent of the respondents planned to expand their operations; only 3 percent intended to decrease or discontinue production.[1] The industry's combined sales probably exceed $10 million. Most captive cervid holdings are either small businesses or are parts of larger agricultural enterprises.

There are more than 1,600 captive cervid (elk and deer) producers in the United States today, raising about 250,000 head of captive cervids. Holdings vary in size and degree of commercialization, with most producers relying on other sources of income, particularly dairy farming or cattle ranching, for their livelihoods. Elk and deer farming yield a higher return on investment than do most other types of livestock enterprises, but also require larger initial investment and operating costs.

Industry wide, elk producers are building up their herds, with almost all newborns sold as breeding stock. A heifer elk is worth about $3,500. Annual income is also earned from the sale of antlers cut in the velvet stage of growth. The antlers sell for about $70 per pound. A bull elk can produce up to 18 pounds each year, for more than 10 years. Thus, a gross income of $1200–1300 can be earned per year from one bull elk.

The value per animal for deer is lower than for elk. Currently, good quality fallow does are sold for about $400 per head, and slaughter bucks can be sold for $150–200 each. Fallow does will produce one offspring per year, valued at about $200 per head.

This rule will include captive cervids in the National Cooperative State/Federal Bovine Tuberculosis Eradication Program. APHIS considered the alternative of not adding provisions concerning captive cervids to this program. Under this alternative, the interstate movement of captive cervids would remain unregulated, increasing the risk for further spread of tuberculosis from captive cervids to cattle, bison, and other livestock, as well as to wildlife and humans. Therefore, this alternative was rejected.

Under this rule, producers of captive cervids will bear certain costs of testing the animals. Routine testing with the SCT test will be paid for by the owner of the herd, and should cost about $25–30 per cervid, based on a herd of about 200 captive cervids over 6 months of age. Approximately two-fifths of this cost will be for additional labor needed to assist in the testing (rounding up the herd, holding animals for injection, etc.), and three-fifths of the cost will be for a veterinarian's professional services. Owners will not be responsible for the cost of the CCT test, retesting affected herds with the SCT test, or any other testing with the SCT test other than routine testing. Captive cervid owners will also bear costs of the BTB test (approximately $100 per cervid) if they desire to use this test. However, the BTB test is only an option under this rule, and will not be required.

Individual owners will benefit from the regulations by having a way to ensure that only tuberculosis-free captive cervids are added to their herds, and in the long run, by a decrease in the incidence of tuberculosis. Also, current tuberculosis testing and transport restrictions for captive cervids vary by State. National disease control standards, effective as a result of this rule, will facilitate interstate trade.

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

The information or recordkeeping requirements in the proposed rule were submitted for approval to OMB and were approved. The assigned OMB control number is 0579–0084. This final rule contains changes that affect the approved requirements. The estimated total annual burden on respondents for the information and recordkeeping requirements in the proposed rule was 557 hours. This final rule adds a requirement that persons wishing to use identification methods for cervids other than official eartags must send a written request for approval to APHIS (see § 77.10(c) of this final rule). This final rule also adds a requirement that the testing laboratory must include a summary of supporting data with BTB test reports, and that full supporting data must be provided on a case-by-case basis at the request of cooperating State and Federal animal health officials (see § 77.10(d)(2) of this final rule). The new requirements add an additional 2 hours to the total annual burden. This final rule also removes the proposed requirement that natural additions under of 1 year of age must be individually identified by an official eartag and recorded in the test report as members of the herd at the time of the herd test (this requirement appeared in § 77.10(f) of the proposed rule). The removal of this requirement reduces the total annual burden by 46 hours. These three changes result in a net reduction of 44 hours from the estimated total annual burden in the proposed rule.

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the new information collection or recordkeeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its

[1] Mjelde, James. ''Exotic Ungulate Production: Summary of Survey Results.'' Department of Agricultural Economics, Texas A&M University.

decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control numbers or, if approval is denied, providing notice of what action we plan to take.

List of Subjects

9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

9 CFR Part 77

Animal diseases, Bison, Cattle, Incorporation by reference, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR parts 50, 77, and 91 as follows:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

1. The authority citation for part 50 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 50.1, the definition for *Captive cervid* is revised to read as set forth below.

§ 50.1 Definitions.

* * * * *

Captive cervid. All species of deer, elk, moose, and all other members of the family Cervidae raised or maintained in captivity for the production of meat and other agricultural products, for sport, or for exhibition. A captive cervid that escapes will continue to be considered a captive cervid as long as it bears an official eartag or other identification approved by the Administrator as unique and traceable with which to trace the animal back to its herd of origin.

* * * * *

PART 77—TUBERCULOSIS

3. The authority citation for part 77 continues to read as follows:

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

4. In part 77, §§ 77.1 through 77.6 are designated as subpart A and a subpart heading, ''Subpart A—Cattle and Bison'', is added before § 77.1.

5. Section § 77.1 is amended as follows:

a. The introductory sentence is amended by removing the word ''part'' and adding the word ''subpart'' in its place.

b. The definition of *Permit* is amended by removing the word ''animals'' the first time it appears and adding the words ''cattle or bison'' in its place, and by removing the word ''part'' each time it appears and adding the word ''subpart'' in its place.

c. The definition of *Transportation document* is amended by adding the phrase ''of cattle or bison'' immediately after ''interstate movement''.

d. The definitions for *Accredited veterinarian* and *Uniform Methods and Rules—Bovine Tuberculosis Eradication* are revised to read as set forth below.

§ 77.1 Definitions.

* * * * *

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this subchapter to perform functions specified in subchapters B, C, and D of this chapter.

* * * * *

Uniform Methods and Rules—Bovine Tuberculosis Eradication. Uniform methods and rules for eradicating bovine tuberculosis in the United States, adopted by the United States Animal Health Association (USAHA) in October, 1988, and approved by APHIS on February 3, 1989. The *Uniform Methods and Rules—Bovine Tuberculosis Eradication*, February 3, 1989 Edition were approved for incorporation by reference into the Code of Federal Regulations by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.[1]

* * * * *

§ 77.3 [Amended]

5a. In § 77.3, footnote 3 is redesignated as footnote 2.

§ 77.6 [Amended]

6. In § 77.6, in the first sentence, the word ''part'' is removed and the word ''subpart'' is added in its place.

7. A new § 77.7 is added to subpart A to read as follows:

§ 77.7 Cleaning and disinfection of premises, conveyances, and materials.

All conveyances and associated equipment, premises, and structures that are used for receiving, holding, shipping, loading, unloading, and delivering cattle or bison in connection with their interstate movement and that are determined by cooperating State and Federal animal health officials to be contaminated because of occupation or use by tuberculous or reactor livestock must be cleaned and disinfected under the supervision of the cooperating State or Federal animal health officials. Such cleaning and disinfecting must be done in accordance with procedures approved by the cooperating State or Federal animal health officials. Cleaning and disinfection must be completed before the premises, conveyances, or materials may again be used to convey, hold, or in any way come in contact with any livestock.

8. In part 77, a new subpart B is added following § 77.7 to read as follows:

Subpart B—Captive Cervids

Sec.

77.8 Definitions.
77.9 General restrictions.
77.10 Testing procedures for tuberculosis in captive cervids.
77.11 Official tuberculosis tests.
77.12 Interstate movement from accredited herds.
77.13 Interstate movement from qualified herds.
77.14 Interstate movement from monitored herds.
77.15 Interstate movement from unclassified herds.
77.16 Other interstate movements.
77.17 Procedures for and interstate movement to necropsy and slaughter.
77.18 Cleaning and disinfection of premises, conveyances, and materials.

Subpart B—Captive Cervids

§ 77.8 Definitions.

Accredited herd. A herd of captive cervids that has tested negative to at least three consecutive official tuberculosis tests of all eligible captive cervids in accordance with § 77.10(f), and that meets the standards set forth in § 77.12 of this subpart. The tests must be conducted at 9–15 month intervals.

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of subchapter J to perform functions specified in subchapters B, C, and D of this chapter.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Affected herd. A herd of captive cervids that contains or that has contained one or more captive cervids infected with *Mycobacterium bovis* (determined by bacterial isolation of *M. bovis*) and that has not tested negative to the three whole herd tests as prescribed in § 77.16(d) of this subpart.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

[1] Copies may be obtained from the National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, Maryland 20737–1231.

Approved slaughtering establishment. A slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a slaughtering establishment that has inspection by a State inspector at the time of slaughter.

Blood tuberculosis (BTB) test. A supplemental test for tuberculosis in cervids.

Captive cervid. All species of deer, elk, moose, and all other members of the family Cervidae raised or maintained in captivity for the production of meat and other agricultural products, for sport, or for exhibition. A captive cervid that escapes will continue to be considered a captive cervid as long as it bears an official eartag or other identification approved by the Administrator as unique and traceable with which to trace the animal back to its herd of origin.

Classified herd. An accredited, qualified, or monitored herd.

Comparative cervical tuberculin (CCT) test. The intradermal injection of biologically balanced USDA bovine PPD tuberculin and avian PPD tuberculin at separate sites in the mid-cervical area to determine the probable presence of bovine tuberculosis (*M. bovis*) by comparing the response of the two tuberculins at 72 hours (plus or minus 6 hours) following injection.

Cooperating State and Federal animal health officials. The State and Federal animal health officials responsible for overseeing and implementing the National Cooperative State/Federal Bovine Tuberculosis Eradication Program.

Depopulate. To destroy all captive cervids in a herd by slaughter or by death otherwise.

Designated accredited veterinarian. An accredited veterinarian who is trained and approved by cooperating State and Federal animal health officials to conduct the single cervical tuberculin (SCT) test on captive cervids.

Designated tuberculosis epidemiologist (DTE). An epidemiologist designated by APHIS to make decisions concerning the use and interpretation of diagnostic tests and the management of affected herds under this subpart.

Exposed captive cervid. Any captive cervid that has been exposed to tuberculosis by reason of associating with captive cervids, cattle, bison, or other livestock from which *M. bovis* has been isolated.

Herd. A group of captive cervids or a group of captive cervids and other livestock maintained on common ground, or two or more groups of captive cervids or captive cervids and other livestock under common ownership or supervision that are geographically separated but that have movement of animals between groups without regard to health status. (A group means one or more animals.)

Livestock. Cattle, bison, cervids, swine, dairy goats, and other hoofed animals (such as llamas, alpacas, and antelope) raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition.

Monitored herd. A herd on which identification records are maintained on captive cervids inspected for tuberculosis at an approved slaughtering establishment or an approved diagnostic laboratory and on captive cervids tested for tuberculosis in accordance with interstate movement requirements, and which meets the standards set forth in § 77.14.

Moved directly. Moved without stopping or unloading at livestock assembly points of any type. Captive cervids being moved directly may be unloaded from the means of conveyance while en route only if they are isolated so that they cannot mingle with any livestock other than those with which they are being shipped.

Negative. Showing no response to the SCT test or the CCT test, classified by the testing laboratory as ''avian'' or ''negative'' on the BTB test, or classified negative for tuberculosis by the testing veterinarian based upon history, supplemental tests, examination of the carcass, and histopathology and culture of selected tissues.

No gross lesions (NGL). Having no visible lesions indicative of bovine tuberculosis detected upon necropsy or slaughter inspection.

Official eartag. An eartag approved by the Administrator as providing unique identification for each individual captive cervid by conforming to the alpha-numeric National Uniform Eartagging System.

Official tuberculosis test. Any of the following tests for bovine tuberculosis in captive cervids, applied and reported in accordance with this subpart:

(1) The single cervical tuberculin (SCT) test;

(2) The comparative cervical tuberculin (CCT) test; and

(3) The blood tuberculosis (BTB) test.

Permit. An official document issued by a representative of APHIS, a State representative, or an accredited veterinarian that must accompany any reactor, suspect, or exposed captive cervid moved interstate.

Qualified herd. A herd of captive cervids that has tested negative to at least one official tuberculosis test of all eligible captive cervids (§ 77.10(f)) within the past 12 months, and that is not classified as an accredited herd.

Quarantine. Prohibition from interstate movement, except for slaughter or necropsy.

Reactor. Any captive cervid that shows a response to the SCT test or the CCT test, or is classified by the testing laboratory as ''*M. bovis* positive'' on the BTB test, and is classified a reactor by the testing veterinarian; or any suspect captive cervid that is classified a reactor upon slaughter inspection or necropsy after histopathology and/or culture of selected tissues by the USDA or State veterinarian performing or supervising the slaughter inspection or necropsy.

Regular-kill slaughter animal. An animal that is slaughtered for food or any reason other than because of a disease regulated under 9 CFR chapter I (such as tuberculosis, brucellosis, or any other livestock disease for which movement of animals is restricted under 9 CFR chapter I).

Single cervical tuberculin (SCT) test. The intradermal injection of 0.1 mL (5,000 tuberculin units) of USDA PPD bovis tuberculin in the mid-cervical area with reading by visual observation and palpation at 72 hours (plus or minus 6 hours) following injection.

Suspect. Any captive cervid that is not negative to the SCT test or the CCT test, or that is classified by the testing laboratory as equivocal on the BTB test, and that is not classified as a reactor by the testing veterinarian.

Tuberculin. A product that is approved by and produced under USDA license for injection into cervids and other animals for the purpose of detecting bovine tuberculosis.

Tuberculosis. The contagious, infectious, and communicable disease caused by *Mycobacterium bovis.* (Also referred to as bovine tuberculosis.)

Tuberculous. Having lesions indicative of tuberculosis, infected with tuberculosis based on isolation of *M. bovis*, or being from a herd in which *M. bovis* has been isolated.

USDA. The United States Department of Agriculture.

Whole herd test. An official tuberculosis test of all test eligible animals in the herd.

§ 77.9 General restrictions.

(a) Except for movement from accredited herds in accordance with § 77.12, no captive cervid may be moved interstate unless it has been tested using an official tuberculosis test, and it is moved in compliance with this subpart.

(b) No captive cervid with a response to any official tuberculosis test is eligible for interstate movement unless

the captive cervid subsequently tests negative to a supplemental official tuberculosis test or is moved interstate directly to slaughter or necropsy in accordance with § 77.17.

(c) Except for captive cervids moving interstate under permit directly to slaughter or necropsy (§ 77.17), each captive cervid or shipment of captive cervids to be moved interstate must be accompanied by a certificate issued within 30 days of the movement by a State or Federal animal health official or an accredited veterinarian. The certificate must state the number of the official eartag or other identification approved by the Administrator for each captive cervid to be moved, the number of captive cervids covered by the certificate, the purpose of the movement, the origin and destination of the captive cervids, the consignor, and the consignee.

(d) Captive cervids in zoological parks that have been accredited by the American Zoo and Aquarium Association (AZA) are exempt from the regulations in this subpart when the captive cervids are moved directly interstate between AZA member facilities. Any captive cervids moved interstate that are not moved directly from an AZA member facility to another AZA member facility must be moved in accordance with the regulations in this subpart.

§ 77.10 Testing procedures for tuberculosis in captive cervids.

(a) *Approved testers.* Except as explained in paragraphs (a)(1) and (a)(2) of this section, official tuberculosis tests may only be given by a veterinarian employed by the State in which the test is administered or by a veterinarian employed by USDA.

(1) A designated accredited veterinarian may conduct the SCT test, except as provided in § 77.11(a)(2) and § 77.16(e) and (f).

(2) Any accredited veterinarian may conduct the BTB test.

(b) *Approved diagnostic laboratories.*

(1) With one exception, histopathology and culture results for all tuberculosis diagnoses will be accepted only from the National Veterinary Services Laboratories (NVSL) in Ames, Iowa. The exception is that results will be accepted from a laboratory of the Food Safety and Inspection Service, USDA, for tissue examination of regular-kill slaughter animals in those cases where no submission is made to NVSL.

(2) The following laboratories are approved to perform the BTB test: Texas Veterinary Medical Center laboratory at Texas A&M University in College Station, Texas.

(c) *Identification.* Any captive cervid tested with an official tuberculosis test must bear official identification in the form of an official eartag, or another identification device or method approved by the Administrator as unique and traceable, at the time of the official tuberculosis test. Use of any identification device or method other than an official eartag must first be approved by the Administrator as unique and traceable. Written requests for approval must be sent to National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231.

(d) *Reporting of tests.*

(1) *SCT and CCT tests.* For the SCT and CCT tests, the testing veterinarian must submit a report to cooperating State and Federal animal health officials of the State in which the captive cervid is tested. The report must include the following information for all SCT and CCT tests administered: The number of the individual eartag or other identification approved by the Administrator; the age, sex, and breed of each captive cervid tested; a record of all responses; the size of each response for the CCT test; and the test interpretation.

(2) *BTB test.* Copies of the BTB test results must be submitted by the testing laboratory to the person, firm, or corporation responsible for the management of the herd, cooperating State and Federal animal health officials of the State in which the captive cervid is tested, and the testing veterinarian. The report must include the following information for all BTB tests administered: The number of the individual eartag or other identification approved by the Administrator; the age, sex, and breed of each captive cervid tested; the test interpretation, and a summary of supporting data. Full supporting data must be submitted by the testing laboratory on a case-by-case basis at the request of cooperating State and Federal animal health officials.

(e) *Test interpretation.*

(1) Interpretation of an SCT test will be based upon the judgment of the testing veterinarian after observation and palpation of the injection site, in accordance with the classification requirements described in § 77.11(a).

(2) Interpretation of a CCT test will be in accordance with the classification requirements described in § 77.11(b).

(3) Interpretation of a BTB test will be in accordance with the patented standards for the BTB test[3] and the classification requirements described in § 77.11(c).

(f) *Captive cervids eligible for testing.* Except as provided in § 77.12(a)(1) and § 77.13(a)(1), testing of herds for classification must include all captive cervids 1 year of age or over and any captive cervids other than natural additions (captive cervids born into the herd) under 1 year of age.

§ 77.11 Official tuberculosis tests.

(a) *Single cervical tuberculin (SCT) test.*

(1) The SCT test is the primary test to be used in individual captive cervids and in herds of unknown tuberculous status. Each captive cervid that responds to the SCT test must be classified as a suspect until it is retested with either the CCT test or the BTB test and is either found negative for tuberculosis or is classified as a reactor, unless, with the exception of a designated accredited veterinarian, the testing veterinarian determines that the captive cervid should be classified as a reactor based on its response to the SCT test. A designated accredited veterinarian must classify a responding captive cervid as a suspect, unless the DTE determines, based on epidemiological evidence, that the captive cervid should be classified as a reactor.

(2) The SCT test is the primary test to be used in affected herds and in herds that have received captive cervids from an affected herd. When used with affected herds or in herds that have received captive cervids from an affected herd, the SCT test may only be administered by a veterinarian employed by the State in which the test is administered or employed by USDA. In affected herds or herds that have received captive cervids from an affected herd, each captive cervid that responds to the SCT test must be classified as a reactor, unless the DTE determines that the captive cervid should be classified as a suspect because of possible exposure to a tuberculous animal.

(b) *Comparative cervical tuberculin (CCT) test.*

(1) The CCT test is a supplemental test that may only be used for retesting captive cervids classified as suspects. The CCT test may be used in affected herds only after the herd has tested

[3] The patented standards for the BTB test may be obtained from the Texas Veterinary Medical Center, College of Veterinary Medicine, Texas A&M University, College Station, Texas, or from the Deer Research Laboratory, Department of Microbiology, University of Otago, P.O. Box 56, Dunedin, New Zealand.

negative to at least two whole herd SCT tests, and only with the prior written consent of the DTE. The CCT test may not be used as a primary test for herds of unknown tuberculous status.

(2) A captive cervid tested with the CCT test must be classified as negative if it has a response to the bovine PPD tuberculin that is less than 1 mm.

(3) Unless the testing veterinarian determines that the captive cervid should be classified as a reactor because of possible exposure to a tuberculous animal, a captive cervid tested with the CCT test must be classified as a suspect if:

(i) It has a response to the bovine PPD tuberculin that is greater than 2 mm and that is equal to the response to the avian PPD tuberculin; or

(ii) It has a response to the bovine PPD tuberculin that is equal to or greater than 1mm and equal to or less than 2mm, and that is equal to or greater than the response to the avian PPD tuberculin.

(4) A captive cervid tested with the CCT test must be classified as a reactor if:

(i) It has a response to the bovine PPD tuberculin that is greater than 2 mm and that is at least 0.5 mm greater than the response to the avian PPD tuberculin; or

(ii) It has been classified as a suspect on two successive CCT tests.

(iii) Any exceptions to reactor classification under the conditions in paragraph (b)(4)(i) and (b)(4)(ii) of this section must be justified by the testing veterinarian in writing and have the concurrence of the DTE.

(c) *Blood tuberculosis (BTB) test.*

(1) The BTB test is a supplemental test that may be used in place of the CCT test for retesting captive cervids classified as suspects.

(2) Except as provided in § 77.16(e), any captive cervid classified by the testing laboratory as ''equivocal'' will be classified as a suspect.

(3) Any captive cervid classified by the testing laboratory as ''M. bovis positive'' will be classified as a reactor.

(4) Any captive cervid classified by the testing laboratory as ''avian'' or ''negative'' will be considered negative for tuberculosis.

(5) The owner of the captive cervid tested is responsible for the cost of the BTB test.

§ 77.12 Interstate movement from accredited herds.

(a) *Qualifications.* To be recognized as an accredited herd:

(1) All captive cervids in the herd eligible for testing in accordance with § 77.10(f) must have tested negative to at least three consecutive official tuberculosis tests, conducted at 9–15 month intervals. However, captive cervids under 1 year of age that are not natural additions to the herd do not have to be tested if they were born in and originate from an accredited herd.

(2) The owner of the herd must have a document issued by cooperating State or Federal animal health officials stating that the herd has met the requirements in paragraph (a)(1) of this section and is classified as an accredited herd.

(b) *Movement allowed.* A captive cervid from an accredited herd may be moved interstate without further tuberculosis testing if it is accompanied by a certificate, as provided in § 77.9(c), that includes a statement that the captive cervid is from an accredited herd. If a group of captive cervids from an accredited herd is being moved interstate together to the same destination, all captive cervids in the group may be moved under one certificate.

(c) *Herd additions allowed.* No captive cervid may be added to an accredited herd except in accordance with paragraphs (c)(4) and (c)(5), and either paragraph (c)(1), (c)(2), or (c)(3) of this section, as follows:

(1) The captive cervid to be added must be moved directly from an accredited herd;

(2) The captive cervid to be added must be moved directly from a qualified or monitored herd and must have tested negative to an official tuberculosis test conducted within 90 days prior to movement to the premises of the accredited herd. Any captive cervid moved from a qualified or monitored herd must also be isolated from all members of the accredited herd until it tests negative to an official tuberculosis test conducted at least 90 days following the date of arrival at the premises of the accredited herd. If a group of captive cervids is being moved together, the entire group must be isolated from all other livestock, but captive cervids in the group need not be isolated from each other, during the testing period. Such herd additions will not receive status as members of the accredited herd for purposes of interstate movement until they have tested negative to an official tuberculosis test and been released from isolation; or

(3) If the captive cervid to be added is not being moved directly from a classified herd, the captive cervid must be isolated from all other members of the herd of origin and must test negative to two official tuberculosis tests. The isolation must begin at the time of the first official tuberculosis test. The tests must be conducted at least 90 days apart, and the second test must be conducted within 90 days prior to movement to the premises of the accredited herd. The captive cervid must also be isolated from all members of the accredited herd until it tests negative to an official tuberculosis test conducted at least 90 days following the date of arrival at the premises of the accredited herd. If a group of captive cervids is being moved together, the entire group must be isolated from all other animals, but captive cervids in the group need not be isolated from each other, during the testing period. Such herd additions will not receive status as members of the accredited herd for purposes of interstate movement until they have tested negative to an official tuberculosis test and have been released from isolation.

(4) A captive cervid to be added must not have been exposed during the 90 days prior to its movement to either:

(i) A captive cervid from a herd with a lower classification status than its own; or

(ii) Any tuberculous livestock.

(d) *Maintenance of accredited herd status.* To maintain status as an accredited herd, the herd must test negative to an official tuberculosis test within 21–27 months from the anniversary date of the third consecutive test with no evidence of tuberculosis disclosed (that is, the test on which the herd was recognized as accredited, or the accrediting test). Each time the herd is tested for reaccreditation, it must be tested 21–27 months from the anniversary date of the accrediting test, not from the last date of reaccreditation (for example, if a herd is accredited on January 1 of a given year, the anniversary date will be January 1 of every second year). Accredited herd status is valid for 24 months (730 days) from the anniversary date of the accrediting test. If the herd is tested between 24 and 27 months after the anniversary date, its accredited herd status will be suspended for the interim between the anniversary date and the reaccreditation test. During the suspension period, the herd will be considered ''unclassified'' and captive cervids may be moved interstate from the herd only in accordance with § 77.15.

§ 77.13 Interstate movement from qualified herds.

(a) *Qualifications.* To be recognized as a qualified herd:

(1) All captive cervids in the herd eligible for testing in accordance with § 77.10(f) must have tested negative to one official tuberculosis test that was administered to the herd within a 7-month period. However, captive cervids

under 1 year of age that are not natural additions do not have to be tested if they were born in and originate from an accredited, qualified, or monitored herd.

(2) The owner of the herd must have a document issued by cooperating State and Federal animal health officials stating that the herd has met the requirement in paragraph (a)(1) of this section and is classified as a qualified herd.

(b) *Movement allowed.* A captive cervid from a qualified herd may be moved interstate only if:

(1) The captive cervid is not known to be infected with or exposed to tuberculosis; and

(2) The captive cervid is accompanied by a certificate, as provided in § 77.9(c), that includes a statement that the captive cervid is from a qualified herd. Except as provided in paragraph (b)(3) of this section, the certificate must also state that the captive cervid has tested negative to an official tuberculosis test conducted within 90 days prior to the date of movement. If a group of captive cervids from a qualified herd is being moved interstate together to the same destination, all captive cervids in the group may be moved under one certificate.

(3) Captive cervids under 1 year of age that are natural additions to the qualified herd or that were born in and originate from a classified herd may move without testing, provided that the certificate accompanying them states that the captive cervids are natural additions to the qualified herd or were born in and originated from a classified herd and have not been exposed to captive cervids from an unclassified herd.

(c) *Herd additions allowed.* No captive cervid may be added to a qualified herd except in accordance with paragraph (c)(4) and either paragraph (c)(1), (c)(2), or (c)(3) of this section, as follows:

(1) The captive cervid to be added must be moved directly from an accredited herd;

(2) The captive cervid to be added must be moved directly from a qualified or monitored herd and must have tested negative to an official tuberculosis test conducted within 90 days prior to movement to the premises of the accredited herd;

(3) If the captive cervid to be added is not being moved directly from a classified herd, the captive cervid must be isolated from all other animals in its herd of origin and must test negative to two official tuberculosis tests prior to movement. The isolation must begin at the time of the first official tuberculosis test. The tests must be conducted at least 90 days apart, and the second test must be conducted within 90 days prior to movement to the premises of the qualified herd. The captive cervid must then be kept in insolation from all animals until it tests negative to an official tuberculosis test conducted at least 90 days following the date of arrival at the premises of the qualified herd. If a group of captive cervids is being moved together, the entire group must be isolated from all other livestock, but captive cervids in the group need not be isolated from each other, during the testing period. Such herd additions will not receive status as members of the qualified herd for purposes of interstate movement until they have tested negative to an official tuberculosis test and been released from isolation.

(4) A captive cervid to be added must not have been exposed during the 90 days prior to its movement to either:

(i) A captive cervid from a herd with a lower classification status than its own; or

(ii) Any tuberculous livestock.

(d) *Maintenance of qualified herd status.* To maintain status as a qualified herd, the herd must test negative to an official tuberculosis test within 9–15 months from the anniversary date of the first test with no evidence of tuberculosis disclosed (this is the qualifying test). Each time the herd is retested for qualified status, it must be tested 9–15 months from the anniversary date of the qualifying test, not from the last date of requalification (for example, if a herd is qualified on January 1 of a given year, the anniversary date will be January 1 of each consecutive year). Qualified herd status remains in effect for 12 months (365 days) following the anniversary date of the qualifying test. Qualified herd status will be suspended between the anniversary date and the requalifying test, if the herd is not tested within 12 months. During the suspension period, the herd will be considered ''unclassified'' and captive cervids may be moved interstate from the herd only in accordance with § 77.15.

§ 77.14 Interstate movement from monitored herds.

(a) *Qualifications.* To be recognized as a monitored herd:

(1) Identification records must be maintained by the person, firm, or corporation responsible for the management of the herd for as long as status as a monitored herd is desired. Such records must be maintained on all captive cervids in the herd that are slaughtered, inspected, and found negative for tuberculosis at an approved slaughtering establishment or necropsied at an approved diagnostic laboratory. Identification records may also include captive cervids from the herd that tested negative for tuberculosis in accordance with requirements for interstate movement. No less than one half of the captive cervids on which records are kept must be slaughter inspected; and

(2) A sufficient number of captive cervids in the herd must be slaughter inspected or tested for interstate movement to ensure that tuberculosis infection at a prevalence level of 2 percent or more will be detected with a confidence level of 95 percent.[4] A maximum number of 178 captive cervids must be slaughter inspected or tested for interstate movement over a 3-year period to meet this requirement.

(b) *Movement allowed.* A captive cervid from a monitored herd may be moved interstate only if:

(1) The captive cervid is not known to be infected with or exposed to tuberculosis; and

(2) The captive cervid is accompanied by a certificate, as provided in § 77.9(c), that includes a statement that the captive cervid is from a monitored herd. Except as provided in paragraph (b)(3) of this section, the certificate must also state that the captive cervid has tested negative to an official tuberculosis test conducted within 90 days prior to the date of movement. If a group of captive cervids from a monitored herd is being moved interstate together to the same destination, all captive cervids in the group may be moved under one certificate.

(3) Captive cervids under 1 year of age that are natural additions to the monitored herd or that were born in and originate from a classified herd may move without testing, provided that the certificate accompanying them states that the captive cervids are natural additions to the monitored herd or were born in and originated from a classified herd and have not been exposed to captive cervids from an unclassified herd.

(c) *Herd additions allowed.* No captive cervid may be added to a monitored herd except in accordance with paragraph (c)(4) and either paragraph (c)(1), (c)(2), or (c)(3) of this section, as follows:

[4] A chart showing the number of captive cervids that must be slaughter inspected or tested for interstate movement, depending on the size of a herd, to meet this requirement may be obtained from the National Animal Health Programs staff, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231.

(1) The captive cervid to be added must be moved directly from an accredited herd;

(2) The captive cervid to be added must be moved directly from a qualified or monitored herd and must have tested negative to an official tuberculosis test conducted within 90 days prior to movement to the premises of the monitored herd; or

(3) If the captive cervid to be added is not being moved directly from a classified herd, the captive cervid must be isolated from all other animals and must test negative to two official tuberculosis tests. The isolation must begin at the time of the first official tuberculosis test. The tests must be conducted at least 90 days apart, and the second test must be conducted within 90 days prior to movement to the premises of the monitored herd. The captive cervid must then be kept in isolation from all animals until it tests negative to an official tuberculosis test conducted at least 90 days following the date it arrives at the premises of the monitored herd. If a group of captive cervids is being moved together, the entire group must be isolated from all other animals, but captive cervids in the group need not be isolated from each other, during the testing period. Such herd additions will not receive status as members of the monitored herd for purposes of interstate movement until they have tested negative to an official tuberculosis test and been released from isolation.

(4) A captive cervid to be added must not have been exposed during the 90 days prior to its movement to either:

(i) A captive cervid from a herd with a lower classification status than its own; or

(ii) Any tuberculous livestock.

(d) *Maintenance of monitored herd status.* The person, firm, or corporation responsible for the management of the herd must submit an annual report to cooperating State or Federal animal health officials prior to the anniversary date of classification to give the number of captive cervids currently in the herd and the number of captive cervids from the herd 1 year of age and older identified, slaughtered, and inspected at an approved slaughtering establishment or necropsied at an approved diagnostic laboratory during the preceding year and captive cervids that have tested negative for tuberculosis in accordance with interstate movement requirements. The number of slaughter inspections or negative testing captive cervids reported in any given year must be at least 25 percent of the total number required over a 3-year period to qualify a herd for monitored herd status. During each consecutive 3-year period, 100 percent of the qualifying total must be reported.

§ 77.15 Interstate movement from unclassified herds.

(a) Except as provided in paragraph (b) of this section, a captive cervid that is not known to be infected with or exposed to tuberculosis and that is from a herd not classified as accredited, qualified, or monitored, may be moved interstate if the captive cervid is accompanied by a certificate that states that:

(1) The captive cervid has tested negative to two official tuberculosis tests conducted no less than 90 days apart;

(2) The second tuberculosis test was conducted within 90 days prior to the date of movement; and

(3) The captive cervid was isolated from all other animals during the testing period (the period beginning at the time of the first test and ending at the time of interstate movement). If a group of captive cervids is being moved together, the entire group must be isolated from all other animals, but captive cervids in the group need not be isolated from each other, during the testing period.

(b) The Administrator may, with the concurrence of the cooperating State animal health officials of the State of destination, and upon request in specific cases, permit the movement of captive cervids not otherwise provided for in this subpart which have not been classified as reactors and are not otherwise known to be affected with tuberculosis, under such conditions as the Administrator may prescribe in each specific case to prevent the spread of tuberculosis. The Administrator shall promptly notify the appropriate cooperating State animal health officials of the State of destination of any such action.

§ 77.16 Other interstate movements.

(a) *Herds containing a suspect.*

(1) *The suspect.*

(i) A captive cervid classified as a suspect on the SCT test must be quarantined until it is slaughtered or retested by the CCT test or the BTB test and found negative for tuberculosis. Retesting must be as follows:

(A) The first CCT test must be administered within the first 10 days following the SCT test or, if not, must be administered at least 90 days after the SCT test. If the CCT test is administered within 10 days of the SCT test, the injection must be on the side of the neck opposite the injection for the SCT test.

(B) The sample for the first BTB test may not be taken until at least 12 days after the injection for the SCT test. It is recommended that the sample be taken within 30 days following the injection for the SCT test.

(ii) A captive cervid classified as a suspect on the first CCT test or the first BTB test must be quarantined until the following has occurred:

(A) A suspect on the first CCT test is tested with a second CCT test at least 90 days after the first CCT test and is found negative for tuberculosis; or

(B) A suspect on the first BTB test is tested with a second BTB test and is found negative for tuberculosis. It is recommended that the captive cervid be tested with the second BTB test within 60 days following the injection for the SCT test.

(2) *The remainder of the herd.* Any herd containing a suspect to an official tuberculosis test must be quarantined until the suspect is retested by the CCT test or the BTB test and found negative for tuberculosis, or the suspect is inspected at slaughter or necropsied and found negative for tuberculosis after histopathology and culture of selected tissues. If the suspect is found negative for tuberculosis upon testing, or after slaughter inspection or necropsy and histopathology and culture of selected tissues, the herd may be released from quarantine and will return to the herd classification status in effect before the herd was quarantined. If the suspect is classified as a reactor upon testing, or after slaughter inspection or necropsy and histopathology and/or culture of selected tissues, the herd may be released from quarantine only in accordance with § 77.16(b) for herds containing a reactor.

(b) *Herds containing a reactor.* The following requirements apply to herds containing a reactor, except for herds that have received captive cervids from an affected herd. Herds that have received captive cervids from an affected herd must be quarantined and tested in accordance with § 77.16(e).

(1) *The reactor.* Captive cervids classified as reactors must be quarantined.

(2) *The remainder of the herd.* Any herd containing reactors must be quarantined until the reactors are slaughtered or necropsied in accordance with § 77.17 and:

(i) If upon slaughter inspection or necropsy any reactors exhibit lesions compatible with or suggestive of tuberculosis, found by histopathology, without the isolation of *M. bovis*, the remainder of the herd may be released from quarantine in accordance with the provisions of § 77.16(c).

(ii) If *M. bovis* is isolated from any reactors, the remainder of the herd will

be considered an affected herd, and will be subject to the provisions for affected herds in § 77.16(d).

(iii) If upon slaughter inspection or necropsy all reactors exhibit no gross lesions (NGL) of tuberculosis and no evidence of tuberculosis infection is found by histopathology and culture of *M. bovis* on specimens taken from the NGL animals, the remainder of the herd may be released from quarantine, and captive cervids from the herd may be moved interstate in accordance with the herd classification status in effect before the herd was quarantined if one of the following conditions is met:

(A) The remainder of the herd is given a whole herd test and is found negative for tuberculosis.

(B) The remainder of the herd is given a whole herd test, and all reactors to the whole herd test exhibit no gross lesions (NGL) of tuberculosis upon slaughter inspection or necropsy and no evidence of tuberculosis infection is found by histopathology or culture of *M. bovis* on specimens taken from the NGL animals.

(iv) If no evidence of tuberculosis is found in any reactor upon slaughter inspection or necropsy, but it is not possible to conduct a whole herd test on the remainder of the herd, the herd will be evaluated, based on criteria such as the testing history of the herd and the State history of tuberculosis infection, by the DTE to determine whether or not the herd may be released from quarantine.

(c) *Herds found to have only lesions of tuberculosis.* A herd in which captive cervids with lesions compatible with or suggestive of tuberculosis are found by histopathology without the isolation of *M. bovis* may be released from quarantine and return to the herd classification status in effect before the herd was quarantined, with the concurrence of the DTE, if the herd tests negative to tuberculosis on a whole herd test conducted 90 days following the removal of the lesioned captive cervid, provided the herd has not been exposed to *M. bovis* during the 90 days. To maintain its herd classification status, the herd must test negative to two annual whole herd tests beginning 10–12 months after the herd is released from quarantine. If any captive cervids in the herd respond to one of the tests, the herd will be subject to the provisions of § 77.16(a) or (b). If the herd is not given the two annual whole herd tests, it will become an unclassified herd.

(d) *Affected herds.* A herd determined to be an affected herd must be quarantined until the herd has tested negative to three whole herd tests in succession, with the first test given 90 days or more after the last test yielding a reactor and the last two tests given at intervals of not less than 180 days. If the herd tests negative to the three whole herd tests, it will be released from quarantine, but will be considered an unclassified herd, and captive cervids may only be moved interstate from the herd in accordance with § 77.15. In addition, the herd must be given five consecutive annual whole herd tests after release from quarantine. (These five tests will count towards qualifying the herd for herd classification.) As an alternative to testing, the herd may be depopulated.

(e) *Herds that have received captive cervids from an affected herd.* If a herd has received captive cervids from an affected herd, the captive cervids from the affected herd of origin will be considered exposed to tuberculosis. The exposed captive cervids and the receiving herd must be quarantined. The exposed captive cervids must be slaughtered, necropsied, or tested with the SCT test by a veterinarian employed by the State in which the test is administered or employed by USDA. The BTB test may be used simultaneously with the SCT test as an additional diagnostic test. Any exposed captive cervid that responds to the SCT test or tests ''*M. bovis* positive'' or ''equivocal'' on the BTB test must be classified as a reactor and must be slaughter inspected or necropsied. Any exposed captive cervid that tests negative to the SCT test or tests ''avian'' or ''negative'' on the BTB test will be considered as part of the affected herd of origin for purposes of testing, quarantine, and the five annual whole herd tests required for affected herds in § 77.16(d).

(1) If bovine tuberculosis is confirmed in any of the exposed captive cervids by bacterial isolation of *M. bovis*, the receiving herd will be classified as an affected herd and will be subject to the provisions for affected herds in § 77.16(d).

(2) If any of the exposed captive cervids are found to exhibit lesions compatible with or suggestive of tuberculosis, found by histopathology, without the isolation of *M. bovis*, the receiving herd will be subject to appropriate testing as determined by the DTE.

(3) If all the exposed captive cervids test negative for tuberculosis, the receiving herd will be released from quarantine if it is given a whole herd test and is found negative for tuberculosis, and will return to the herd classification in effect before the herd was quarantined. In addition, the receiving herd must be retested with the SCT test 1 year after release from quarantine in order for captive cervids from the herd to continue to be moved interstate. Supplemental diagnostic tests may be used if any captive cervids in the herd show a response to the SCT test.

(f) *Source herds.* A herd suspected of being the source of tuberculous captive cervids based on a slaughter traceback investigation must be quarantined upon notification (by the person conducting the investigation) to the USDA Area Veterinarian-in-Charge for the State in which the herd resides, and a herd test must be scheduled. If the herd is suspected of being the source of slaughter captive cervids having lesions of tuberculosis, the herd test must be done by a veterinarian employed by the State in which the test is administered or employed by USDA.

(1) If the herd is identified as the source of captive cervids having lesions of tuberculosis and *M. bovis* has been confirmed by bacterial isolation from the slaughter animal, all captive cervids in the herd that respond to the SCT test must be classified as reactors. If none respond to the SCT test, the herd may be released from quarantine and will return to the herd classification status in effect before the herd was quarantined, unless the DTE judges that additional testing is appropriate to ensure the herd's freedom from tuberculosis.

(2) If the herd is identified as the source of captive cervids that exhibit lesions compatible with or suggestive of tuberculosis, found by histopathology, without the isolation of *M. bovis*, all captive cervids in the herd that respond to the SCT test must be classified as suspects, and supplemental tests must be applied.

(3) If the herd is not identified as the source herd, the herd will be released from quarantine if the herd is given a whole herd test and is found negative for tuberculosis. The herd will then return to the herd classification status in effect before the herd was quarantined.

(g) *Newly assembled herds.* (1) A newly assembled herd will be classified as having the herd status of the herd from which the captive cervids originated. If the herd is assembled from captive cervids from more than one herd, it will be classified as having the herd status of the originating herd with the lowest status. A newly assembled herd will also assume the testing schedule of the herd status it is given. Captive cervids in the herd must have no exposure to captive cervids from a herd of lesser status than the herd of origin determining the status of the newly assembled herd or to any tuberculous livestock.

(2) A herd newly assembled on premises where a tuberculous herd has been depopulated must be given two consecutive annual whole herd tests. The first test must be administered at least 6 months after the assembly of the new herd. If the whole herd tests are not conducted within the indicated time frame, the herd will be quarantined. If the herd tests negative to the two whole herd tests, there are no further requirements. If any captive cervid in the herd responds on one of the whole herd tests, the herd will be subject to the provisions of § 77.16(a) or (b). If the premises has been vacant for more than 1 year preceding the assembly of the new herd on the premises, these requirements may be waived if the risk of tuberculosis transmission to the newly assembled herd is deemed negligible by cooperating State and Federal animal health officials.

§ 77.17 Procedures for and interstate movement to necropsy and slaughter.

(a) *Procedures for necropsy and slaughter.*

(1) A necropsy must be performed by or under the supervision of a veterinarian who is employed by USDA or employed by the State in which the captive cervid was classified, and who is trained in tuberculosis necropsy procedures.

(2) If, upon necropsy, a captive cervid is found without evidence of *M. bovis* infection by histopathology and culture, the captive cervid will be considered negative for tuberculosis.

(3) Reactors, suspects, and exposed captive cervids may be slaughtered only at an approved slaughtering establishment, as defined in § 77.8.

(b) *Interstate movement to necropsy or slaughter.*

(1) *Permit.* Any reactor, suspect, or exposed captive cervid to be moved interstate to necropsy or slaughter must be accompanied by a permit issued by a representative of APHIS, a State representative, or an accredited veterinarian. The captive cervid must remain on the premises where it was identified as a reactor, suspect, or exposed captive cervid until a permit for its movement is obtained. No stopover or diversion from the destination listed on the permit is allowed. If a change in destination becomes necessary, a new permit must be obtained from a cooperating State or Federal animal health official or an accredited veterinarian before the interstate movement begins. The permit must list:

(i) The classification of the captive cervid (reactor, suspect, or exposed);

(ii) The reactor eartag number, or, for suspects and exposed captive cervids, the official eartag or other approved identification number;

(iii) The owner's name and address;

(iv) The origin and destination of the captive cervids;

(v) The number of captive cervids covered by the permit; and

(vi) The purpose of the movement.

(2) *Identification of reactors.* Reactors must be tagged with an official eartag attached to the left ear and bearing a serial number and the inscription ''U.S. Reactor,'' and either:

(i) Branded with the letter ''T'' high on the left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size; or

(ii) Permanently identified by the letters ''TB'' tattooed legibly in the left ear, sprayed on the left ear with yellow paint, and either accompanied directly to necropsy or slaughter by an APHIS or State representative or moved directly to necropsy or slaughter in a vehicle closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(3) *Identification of exposed captive cervids.* Exposed captive cervids must be identified by an official eartag or other approved identification and either:

(i) Branded with the letter ''S'' high on the left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size; or

(ii) Either accompanied directly to necropsy or slaughter by an APHIS or State representative, or moved directly to necropsy or slaughter in a vehicle closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

§ 77.18 Cleaning and disinfection of premises, conveyances, and materials.

All conveyances and associated equipment, premises, and structures that are used for receiving, holding, shipping, loading, unloading, and delivering captive cervids in connection with their interstate movement and that are determined by cooperating State and Federal animal health officials to be contaminated because of occupation or use by tuberculous or reactor livestock must be cleaned and disinfected under the supervision of the cooperating State or Federal animal health officials. Such cleaning and disinfecting must be done in accordance with the procedures approved by the cooperating State or Federal animal health officials. Cleaning and disinfection must be completed before the premises, conveyances, or materials may again be used to convey, hold, or in any way come in contact with any livestock.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

9. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.22, 2.80, and 371.2(d).

§ 91.1 [Amended]

10. In § 91.1, the definition of *Animals* is amended by adding ''captive cervids,'' immediately after ''cattle (including American bison),''.

11. Section 91.7 is added to read as follows:

§ 91.7 Captive cervids.

To be eligible for export, a captive cervid must be accompanied by an origin health certificate stating that the captive cervid has tested negative to an official single cervical tuberculin test for tuberculosis, as described in part 77, subpart B, of this chapter, within 90 days prior to export. The origin health certificate must specify the date the test was conducted and the test results.

Done in Washington, DC, this 23rd day of December 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–34726 Filed 12–30–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 835

[Docket No: EH–RM–96–835]

RIN 1901–AA59

Occupational Radiation Protection; Correction

AGENCY: Department of Energy.

ACTION: Final rule; correction.

SUMMARY: The Department of Energy published a final rule amending its regulations on Occupational Radiation Protection on November 4, 1998. This document corrects errors in the amendatory language of that rule.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Joel Rabovsky on (301) 903–2135.

SUPPLEMENTARY INFORMATION: This document makes corrections to the amendatory language in a final rule amending the Department's Occupational Radiation Protection regulations codified at 10 CFR part 835 published on November 4, 1998 (63 FR 59662). These changes are simply corrections to amendatory instructions which were inadvertently omitted the final rule.

In rule document 98–27366, beginning on page 59662, in the issue of Wednesday, November 4, 1998, make the following corrections:

PART 835—[CORRECTED]

§ 835.401 [Corrected]

1. On page 59683, in the first column, amendatory instruction 16a is corrected by adding the words ''adding paragraph'' before the reference to paragraph ''(a)(6).''

§ 835.703 [Corrected]

2. On page 59685, in the second column, amendatory instruction 30 is corrected by adding the words ''the section heading,'' after ''§ 835.703,'' and before the word ''paragraphs.''

Subpart N [Corrected]

3. On page 59687, in the first column, add amendatory instruction 38a above the heading for Subpart N to read as follows:

38a. The heading for Subpart N is revised to read as follows:

§ 835.1301 [Corrected]

4. On page 59687, in the first column, amendatory instruction 39 is corrected by adding the words ''and paragraph (e) is removed,'' before the words ''to read as follows''.

§ 835.1302 [Corrected]

5. On page 59687, in the first column, amendatory instruction 40 is corrected by adding the words ''and paragraph (e) is removed,'' before the words ''to read as follows''.

6. On page 59687, in the second column, in § 835.1302, remove the 5 stars after paragraph (d).

Dated: December 14, 1998.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 98–34785 Filed 12–30–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–23–AD; Amendment 39–10970; AD 99–01–03]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 97–14–16, which applies to Raytheon Aircraft Company (Raytheon) Models 1900, 1900C, and 1900D airplanes. AD 97–14–16 currently requires repetitively inspecting the outboard flap support roller bearings and flap attachment brackets for indications of contact (wear), inspecting for elongated holes in the flap attachment brackets, repairing or replacing any part showing wear, and replacing any bracket with elongated holes. AD 97–14–16 was the result of five incidents where the flap roller bearings rubbed on the flap attachment brackets and resulted in aileron interference. This AD retains the repetitive inspection requirement of AD 97–14–16, but reduces the number of ground-air-ground (GAG) cycles allowed between inspections and lowers the total number of accumulated GAG cycles allowed before mandatory accomplishment of the initial inspection. This AD also provides the option of replacing the outboard flap roller bearings with parts of improved design as terminating action for the repetitive inspection requirement. The actions specified by this AD are intended to prevent asymmetric flaps, jammed flaps, and/or possible interference between the flap and the aileron, which could inhibit aileron travel and result in possible loss of roll control of the airplane.

DATES: Effective February 8, 1999.

The incorporation by reference of Raytheon Aircraft Safety Communiqué No. 137, Revision 1, dated December, 1997; and Raytheon Aircraft Mandatory Service Bulletin SB 27–3158, Issued: July, 1998, as listed in the regulations, is approved by the Director of the Federal Register as of February 8, 1999.

The incorporation by reference of Raytheon Aircraft Temporary Revision No. 57–1 to the Raytheon Aircraft Beech 1900 Airliner Series Structural Repair Manual P/N 114–590021–9B, dated May 16, 1997; Reissued: June 30, 1992, as listed in the regulations, was previously approved by the Director of the Federal Register as of August 4, 1997 (62 FR 37128, July 11, 1997).

ADDRESSES: Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) to include an AD that would apply to Raytheon Models 1900, 1900C, and 1900D airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 8, 1998 (63 FR 36864). The NPRM proposed to supersede AD 97–14–16, Amendment 39–10074 (62 FR 37128, July 11, 1997), which currently requires repetitively inspecting the outboard flap support roller bearings and flap attachment brackets for indications of contact (wear), inspecting for elongated holes in the flap attachment brackets, repairing or replacing any part showing wear, and replacing any bracket with elongated holes.

The NPRM proposed to retain the same actions as AD 97–14–16, but would reduce the number of ground-air-ground (GAG) cycles allowed between inspections and would lower the total number of accumulated GAG cycles allowed before mandatory accomplishment of the initial inspection.

Accomplishment of the proposed inspections as specified in the NPRM would be required in accordance with Raytheon Aircraft Mandatory Service Bulletin SB 27–158, Issued: June, 1998. Accomplishment of the proposed repairs as specified in the NPRM would be required in accordance with Raytheon Aircraft Temporary Revision No. 57–1 to the Raytheon Aircraft Beech

1900 Airliner Series Structural Repair Manual P/N 114–590021–9B, dated May 16, 1997; Reissued: June 30, 1992.

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

Comment Disposition

One commenter supports the NPRM as written.

The other two commenters raise issues concerning the way the FAA referenced the applicable service information in the NPRM. The commenters' concerns are as follows:

—The FAA incorrectly referenced Raytheon Aircraft Mandatory Service Bulletin SB 27–3158, Issued: July, 1998, as the document to use to accomplish the inspections. The document that contains procedures to accomplish the inspections is Raytheon Aircraft Safety Communique No. 137, Revision 1, dated December, 1997.

—Raytheon Aircraft Mandatory Service Bulletin SB 27–3158 is incorrectly referenced as ''Issued: June, 1998'' instead of ''Issued: July, 1998''.

—Raytheon Aircraft Mandatory Service Bulletin SB 27–3158, Issued: July, 1998, references replacing the outboard flap support roller bearings. This should be an option available to the owners/operators of the affected airplanes, instead of the repetitive inspections.

The FAA concurs with all of the above comments. The FAA will develop this final rule to include Raytheon Aircraft Safety Communique No. 137, Revision 1, dated December, 1997, as the document to use to accomplish the repetitive inspections. The FAA will also include the option of replacing the outboard flap support roller bearings in accordance with Raytheon Aircraft Mandatory Service Bulletin SB 27–3158, Issued: July, 1998, as terminating action for the repetitive inspection requirement of the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the changes described above and minor editorial corrections. The FAA has determined that these changes and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 527 airplanes in the U.S. registry will be affected by this AD.

The following cost information is for those owners/operators of the affected airplanes who choose to repetitively inspect the outboard flap support roller bearings instead of replacing these bearings with parts of improved design. It will take approximately 2 workhours per airplane to accomplish the initial inspection at approximately $60 per workhour. Based on these figures, the total cost impact of the initial inspection is estimated to be $120 per airplane. Costs to repair the outboard flap support roller bearings (if wear is found) would cost $920 per airplane (8 workhours × $60 per hour + $440 parts cost). Only the initial inspection and possible initial repair costs are calculated into these figures. The FAA has no way of determining how many repetitive inspections and repairs would be required on each affected airplane.

The following cost information is for those owners/operators of the affected airplanes who choose to replace the outboard flap support roller bearings with parts of improved design rather than repetitively inspect these bearings. It will take approximately 3 workhours per airplane to accomplish the replacement at approximately $60 per workhour. Replacement outboard flap support roller bearings cost approximately $1,140 per airplane. Based on these figures, the total cost impact of the replacement is estimated to be $1,320 per airplane. Raytheon will give warranty credit for replacement outboard flap support roller bearings until July 1999.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting 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 removing Airworthiness Directive (AD) 97–14–16, Amendment 39–10074 (62 FR 37128, July 11, 1997), and by adding a new AD to read as follows:

99–01–03 Raytheon Aircraft Company (Type Certificate No. A24CE formerly held by the Beech Aircraft Corporation): Amendment 39–10970; Docket No. 98–CE–23–AD; Supersedes AD 97–14–16, Amendment 39–10074.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial numbers
1900	UA–1, UA–2, and UA–3.
1900C ...	UB–1 through UB–74, and UC–1 through UC–174.
1900C (C–12J).	UD–1 through UD–6.
1900D ...	UE–1 through UE–322.

Note 1: This AD applies to each airplane 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 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 (e) 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 in the body of this AD, unless already accomplished.

Note 2: Hours time-in-service (TIS) may be substituted for ground-air-ground (GAG) cycles by multiplying the number of hours TIS by 2. For example, 1,300 hours TIS would equal 2,600 GAG cycles.

To prevent asymmetric flaps, jammed flaps, and/or possible interference between the flap and the aileron, which could inhibit aileron travel and result in possible loss of roll control of the airplane, accomplish the following:

(a) Initially at whichever of the compliance times in paragraphs (a)(1), (a)(2), and (a)(3) of this AD that occurs later, and thereafter at intervals not to exceed 600 ground-air-ground (GAG) cycles, inspect the outboard flap attachment brackets and roller bearings on both wings for visible wear and elongation of the bracket holes, in accordance with the Accomplishment Instructions section of Raytheon Aircraft Safety Communiqué No. 137, Revision 1, dated December, 1997.

(1) Upon accumulating 600 total GAG cycles;

(2) Within 600 GAG cycles from the date of the last inspection required by AD 97–14–16; or

(3) Within the next 100 GAG cycles after the effective date of this AD.

(b) Prior to further flight after any inspection required by paragraph (a) of this AD, repair or replace any worn or damaged part in accordance with Raytheon Aircraft Temporary Revision No. 57–1 to the Raytheon Aircraft Beech 1900 Airliner Series Structural Repair Manual P/N 114–590021–9B6, dated May 16, 1997; Reissued: June 30, 1992.

(c) As an alternative method of compliance to the repetitive inspections and possible repairs or replacements required by paragraphs (a) and (b) of this AD, replace the outboard flap support roller bearings with parts of improved design, in accordance with the Accomplishment Instructions section of Raytheon Aircraft Mandatory Service Bulletin SB 27–3158, Issued: July, 1998. Replacement of the outboard flap roller bearings is considered terminating action for the repetitive inspection requirement of this AD.

(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) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager. Wichita ACO.

(2) Alternative methods of compliance approved for AD 97–14–16 (superseded by this AD) are not considered approved as alternative methods of compliance for this AD.

(3) Replacing all outboard flap support roller bearings with parts of improved design, in accordance with the Accomplishment Instructions section of Raytheon Aircraft Mandatory Service Bulletin SB 27–3158, Issued: July, 1998, is approved as an alternative method of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) The inspections required by this AD shall be done in accordance with Raytheon Aircraft Safety Communiqué No. 137, Revision 1, dated December, 1997. The outboard flap support roller bearing replacements (optional) required by this AD shall be accomplished in accordance with Raytheon Aircraft Mandatory Service Bulletin SB 27–3158, Issued: July, 1998. The repairs or replacements of any worn or damaged parts required by this AD shall be done in accordance with Raytheon Aircraft Temporary Revision No. 57–1 to the Raytheon Aircraft Beech 1900 Airliner Series Structural Repair Manual P/N 114–590021–9B, dated May 16, 1997; Reissued: June 30, 1992.

(1) The incorporation by reference of Raytheon Aircraft Safety Communiqué No. 137, Revision 1, dated December, 1997; and Raytheon Aircraft Mandatory Service Bulletin SB 27–3158, Issued: July, 1998, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Raytheon Aircraft Temporary Revision No. 57–1 to the Raytheon Aircraft Temporary Revision No. 57–1 to the Raytheon Aircraft Beech 1900 Airliner Series Structural Repair Manual P/N 114–590021–9B, dated May 16, 1997; Reissued: June 30, 1992, was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of August 4, 1997 (62 FR 37128, July 11, 1997).

(3) Copies may be obtained from the Raytheon Aircraft Company, 9709 E. Central, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment supersedes AD 97–14–16, Amendment 39–10074.

(h) This amendment becomes effective on February 8, 1999.

Issued in Kansas City, Missouri, on December 22, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–34385 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–72–AD; Amendment 39–10972; AD 99–01–05]

RIN 2120–AA64

Airworthiness Directives; All Airplane Models of The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation) That Are Equipped with Wing Lift Struts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 93–10–06, which currently requires repetitively inspecting the wing lift struts and wing lift strut forks for cracks or corrosion on all airplane models of The New Piper Aircraft, Inc. (Piper) that are equipped with wing lift struts, and replacing any strut or fork found cracked or corroded. This AD clarifies certain requirements of AD 93–10–06, eliminates the lift strut fork repetitive inspection requirement on the Piper PA–25 series airplanes, incorporates models inadvertently omitted from AD 93–10–06, and requires fabricating and installing a placard on the lift strut. This AD results from reports, questions, and information received from the field on AD 93–10–06, which show a need to clarify and add information that will more fully achieve the safety intent of that AD. The actions specified by this AD are intended to prevent in-flight separation of the wing from the airplane caused by corroded wing lift struts or cracked wing lift forks, which could result in loss of control of the airplane.

DATES: Effective February 8, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 8, 1999.

ADDRESSES: The service bulletins referenced in this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. Copies of the instructions to the Jensen Aircraft STC's may be obtained from Jensen Aircraft, Inc., 9225 County Road 140, Salida, Colorado 81201. Copies of the instructions to the F. Atlee Dodge STC may be obtained from F. Atlee Dodge, Aircraft Services, Inc., P.O. Box 190409, Anchorage, Alaska 99519–0409. This information may also be examined at the Federal Aviation Administration

(FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–CE–72–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William O. Herderich, Aerospace Engineer, FAA, Atlanta Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6084; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Piper airplane models equipped with wing lift struts was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 23, 1998, (63 FR 20143). The NPRM proposed to supersede AD 93–10–06, Amendment 39–8586 (58 FR 29965, May 25, 1993), which currently requires repetitively inspecting the wing lift struts and wing lift strut forks for cracks or corrosion, and replacing any strut or fork found cracked or corroded. The NPRM proposed to retain the requirements of repetitively inspecting the wing lift struts and wing lift strut forks for cracks or corrosion, and replacing any strut or fork found cracked or corroded. The proposed NPRM would also clarify certain requirements of AD 93–10–06, eliminate the lift strut fork repetitive inspection requirement on the Piper PA–25 series airplanes, incorporate airplane models inadvertently omitted from the applicability of AD 93–10–06, and require installing a placard on the lift strut. Accomplishment of the inspections specified in the NPRM would be required in accordance with Piper Service Bulletin (SB) No. 528D, dated October 19, 1990, or Piper SB No. 910A, dated October 10, 1989; or the Appendix to the proposed AD.

Accomplishment of the installation as specified in the NPRM would be required in accordance with one of the following:

—The maintenance manual for original equipment manufacturer (OEM) wing lift struts or new sealed wing lift strut assemblies as referenced in Piper SB 528D, dated October 19, 1990, or Piper SB No. 910A, dated October 10, 1989;

—F. Atlee Dodge Instructions No. 3233–I for Modified Piper Wing Lift Struts (STC SA4635NM), dated February 1, 1991; or

—Jensen Aircraft Installation Instructions for Modified Lift Strut Fittings, which incorporates the following pages:

Pages	Revision level	Date
1 and 5	Original Issue ...	July 15, 1983.
2, 4, and 6.	Revision No. 1 ..	March 30, 1984.
a and 3	Revision No. 2 ..	April 20, 1984.

The NPRM was the result of reports, questions, and information received from the field on AD 93–10–06, which show a need to clarify and add information that will more fully achieve the safety intent of that AD.

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

Comment Disposition

Both commenters request that the FAA reference Univair Aircraft Corporation lift strut assemblies in the AD. Univair holds a parts manufacturer approval (PMA) for parts that are identical to the improved design Piper lift strut assemblies referenced in the NPRM.

The FAA does not concur. FAA policy is to not reference PMA parts in AD's, unless the FAA determines that the unsafe condition applies to the PMA parts. If these Univair parts are installed, then the actions of this AD would not apply because the parts are an FAA-approved equivalent to the improved design Piper lift strut assemblies that, when installed, eliminate the repetitive inspection requirement of the AD.

No changes have been made to the AD based on these comments.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 22,000 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per airplane to accomplish the initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $10,560,000, or $480 per airplane.

These figures are based only on the cost of the initial inspection and do not account for the costs of any repetitive inspections. The FAA has no way of determining how many repetitive inspections each owner/operator will incur over the life of the airplane. The FAA also has no way of determining how many airplanes have improved design wing lift struts and forks installed. This will eliminate the requirements of this AD, and thus reduce the cost impact of this AD upon the public.

AD 93–10–06 currently requires the same actions as proposed in this document. The only differences between AD 93–10–06 and this AD are the addition of ultrasonic methods as an option for accomplishing the inspections, the elimination of the requirement of inspecting the lift strut forks on Piper PA–25 series airplanes, the addition of certain airplane models equipped with Piper lift strut assemblies, the addition of the requirement of installing the ''NO STEP'' placard on the wing lift struts, and editorial corrections and additions for clarification purposes.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting 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 removing Airworthiness Directive (AD) 93–10–06, Amendment 39–8536 (58 FR 29965, May 25, 1993), and by adding a new AD to read as follows:

99–01–05 The New Piper Aircraft, Inc.: Amendment 39–10972; Docket No. 96–CE–72–AD; Supersedes AD 93–10–06, Amendment 39–8536.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial numbers
TG–8 (Army TG–8, Navy XLNP–1)	All serial numbers.
E–2 and F–2	All serial numbers.
J3C–40, J3C–50, J3C–50S, (Army L–4, L–4B, L–4H, and L–4J), J3C–65 (Navy NE–1 and NE–2), J3C–65S J3F–50, J3F–50S, J3F–60, J3F–60S, J3F–65 (Army L–4D), J3F–65S, J3L, J3L–S, J3L–65 (Army L–4C), and J3L–65S.	All serial numbers.
J4, J4A, J4A–S, and J4E (Army L–4E)	4–401 through 4–1649.
J5A (Army L–4F), J5A–80, J5B (Army L–4G), J5C, L–14, AE–1, and HE–1	All serial numbers.
PA–11 and PA–11S	11–1 through 11–1678.
PA–12 and PA–12S	12–1 through 12–4036.
PA–14	14–1 through 14–523.
PA–15	15–1 through 15–388.
PA–16 and PA–16S	16–1 through 16–736.
PA–17	17–1 through 17–215.
PA–18, PA–18S, PA–18 ''105'' (Special), PA–18S ''105'' (Special), PA–18A, PA–18 ''125'' (Army L–21A), PA–18S ''125'', PA–18AS ''125'', PA–18 ''135'' (Army L–21B), PA–18A ''135'', PA–18S ''135'', PA–18AS ''135'', PA–18 ''150'', PA–18A ''150'', PA–18S ''150'', PA–18AS ''150'', PA–18A (Restricted), PA–18A ''135'' (Restricted), and PA–18A ''150'' (Restricted).	18–1 through 18–8309025, 189001 through 1809032, and 1809034 through 1809040.
PA–19 (Army L–18C), and PA–19S	19–1, 19–2, and 19–3.
PA–20, PA–20S, PA–20 ''115'', PA–20S ''115'', PA–20 ''135'', and PA–20S ''135''	20–1 through 20–1121.
PA–22, PA–22–108, PA–22–135, PA–22S–135, PA–22–150, PA–22S–150, PA–22–160, and PA–22S–160.	22–1 through 22–9848.
PA–25, PA–25–235, and PA–25–260	25–1 through 25-8156024.

Note 1: This AD applies to each airplane 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 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 (f) 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 in the body of this AD, unless already accomplished.

To prevent in-flight separation of the wing from the airplane caused by corroded wing lift struts or cracked wing lift strut forks, which could result in loss of control of the airplane, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.
Level 4: (A), (B), (C), etc.

Level 2, Level 3, and Level 4 structures are designations of the Level 1 paragraph they immediately follow.

(a) For all affected airplane models, within 1 calendar month after the effective date of this AD or within 24 calendar months after the last inspection accomplished in accordance with AD 93–10–06 (superseded by this action), whichever occurs later, remove the wing lift struts in accordance with Piper Service Bulletin (SB) No. 528D, dated October 19, 1990, or Piper SB No. 910A, dated October 10, 1989, as applicable, and accomplish one of the following (the actions in either paragraph (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5); including subparagraphs, of this AD):

(1) Inspect the wing lift struts for corrosion in accordance with the ''Instructions'' section in Part I of either Piper SB No. 528D, dated October 19, 1990, or Piper SB No. 910A, dated October 10, 1989, as applicable.

(i) If no perceptible dents (as defined in the above SB's) are found in the wing lift strut and no corrosion is externally visible, prior to further flight, apply corrosion inhibitor to each strut in accordance with whichever of the above SB's that is applicable. Reinspect the lift struts at intervals not to exceed 24 calendar months and accomplish any of the requirements of paragraph (a) of this AD, including all subparagraphs.

(ii) If a perceptible dent (as defined in the above SB's) is found in the wing lift strut or external corrosion is found, prior to further flight, accomplish one of the installations (and subsequent actions presented in each paragraph) specified in paragraphs (a)(3), (a)(4), or (a)(5) of this AD.

(2) Inspect the wing lift struts for corrosion in accordance with the Appendix to this AD. The inspection procedures in this Appendix must be accomplished by a Level 2 inspector certified using the guidelines established by the American Society for Non-destructive Testing, or MIL–STD–410.

(i) If no corrosion is found that is externally visible and all requirements in the Appendix to this AD are met, prior to further flight, apply corrosion inhibitor to each strut in accordance with whichever of the above SB's that is applicable. Reinspect the lift struts at intervals not to exceed 24 calendar months and accomplish any of the requirements of paragraph (a) of this AD, including all subparagraphs.

(ii) If external corrosion is found or if any of the requirements in the Appendix of this AD are not met, prior to further flight, accomplish one of the installations (and subsequent actions presented in each paragraph) specified in paragraphs (a)(3), (a)(4), or (a)(5) of this AD.

(3) Install original equipment manufacturer (OEM) part number wing struts (or FAA-approved equivalent part numbers) that have been inspected in accordance with the specifications presented in either paragraph (a)(1) or (a)(2) of this AD, and are found to be airworthy according to the inspection requirements included in these paragraphs. Thereafter, inspect these wing lift struts at intervals not to exceed 24 calendar months in accordance with the specifications presented in either paragraph (a)(1) or (a)(2) of this AD.

(4) Install new sealed wing lift strut assemblies, part numbers as specified in Piper SB No. 528D and Piper SB No. 910A (or FAA-approved equivalent part numbers) on each wing as specified in the Instructions section in Part II of the above-referenced

SB's. These sealed wing lift strut assemblies also include the wing lift strut forks. Installation of these assemblies constitute terminating action for the inspection requirements of both paragraphs (a) and (b) of this AD.

(5) Install F. Atlee Dodge wing lift strut assemblies in accordance with F. Atlee Dodge Installation Instructions No. 3233–I for Modified Piper Wing Lift Struts (Supplemental Type Certificate (STC) SA4635NM), dated February 1, 1991. Thereafter, inspect these wing lift struts at intervals not to exceed 60 calendar months in accordance with the specifications presented in paragraph (a)(1) or (a)(2) of this AD.

(b) For all affected airplane models, except for Models PA–25, PA–25–235, and PA–25–260, within the next 100 hours time-in-service (TIS) after the effective date of this AD or within 500 hours TIS after the last inspection accomplished in accordance with AD 93–10–06 (superseded by this action), whichever occurs later, remove the wing lift strut forks, and accomplish one of the following (the actions in either paragraph (b)(1), (b)(2), (b)(3), (b)(4), or (b)(5); including subparagraphs, of this AD):

(1) Inspect the wing lift strut forks using FAA-approved magnetic particle procedures.

(i) If no cracks are found, reinspect at intervals not to exceed 500 hours TIS provided that the replacement requirements of paragraphs (b)(1)(ii)(B) and (b)(1)(ii)(C) of this AD have been met.

(ii) Replace the wing lift strut forks at whichever of the following is applicable:

(A) *If cracks are found on any wing lift strut fork: Prior to further flight;*

(B) *If the airplane is equipped with floats or has been equipped with floats within the last 2,000 hours TIS and no cracks are found during the above inspections:* Upon accumulating 1,000 hours TIS on the wing lift strut forks or within the next 100 hours TIS, whichever occurs later; or

(C) *If the airplane has not been equipped with floats within the last 2,000 hours TIS and no cracks are found during the above inspections:* Upon accumulating 2,000 hours TIS on the wing lift strut forks or within the next 100 hours TIS, whichever occurs later.

(iii) Replacement parts shall be of the same part numbers of the existing part (or FAA-approved equivalent part numbers) and shall be manufactured with rolled threads. Lift strut forks manufactured with machined (cut) threads shall not be utilized.

(iv) The 500-hour TIS interval repetitive inspections are still required when the above replacements are accomplished.

(2) Install new OEM part number wing lift strut forks (or FAA-approved equivalent part numbers). Reinspect and replace these wing lift strut forks at the intervals specified in paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv), including all subparagraphs, of this AD.

(3) Install new sealed wing lift strut assemblies, part numbers as specified in Piper SB No. 528D and Piper SB No. 910A (or FAA-approved equivalent part numbers) on each wing, as specified in the Instructions section in Part II of the above-referenced SB's.

(i) This installation may have ''already been accomplished'' through the actions specified in paragraph (a)(4) of this AD.

(ii) No repetitive inspections are required after installing these sealed wing lift strut assemblies.

(4) Install Jensen Aircraft wing lift strut fork assemblies as specified in the STC's presented in the paragraphs that follow, as applicable, in accordance with Jensen Aircraft Installation Instructions for Modified Lift Strut Fittings, which incorporates the following pages:

Pages	Revision level	Date
1 and 5	Original Issue ...	July 15, 1983.
2, 4, and 6.	Revision No. 1 ..	March 30, 1984.
a and 3	Revision No. 2 ..	April 20, 1984.

No repetitive inspections are required after installing these Jensen Aircraft wing lift strut fork assemblies; however, repetitive inspections of the lift strut are required as specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD:

(i) For Models PA–12 and PA–12S airplanes: *STC SA1583NM;*

(ii) For Model PA–14 airplanes: *STC SA1584NM;*

(iii) For the Models PA–16 and PA–16S airplanes: *STC SA1590NM;*

(iv) For the Models PA–18, PA–18S, 189001 PA–18 ''105'' (Special), PA–18S ''105'' (Special), PA–18A, PA–18 ''125'' (Army L–21A), PA–18S ''125'', PA–18AS ''125'', PA–18 ''135'' (Army L–21B), PA–18A ''135'', PA–18S ''135'', PA–18S ''135'', PA–18AS ''135'', PA–18 ''150'', PA–18A ''150'', PA–18S ''150'', PA–18AS ''150'', PA–18A (Restricted), PA–18A ''135'' (Restricted), and PA–18A ''150'' (Restricted) airplanes: *STC SA1585NM;*

(v) For the Models PA–20, PA–20S, PA–20 ''115'', PA–20S ''115'', PA–20 ''135'', and PA–20S ''135'' airplanes: *STC SA1586NM;* and

(vi) For the Model PA–22 airplanes: *STC SA1587NM.*

(5) Install F. Atlee Dodge wing lift strut assemblies in accordance with F. Atlee Dodge Installation Instructions No. 3233–I for Modified Piper Wing Lift Struts (STC SA4635NM), dated February 1, 1991.

(i) No repetitive inspections of the wing lift strut forks are required when these assemblies are installed.

(ii) This installation may have ''already been accomplished'' through the actions specified in paragraph (a)(5) of this AD.

(c) If holes are drilled, in either one of the scenarios presented in paragraphs (c)(1) and (c)(2) of this AD, to attach cuffs, door clips, or other hardware, inspect the wing lift struts at intervals not to exceed 24 calendar months using the procedures specified in paragraphs (a)(1) and (a)(2), including all subparagraphs, of this AD:

(1) Wing lift strut assemblies installed in accordance with (a)(4) or (b)(3) of this AD; or

(2) F. Atlee Dodge wing lift strut assemblies installed in accordance with paragraph (a)(5) or (b)(5) of this AD.

(d) For all affected airplane models, within 1 calendar month after the effective date of this AD or within 24 calendar months after the last inspection accomplished in accordance with AD 93–10–06 (superseded by this action), whichever occurs later, and thereafter prior to further flight after the installation of any lift strut assembly, accomplish one of the following:

(1) Install ''NO STEP'' decal, Piper part number (P/N) 80944–02, on each wing lift strut approximately 6 inches from the bottom of the struts in a way that the letters can be read when entering and exiting the aircraft; or

(2) Paint the statement ''NO STEP'' approximately 6 inches from the bottom of the struts in a way that the letters can be read when entering and exiting the aircraft. Use a minimum of 1-inch letters using a color that contrasts with the color of the airplane.

(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 airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 93–10–06, Amendment 39–8536, are considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(g) The inspections required by this AD shall be done in accordance with Piper Service Bulletin No. 528D, dated October 19, 1990, and Piper Service Bulletin No. 910A, dated October 10, 1989. The installation required by this AD shall be done in accordance with F. Atlee Dodge Installation Instructions No. 3233–I for Modified Piper Wing Lift Struts (Supplemental Type Certificate (STC) SA4635NM), dated February 1, 1991, and Jensen Aircraft Installation Instructions for Modified Lift Strut Fittings, which incorporates the following pages:

Pages	Revision level	Date
1 and 5	Original Issue ...	July 15, 1983.
2, 4, and 6.	Revision No. 1 ..	March 30, 1984.
a and 3	Revision No. 2 ..	April 20, 1984.

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. The service bulletins referenced in this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. Copies of the instructions to

the Jensen Aircraft STC's may be obtained from Jensen Aircraft, 9225 County Road 140, Salida, Colorado 81201. Copies of the instructions to the F. Atlee Dodge STC may be obtained from F. Atlee Dodge, Aircraft Services, Inc., P.O. Box 190409, Anchorage, Alaska 99519–0409. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(h) This amendment supersedes AD 93–10–06, Amendment 39–8536.

(i) This amendment becomes effective on February 8, 1999.

Appendix to AD 99–01–05; Amendment 39–10972; Docket No. 96–CE–72–AD

Procedures and Requirements for Ultrasonic Inspection of Piper Wing Lift Struts

Equipment Requirements

1. A portable ultrasonic thickness gauge or flaw detector with echo-to-echo digital thickness readout capable of reading to 0.001-inch and an A-trace waveform display will be needed to accomplish this inspection.

2. An ultrasonic probe with the following specifications will be needed to accomplish this inspection: 10 MHz (or higher), 0.283-inch (or smaller) diameter dual element or delay line transducer designed for thickness gauging. The transducer and ultrasonic system shall be capable of accurately measuring the thickness of AISI 4340 steel down to 0.020-inch. An accuracy of +/-0.002-inch throughout a 0.020-inch to 0.050-inch thickness range while calibrating shall be the criteria for acceptance.

3. Either a precision machined step wedge made of 4340 steel (or similar steel with equivalent sound velocity) or at least three shim samples of same material will be needed to accomplish this inspection. One thickness of the step wedge or shim shall be less than or equal to 0.020-inch, one shall be greater than or equal to 0.050-inch, and at least one other step or shim shall be between these two values.

4. Glycerin, light oil, or similar non-water based ultrasonic couplants are recommended in the setup and inspection procedures. Water-based couplants, containing appropriate corrosion inhibitors, may be utilized, provided they are removed from both the reference standards and the test item after the inspection procedure is completed and adequate corrosion prevention steps are then taken to protect these items.

- **Note:** Couplant is defined as ''a substance used between the face of the transducer and test surface to improve transmission of ultrasonic energy across the transducer/strut interface.''

- **Note:** If surface roughness due to paint loss or corrosion is present, the surface should be sanded or polished smooth before testing to assure a consistent and smooth surface for making contact with the transducer. Care shall be taken to remove a minimal amount of structural material. Paint repairs may be necessary after the inspection to prevent further corrosion damage from occurring. Removal of surface irregularities will enhance the accuracy of the inspection technique.

Instrument Setup

1. Set up the ultrasonic equipment for thickness measurements as specified in the instrument's user's manual. Because of the variety of equipment available to perform ultrasonic thickness measurements, some modification to this general setup procedure may be necessary. However, the tolerance requirement of step 13 and the record keeping requirement of step 14, must be satisfied.

2. If battery power will be employed, check to see that the battery has been properly charged. The testing will take approximately two hours. Screen brightness and contrast should be set to match environmental conditions.

3. Verify that the instrument is set for the type of transducer being used, i.e. single or dual element, and that the frequency setting is compatible with the transducer.

4. If a removable delay line is used, remove it and place a drop of couplant between the transducer face and the delay line to assure good transmission of ultrasonic energy. Reassemble the delay line transducer and continue.

5. Program a velocity of 0.231-inch/microsecond into the ultrasonic unit unless an alternative instrument calibration procedure is used to set the sound velocity.

6. Obtain a step wedge or steel shims per item 3 of the Equipment Requirements. Place the probe on the thickest sample using couplant. Rotate the transducer slightly back and forth to ''ring'' the transducer to the sample. Adjust the delay and range settings to arrive at an A-trace signal display with the first backwall echo from the steel near the left side of the screen and the second backwall echo near the right of the screen. Note that when a single element transducer is used, the initial pulse and the delay line/steel interface will be off of the screen to the left. Adjust the gain to place the amplitude of the first backwall signal at approximately 80% screen height on the A-trace.

7. ''Ring'' the transducer on the thinnest step or shim using couplant. Select positive half-wave rectified, negative half-wave rectified, or filtered signal display to obtain the cleanest signal. Adjust the pulse voltage, pulse width, and damping to obtain the best signal resolution. These settings can vary from one transducer to another and are also user dependent.

8. Enable the thickness gate, and adjust the gate so that it starts at the first backwall echo and ends at the second backwall echo. (Measuring between the first and second backwall echoes will produce a measurement of the steel thickness that is not affected by the paint layer on the strut). If instability of the gate trigger occurs, adjust the gain, gate level, and/or damping to stabilize the thickness reading.

9. Check the digital display reading and if it does not agree with the known thickness of the thinnest thickness, follow your instrument's calibration recommendations to produce the correct thickness reading. When a single element transducer is used this will usually involve adjusting the fine delay setting.

10. Place the transducer on the thickest step of shim using couplant. Adjust the thickness gate width so that the gate is triggered by the second backwall reflection of the thick section. If the digital display does not agree with the thickest thickness, follow your instruments calibration recommendations to produce the correct thickness reading. A slight adjustment in the velocity may be necessary to get both the thinnest and the thickest reading correct. Document the changed velocity value.

11. Place couplant on an area of the lift strut which is thought to be free of corrosion and ''ring'' the transducer to surface. Minor adjustments to the signal and gate settings may be required to account for coupling improvements resulting from the paint layer. The thickness gate level should be set just high enough so as not to be triggered by irrelevant signal noise. An area on the upper surface of the lift strut above the inspection area would be a good location to complete this step and should produce a thickness reading between 0.034-inch and 0.041-inch.

12. Repeat steps 8, 9, 10, and 11 until both thick and thin shim measurements are within tolerance and the lift strut measurement is reasonable and steady.

13. Verify that the thickness value shown in the digital display is within +/-0.002-inch of the correct value for each of the three or more steps of the setup wedge or shims. Make no further adjustments to the instrument settings.

14. Record the ultrasonic versus actual thickness of all wedge steps or steel shims available as a record of setup.

Inspection Procedure

1. Clean the lower 18 inches of the wing lift struts using a cleaner that will remove all dirt and grease. Dirt and grease will adversely affect the accuracy of the inspection technique. Light sanding or polishing may also be required to reduce surface roughness as noted in the Equipment Requirements section.

2. Using a flexible ruler, draw a ¼-inch grid on the surface of the first 11 inches from the lower end of the strut as shown in Piper Service Bulletin No. 528D or 910A, as applicable. This can be done using a soft (#2) pencil and should be done on both faces of the strut. As an alternative to drawing a complete grid, make two rows of marks spaced every ¼-inch across the width of the strut. One row of marks should be about 11 inches from the lower end of the strut, and the second row should be several inches away where the strut starts to narrow. Lay the flexible ruler between respective tick marks of the two rows and use tape or a rubber band to keep the ruler in place. See Figure 1.

3. Apply a generous amount of couplant inside each of the square areas or along the edge of the ruler. Re-application of couplant may be necessary.

4. Place the transducer inside the first square area of the drawn grid or at the first ¼-inch mark on the ruler and ''ring'' the transducer to the strut. When using a dual element transducer, be very careful to record the thickness value with the axis of the transducer elements perpendicular to any curvature in the strut. If this is not done, loss of signal or inaccurate readings can result.

5. Take readings inside each square on the grid or at ¼-inch increments along the ruler

and record the results. When taking a thickness reading, rotate the transducer slightly back and forth and experiment with the angle of contact to produce the lowest thickness reading possible. Pay close attention to the A-scan display to assure that the thickness gate is triggering off of maximized backwall echoes.

• **Note:** A reading shall not exceed .041-inch. If a reading exceeds .041-inch, repeat steps 13 and 14 of the Instrument Setup section before proceeding further.

6. If the A-trace is unsteady or the thickness reading is clearly wrong, adjust the signal gain and/or gate setting to obtain reasonable and steady readings. If any instrument setting is adjusted, repeat steps 13 and 14 of the Instrument Setup section before proceeding further.

7. In areas where obstructions are present, take a data point as close to the correct area as possible.

• **Note:** The strut wall contains a fabrication bead at approximately 40% of the strut chord. The bead may interfere with accurate measurements in that specific location.

8. A measurement of 0.024-inch or less shall require replacement of the strut prior to further flight.

9. If at any time during testing an area is encountered where a valid thickness measurement cannot be obtained due to a loss of signal strength or quality, the area shall be considered suspect. These areas may have a remaining wall thickness of less than 0.020-inch, which is below the range of this setup, or they may have small areas of localized corrosion or pitting present. The latter case will result in a reduction in signal strength due to the sound being scattered from the rough surface and may result in a signal that includes echoes from the pits as well as the backwall. The suspect area(s) shall be tested with a Maule ''Fabric Tester'' as specified in Piper Service Bulletin No. 528D or 910A.

10. Record the lift strut inspection in the aircraft log book.

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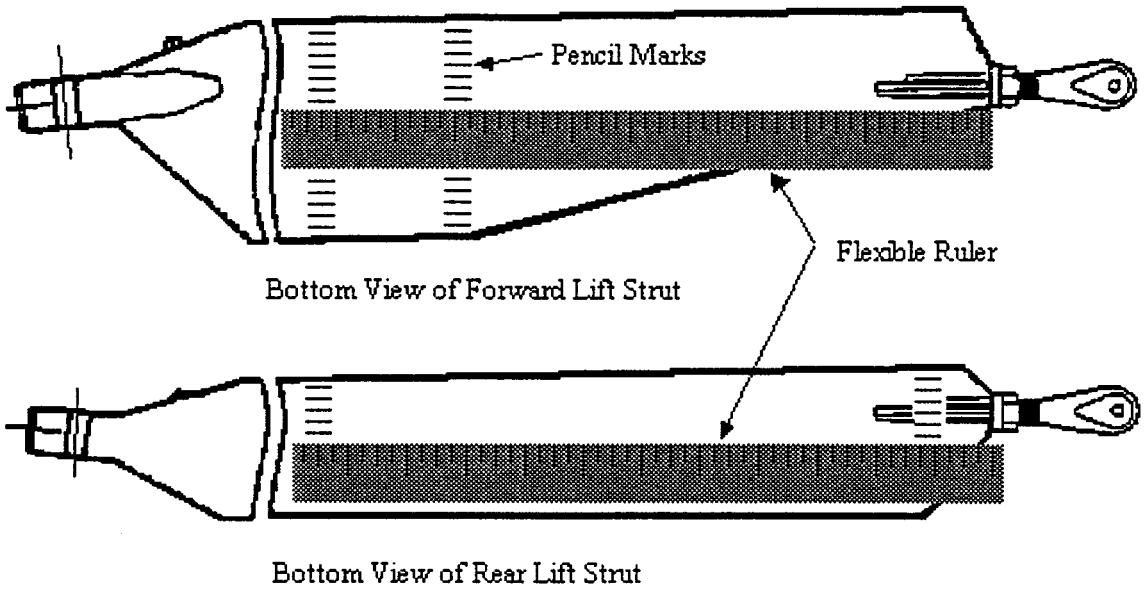

Figure 1

Issued in Kansas City, Missouri, on December 22, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–34384 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–83–AD; Amendment 39–10971; AD 99–01–04]

RIN 2120–AA64

Airworthiness Directives; Avions Pierre Robin Model R2160 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Avions Pierre Robin Model R2160 airplanes. This AD requires replacing the left and right rudder bars with improved design rudder bars. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified in this AD are intended to prevent distortion of the original design rudder bars during operation, which could result in reduced or loss of control of the airplane.

DATES: Effective March 12, 1999.

Comments for inclusion in the Rules Docket must be received on or before February 5, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–83–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 80 44 20 50; facsimile: 80 35 60 80. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–83–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Karl M. Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone:

(816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Avions Pierre Robin Model R2160 airplanes. The DGAC reports a case of rudder bar distortion during intensive aerobatic use.

This condition, if not corrected, could result in reduced or loss of control of the airplane.

Relevant Service Information

Avions Pierre Robin has issued Service Bulletin No. 143, dated September 8, 1995, which specifies replacing the left and right rudder bars, part number (P/N) 27.23.05.010 (left) and P/N 27.23.05.020 (right), with improved design rudder bars, P/N 27.40.31.010 (left) and P/N 27.40.31.020 (right).

The DGAC classified this service bulletin as mandatory and issued French AD 95–217(A), dated November 8, 1995, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Avions Pierre Robin Model R2160 airplanes of the same type design registered in the United States, the FAA is issuing an AD. This AD requires replacing the left and right rudder bars, part number (P/N) 27.23.05.010 (left) and P/N 27.23.05.020 (right), with improved design rudder bars, P/N 27.40.31.010 (left) and P/N 27.40.31.020 (right). Accomplishment of the actions of this AD would be required in accordance with the applicable maintenance manual.

Cost Impact

None of the Avions Model R2160 airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register.

Should an affected airplane be imported and placed on the U.S. Register, accomplishment of the required replacement would take approximately 20 workhours per airplane at an average labor rate of $60 per work hour. Parts cost approximately $500 per airplane. Based on these figures, the total cost impact of this AD would be $1,700 per airplane that would become registered in the United States.

The Effective Date of This AD

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and 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 shall 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. 98–CE–83–AD.'' The postcard will be date stamped and returned to the commenter.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 (AD) to read as follows:

99–01–04 Avions Pierre Robin: Amendment 39–10971; Docket No. 98–CE–83–AD.

Applicability: Model R2160 airplanes, all serial numbers beginning with 250; certificated in any category.

Note 1: This AD applies to each airplane 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 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 (d) 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 within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent distortion of the original design rudder bars during operation, which could result in reduced or loss of control of the airplane, accomplish the following:

(a) Replace the left and right rudder bars, part number (P/N) 27.23.05.010 (left) and P/N 27.23.05.020 (right), with improved design rudder bars, P/N 27.40.31.010 (left) and P/N 27.40.31.020 (right), or FAA-approved equivalent part numbers. Accomplish these replacements in accordance with the applicable maintenance manual, as specified in Avions Pierre Robin Service Bulletin No. 143, dated September 8, 1995.

(b) As of the effective date of this AD, no person may install, on any of the affected airplanes, rudder bars that are not of improved design, P/N 27.40.31.010 (left) and P/N 27.40.31.020 (right), or FAA-approved equivalent part numbers.

(c) 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.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be used if approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Avions Pierre Robin Service Bulletin No. 143, dated September 8, 1995, should be directed to Avions Pierre Robin, 1 route de Troyes 21121 Darois, France; telephone: 03.80.44.20.50; facsimile: 03.80.35.60.80. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in French AD 95–217(A), dated November 8, 1995.

(f) This amendment becomes effective on March 12, 1999.

Issued in Kansas City, Missouri, on December 22, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–34383 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–100–AD; Amendment 39–10974; AD 99–01–07]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain British Aerospace Jetstream Model 3101 airplanes. This AD requires installing additional stringers at the lower fuselage skin panels between the main and rear spar frames. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified in this AD are intended to correct a strength deficiency in the area of the lower fuselage skin panels between the main rear spar frames, which, if not corrected, could result in reduced or loss of control of the airplane during maximum speed limit operations.

DATES: Effective March 19, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 1999.

Comments for inclusion in the Rules Docket must be received on or before February 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–100–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–100–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace Jetstream Model 3101 airplanes. The CAA reports that a strength deficiency could exist in the area of the lower fuselage skin panels between the main rear spar frames (FrameStations 223 and 257.8). The affected airplanes may not be able to meet the design requirements for lateral load cases.

This condition, if not corrected, could result in reduced or loss of control of the airplane during maximum speed limit operations.

Relevant Service Information

British Aerospace has issued Jetstream ServiceBulletin 53–JM7297, Original Issue: May 10, 1984, which specifies procedures for installing additional stringers at the lower fuselage skin panels between the main and rear spar frames (Frame Stations 223 and 257.8). This is referred to as Jetstream Modification JM 7297.

The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom. The CAA classifying a service bulletin as mandatory is the same in the United Kingdom as the FAA issuing an AD in the United States.

The FAA's Determination

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other British Aerospace Jetstream Model 3101 airplanes of the same type design registered in the United States, the FAA is issuing an AD. This AD requires incorporating Jetstream Modification JM 7297 by installing additional stringers at the lower fuselage skin panels between the main and rear spar frames (Frame Stations 223 and 257.8). Accomplishment of the actions of thisAD would be required in accordance with British Aerospace Jetstream Service Bulletin 53–JM7297, Original Issue: May 10, 1984.

Cost Impact

The FAA estimates that 3 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 250 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 per work hour. Parts cost approximately $6,600 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $64,800, or $21,600 per airplane.

All 3 of the affected Jetstream Model 3101 airplanes are in compliance with the actions specified in this AD and British Aerospace Jetstream Service Bulletin 53–JM7297, Original Issue: May 10, 1984. Based on this information, this AD imposes no cost impact upon the owners/operators of the affected airplanes on the U.S. Register.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. The requirements of this direct final rule address an unsafe condition identified by a foreign civil airworthiness authority and do not impose a significant burden on affected operators. In accordance with Section 11.17 of the Federal Aviation Regulations (14 CFR 11.17) unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, a written adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and 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 shall 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. 98-CE–100-AD.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For reasons discussed in the preamble, I certify that 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) 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 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 a new airworthiness directive (AD) to read as follows:

99–01–07 British Aerospace: Amendment 39–10974; Docket No. 98–CE–100–AD.

Applicability: Jetstream Model 3101 airplanes, constructors numbers 601 through 607 and 609 through 619, certificated in any category.

Note 1: This AD applies to each airplane 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 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 within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To correct a strength deficiency in the area of the lower fuselage skin panels between the main rear spar frames, which, if not corrected, could result in reduced or loss of control of the airplane during maximum speed limit operations, accomplish the following:

(a) Incorporate Jetstream Modification JM 7297 by installing additional stringers at the lower fuselage skin panels between the main and rear spar frames (Frame Stations 223 and 257.8). Accomplish this modification in accordance with Part B of the Accomplishment Instructions in British Aerospace Jetstream Service Bulletin 53–JM7297, Original Issue: May 10, 1984.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be used if approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) The modification required by this AD shall be done in accordance with British Aerospace Jetstream Service Bulletin 53–JM7297, Original Issue: May 10, 1984. 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 British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, 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 British Aerospace Jetstream Service Bulletin 53–JM7297, Original Issue: May 10, 1984. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

(e) This amendment becomes effective on March 19, 1999.

Issued in Kansas City, Missouri, on December 21, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–34382 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–99–AD; Amendment 39–10973; AD 99–01–06]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain British Aerospace Jetstream Model 3101 airplanes. This AD requires installing a standard bonding socket that is fitted flush with the upper surface of each wing at the fueling points (Station 297). This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified in this AD are intended to correct a potentially insufficient ground contact between the refueler hose nozzle and the aircraft, which, if not corrected before the fuel cap is removed, could result in sparks with a consequent fire and/or explosion in the fuel tank.

DATES: Effective March 19, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 1999.

Comments for inclusion in the Rules Docket must be received on or before February 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–99–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–99–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace Jetstream Model 3101 airplanes. The CAA reports that an insufficient ground contact between the refueler hose nozzle and the aircraft could exist.

This condition, if not corrected before the fuel cap is removed, could result in sparks with a consequent fire and/or explosion in the fuel tank.

Relevant Service Information

British Aerospace has issued Jetstream Service Bulletin 57–JM7298, Original Issue: May 16, 1984, which specifies procedures for installing a standard bonding socket that is fitted flush with the upper surface of each wing at the fueling points (Station 297). This is referred to as Jetstream Modification JM 7298 Part A.

The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom. The CAA classifying a service bulletin as mandatory is the same in the United Kingdom as the FAA issuing an AD in the United States.

The FAA's Determination

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has

kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other British Aerospace Jetstream Model 3101 airplanes of the same type design registered in the United States, the FAA is issuing an AD. This AD requires incorporating Jetstream Modification JM 7298 Part A by installing a standard bonding socket that is fitted flush with the upper surface of each wing at the fueling points (Station 297). Accomplishment of the actions of this AD would be required in accordance with British Aerospace Jetstream Service Bulletin 57–JM7298, Original Issue: May 16, 1984.

Cost Impact

The FAA estimates that 2 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 22 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 per work hour. British Aerospace will provide modification kits at no cost to the owner/operator of the affected airplanes. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $2,640, or $1,320 per airplane.

Both of the affected Jetstream Model 3101 airplanes are already in compliance with the actions specified in this AD and British Aerospace Jetstream Service Bulletin 57–JM7298, Original Issue: May 16, 1984. Based on this information, this AD imposes no cost impact upon the owners/operators of the affected airplanes on the U.S. Register.

Compliance Time of This AD

This unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 10 hours time-in-service (TIS) as it would be for an airplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. The requirements of this direct final rule address an unsafe condition identified by a foreign civil airworthiness authority and do not impose a significant burden on affected operators. In accordance with Section 11.17 of the Federal Aviation Regulations (14 CFR 11.17) unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, a written adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and 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 shall 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. 98–CE–99–AD.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For reasons discussed in the preamble, I certify that 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) 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 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 a new airworthiness directive (AD) to read as follows:

99–01–06 **British Aerospace:** Amendment 39–10973; Docket No. 98–CE–99–AD.

Applicability: Jetstream Model 3101 airplanes, constructors numbers 602, 604

through 607, 609 through 614, and 616; certificated in any category.

Note 1: This AD applies to each airplane 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 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 within the next 4 calendar months after the effective date of this AD, unless already accomplished.

To correct a potentially insufficient ground contact between the refueler hose nozzle and the aircraft, which, if not corrected before the fuel cap is removed, could result in sparks with a consequent fire and/or explosion in the fuel tank, accomplish the following:

(a) Incorporate Jetstream Modification JM 7298 Part A on each wing by installing a standard bonding socket that is fitted flush with the upper surface of each wing at the fueling points (Station 297). Accomplish these actions in accordance with the Accomplishment Instructions section of British Aerospace Jetstream Service Bulletin 57–JM7298, Original Issue: May 16, 1984.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be used if approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) The modifications required by this AD shall be done in accordance with British Aerospace Jetstream Service Bulletin 57–JM7298, Original Issue: May 16, 1984. 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 British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, 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 British Aerospace Jetstream Service Bulletin 57–JM7298, Original Issue: May 16, 1984. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

(e) This amendment becomes effective on March 19, 1999.

Issued in Kansas City, Missouri, on December 21, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–34381 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–327–AD; Amendment 39–10976; AD 99–01–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections to detect discrepancies of the diagonal brace lugs of the engine strut, and rework of the diagonal brace lugs, if necessary. That AD also provides an option to defer the rework for certain cases by accomplishing repetitive inspections and resealing the bushing. That AD also provides for an optional terminating modification for the repetitive inspections. This amendment adds a requirement to repetitively inspect a new area of the diagonal brace of the engine strut. For certain airplanes, this amendment also adds new repetitive inspections of the subject area and requires that certain previously required repetitive inspections be accomplished at reduced intervals. This amendment is prompted by reports of fatigue or stress corrosion cracking in new areas of the diagonal brace. The actions specified in this AD are intended to prevent such fatigue or stress corrosion cracking, which could result in failure of the strut and consequent separation of the engine from the airplane.

DATES: Effective January 15, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 15, 1999.

The incorporation by reference of Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 29, 1997 (62 FR 47927, September 12, 1997).

Comments for inclusion in the Rules Docket must be received on or before March 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–327–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined 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.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On September 5, 1997, the FAA issued AD 97–19–08, amendment 39–10128 (62 FR 47927, September 12, 1997), applicable to certain Boeing Model 747 series airplanes, to require repetitive detailed visual and ultrasonic inspections to detect cracking, corrosion, and migrated or rotated bushings of the diagonal brace lugs of the engine strut, and rework of the diagonal brace lugs, if necessary. In lieu of accomplishing the rework prior to further flight in certain cases where no cracking or corrosion is detected, that AD provides an option to defer the rework for a short period of time by resealing the bushing and accomplishing repetitive inspections. That AD also provides for an optional modification of the strut/wing, which would constitute terminating action for the repetitive inspection requirements. That action was prompted by reports of fatigue cracking in the diagonal brace lug. The actions required by that AD are intended to prevent such fatigue cracking, which could result in failure of the strut and consequent separation of the engine from the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received several reports indicating that additional cracking of the diagonal brace lugs has been detected on the affected airplanes. On several airplanes, cracks were found in the area of the lug common to the long axis of the diagonal brace. An ultrasonic inspection of that area was not required by AD 97–19–08. Therefore, cracking in the area of the lug common to the long axis of the diagonal brace may have gone undetected. Cracking was also detected in the root radius of the aft clevis of the diagonal brace. That area was not subject to inspections in accordance with AD 97–19–08.

On other airplanes, during repetitive inspections performed in accordance with AD 97–19–08, cracking of the diagonal brace lugs was detected during inspections performed earlier than the scheduled repetitive interval. Those airplanes had accumulated between 213 and 267 flight cycles since the previous inspection of the diagonal brace lugs.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–54A2126, Revision 6, dated August 28, 1997. That service bulletin is substantially similar to Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997 (which was referenced as the appropriate source of service information in AD 97–19–08). However, Boeing Service Bulletin 747–54A2126, Revision 6, clarifies the inspection method and intervals for the forward and aft diagonal brace lugs, and updates the effectivity listing of the service bulletin to reflect changes in airplane operators but adds no new airplanes.

The FAA also has reviewed and approved Boeing Alert Service Bulletin 747–54A2126, Revision 7, dated November 20, 1998. Revision 7 of the alert service bulletin was issued subsequent to the findings of new cracking, and describes procedures for a repetitive ultrasonic inspection that are substantially similar to those described in Revision 5 of the alert service bulletin and in Boeing Service Bulletin 747–54A2126, Revision 6. Revision 7 also describes procedures for rework of the diagonal brace lug; and an option to defer the rework, in cases where no cracking or corrosion is found, by resealing the bushing or applying a corrosion-inhibiting compound, and performing repetitive inspections. Those procedures are substantially similar to the procedures described in Revision 5 of the alert service bulletin and in Boeing Service Bulletin 747–54A2126, Revision 6. However, Revision 7 also describes procedures for a detailed visual inspection, for all airplanes, to detect cracks, corrosion, or other damage of the diagonal brace lug, as well as of the root radius of the clevis of the inboard and outboard diagonal braces. Revision 7 also describes procedures for repetitive high frequency eddy current inspections, for certain airplanes, to detect cracking or corrosion of the diagonal brace lugs. Revision 7 also specifies, for certain airplanes, revised repetitive inspection intervals.

Other Relevant Rulemaking

The FAA previously has issued AD 95–10–16, amendment 39–9233 (60 FR 27008, May 22, 1995), applicable to Boeing Model 747 series airplanes equipped with Pratt & Whitney Model JT9D series engines (excluding Model JT9D–70 engines); AD 95–13–05, amendment 39–9285 (60 FR 33333, June 28, 1995), applicable to Boeing Model 747 series airplanes equipped with Rolls Royce Model RB211 series engines; and AD 95–13–07, amendment 39–9287 (60 FR 33336, June 28, 1995), applicable to Boeing Model 747 series airplanes equipped with General Electric Model CF6–45 or –50 series engines, or Pratt & Whitney Model JT9D–70 series engines. Those AD's require accomplishment of certain modifications of the nacelle strut/wing structure, which constitutes terminating action for the repetitive inspection requirements of this AD.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 97–19–08 to continue to require repetitive inspections to detect discrepancies of the diagonal brace lugs of the engine strut, and rework of the diagonal brace lugs, if necessary. This AD also continues to provide an option to defer the rework by accomplishing repetitive inspections and resealing the bushing. This AD also continues to provide for an optional terminating action for the repetitive inspection requirements.

This AD adds new repetitive inspections to detect discrepancies of the root radius of the clevis of the diagonal brace of the engine strut. For certain airplanes, this AD also adds new repetitive inspections to detect discrepancies of the diagonal brace lugs of the engine strut and requires that certain previously required repetitive inspections be accomplished at reduced intervals. The actions are required to be accomplished in accordance with the service bulletin or alert service bulletin described previously, except as discussed below.

Explanation of Addition to Compliance Options

AD 97–19–08 provides an option—in cases where a migrated or rotated bushing, but no cracking or corrosion, is detected—to defer the rework of the diagonal brace lugs by accomplishing repetitive inspections and resealing the bushing. However, Boeing Alert Service Bulletin 747–54A2126, Revision 5, specified that the rework could be deferred by accomplishing repetitive inspections and either resealing the bushing or applying a corrosion-inhibiting compound (and repeating the application of such compound at intervals not to exceed 9 months). The FAA finds that the option for application of a corrosion-inhibiting compound was inadvertently omitted from paragraph (d)(1) of AD 97–19–08. Therefore, paragraph (d)(1) of this AD, which restates the requirements of paragraph (d)(1) of AD 97–19–08, has been amended to read, ''* * * reseal the bushings or apply corrosion-inhibiting compound * * *.'' Related to this change, paragraph (d)(1) also specifies, ''If corrosion-inhibiting compound is applied, repeat the application at intervals not to exceed 9 months * * *.''

Differences Between the Alert Service Bulletin and This AD

Operators should note that Boeing Alert Service Bulletin 747–54A2126, Revision 7, specifies that the initial inspection threshold may be increased for diagonal braces that have been reworked in accordance with Boeing Service Bulletin 747–54–2126, dated June 16, 1988; Revision 1, dated August 25, 1988; Revision 2, dated April 27, 1989; Revision 3, dated October 19, 1989; or Revision 4, dated January 31, 1991. This AD, however, does not provide for such an increase in initial inspection thresholds for diagonal braces that have been reworked.

The FAA has determined that the compliance times for the initial inspection as specified in Tables 1 and II of Figure 1 of the alert service bulletin represent an appropriate interval of time allowable, such that the inspections do not pose an undue burden upon operators, and an acceptable level of safety of the transport airplane fleet can be maintained. In making this determination, the FAA has considered the manufacturer's recommendations as well as the safety implications of discrepancies of the diagonal brace lugs of the engine strut. However, under the

provisions of paragraph (l)(1) of this AD, the FAA may approve requests for adjustment of the initial inspection threshold for diagonal braces that have been reworked in accordance with Boeing Service Bulletin 747–54–2126, original issue, Revision 1, Revision 2, Revision 3, or Revision 4.

Operators also should note that, although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Operators also should note that Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997, and Revision 7, dated November 20, 1998; and Boeing Service Bulletin 747–54A2126, Revision 6; specify that certain corrective actions may be accomplished in accordance with ''an operator's equivalent procedure.'' However, this AD requires that all inspection and rework procedures be accomplished in accordance with the procedures specified in the service bulletin. An ''operator's equivalent procedure'' for inspecting or reworking the diagonal brace may be used only if approved as an alternative method of compliance in accordance with paragraph (l)(1) of this AD.

Determination of Rule's Effective Date

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall 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 Number 98–NM–327–AD.'' The postcard will be date stamped and returned to the commenter.

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.

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 removing amendment 39–10128 (62 FR 47927, September 12, 1997), and by adding a new airworthiness directive (AD), amendment 39–10976, to read as follows:

99–01–10 Boeing: Amendment 39–10976. Docket 98–NM–327–AD. Supersedes AD 97–19–08, Amendment 39–10128.

Applicability: Model 747 series airplanes having line positions 1 through 1046 inclusive; certificated in any category; equipped with Pratt & Whitney Model JT9D series engines, General Electric Model CF6–45 and –50 series engines, or Rolls Royce Model RB211 series engines; excluding those airplanes on which modifications of the strut/wing structure have been accomplished in accordance with one of the following AD's:

- AD 95–10–16, amendment 39–9233, or
- AD 95–13–05, amendment 39–9285, or
- AD 95–13–07, amendment 39–9287.

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 (l)(1) 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 and stress corrosion cracking in the diagonal brace, which could result in failure of the strut and consequent separation of the engine from the airplane, accomplish the following:

Restatement of Requirements of AD 97–19–08

(a) For airplanes identified as Groups 1, 2, 3, and 4 in Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997: Perform a detailed visual and ultrasonic inspection to detect cracking, corrosion, and migrated or rotated bushings of the diagonal brace lugs, in accordance

with and at the times specified in Table 1 of Figure 1 of Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997, or Boeing Service Bulletin 747–54A2126, Revision 6, dated August 28, 1997; except that where the service bulletin states that an inspection is to be performed within a specified number of days after receipt of the service bulletin, the inspection shall be accomplished within that number of days after September 29, 1997 (the effective date of AD 97–19–08, amendment 39–10128). Thereafter, repeat the inspections of the diagonal brace lug as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, until the inspections required by paragraph (e) have been accomplished.

(1) For the aft diagonal brace lug: Repeat the detailed visual and ultrasonic inspections thereafter at intervals not to exceed those specified in paragraph (d) or (e) in Table 1 of Figure 1 of the service bulletin, as applicable.

(2) For the forward diagonal brace lug: Repeat the detailed visual and ultrasonic inspections thereafter at intervals not to exceed 600 landings. These inspections on the forward diagonal brace lug must be accomplished in accordance with 747 Non-Destructive Test (NDT) Manual D6–7170, Part 4, Subject 54–40–05.

Note 2: Where there are differences between the AD and the referenced service bulletins, the AD prevails.

(b) For airplanes identified as Groups 3, 4, and 5 in Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997: Perform a detailed visual and ultrasonic inspection to detect cracking, corrosion, or migrated or rotated bushings of the diagonal brace lugs, in accordance with and at the times specified in Table II of Figure 1 of Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997, or Boeing Service Bulletin 747–54A2126, Revision 6, dated August 28, 1997; except that, where the service bulletin states that an inspection is to be performed within a specified number of days after receipt of the service bulletin, the inspection shall be accomplished within that number of days after September 29, 1997. Repeat the detailed visual and ultrasonic inspections thereafter at intervals not to exceed 1,000 flight cycles, until the inspections required by paragraph (f) have been accomplished.

(c) If any migrated or rotated bushing is detected during any of the inspections required by paragraph (a) or (b) of this AD, prior to further flight, rework the diagonal brace lug, in accordance with Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997, or Boeing Service Bulletin 747–54A2126, Revision 6, dated August 28, 1997; except as provided in paragraph (d) of this AD. Thereafter, repeat the detailed visual and ultrasonic inspections required by paragraph (a) of this AD prior to the accumulation of 5,000 landings, and/or repeat the detailed visual and ultrasonic inspections required by paragraph (b) of this AD prior to the accumulation of 9,000 landings. If the lug bore diameter is not within the rework limits, prior to further flight, replace the diagonal brace or repair it, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings.

(d) In lieu of accomplishing the requirements of paragraph (c) of this AD, perform an ultrasonic inspection to detect cracking or corrosion of the diagonal brace lug, in accordance with Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997, or Boeing Service Bulletin 747–54A2126, Revision 6, dated August 28, 1997.

(1) If no other damage is detected during the inspection required by paragraph (d) of this AD, prior to further flight, reseal the bushings or apply corrosion-inhibiting compound in accordance with the service bulletin; and thereafter, repeat the inspections of the diagonal brace lug as specified in paragraph (d)(1)(i) or (d)(1)(ii) of this AD, as applicable. If corrosion-inhibiting compound is applied, repeat the application at intervals not to exceed 9 months, in accordance with the service bulletin. Within 15 or 18 months (as applicable in the service bulletin) since the initial detection of the migrated or rotated bushing, rework the diagonal brace lug in accordance with the service bulletin; and thereafter, repeat the detailed visual and ultrasonic inspections required by paragraph (a) of this AD prior to the accumulation of 5,000 landings and/or repeat the detailed visual and ultrasonic inspections required by paragraph (b) of this AD prior to the accumulation of 9,000 landings. If the lug bore diameter is not within the rework limits, prior to further flight, replace the diagonal brace or repair it, in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

(i) For the aft diagonal brace lug: Repeat the detailed visual and ultrasonic inspections required by paragraphs (a) and (b) of this AD thereafter at intervals not to exceed those specified in paragraph (d) or (e) in Table 1 and paragraph (d) of Table II of Figure 1 of the service bulletin, as applicable; except that the repetitive detailed visual inspections are required within 9 months following accomplishment of the resealing or application of corrosion-inhibiting compound.

(ii) For the forward diagonal brace lug: Repeat the detailed visual and ultrasonic inspections required by paragraphs (a) and (b) of this AD thereafter at the repetitive intervals specified in those paragraphs, as applicable; except that the repetitive detailed visual inspections are required within 9 months following accomplishment of the resealing or application of corrosion-inhibiting compound. These inspections on the forward diagonal brace lug must be accomplished in accordance with 747 NDT Manual D6–7170, Part 4, Subject 54–40–05.

(2) If any cracking or corrosion is detected during the inspection required by paragraph (d) of this AD, prior to further flight, rework the diagonal brace lug in accordance with the service bulletin; and thereafter, repeat the detailed visual and ultrasonic inspections required by paragraph (a) of this AD prior to the accumulation of 5,000 landings, and/or repeat the detailed visual and ultrasonic inspections required by paragraph (b) of this AD prior to the accumulation of 9,000 landings. If the lug bore diameter is not within the rework limits, prior to further flight, replace the diagonal brace or repair it, in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

New Requirements of This AD

(e) For airplanes identified as Groups 1, 2, 3, and 4 in Boeing Alert Service Bulletin 747–54A2126, Revision 7, dated November 20, 1998: Perform detailed visual, high frequency eddy current (HFEC), and ultrasonic inspections, as applicable, to detect cracking, corrosion, and migrated or rotated bushings of the diagonal brace lugs or of the root radius of the clevis of the diagonal brace, in accordance with Table 1 of Figure 1 of Revision 7 of the alert service bulletin, at the time specified in paragraph (e)(1) or (e)(2) of this AD, whichever occurs later. Repeat the inspections thereafter at the times specified in Table 1 of Figure 1 of Revision 7 of the alert service bulletin. Accomplishment of the applicable inspections constitutes terminating action for the repetitive inspection requirements of paragraphs (a)(1) and (a)(2) of this AD. For airplanes on which any migrated or rotated bushing was detected during any inspection required by paragraph (a) of this AD, but on which the rework required by paragraph (c) of this AD has not been accomplished, accomplishment of the inspections required by paragraph (e) of this AD constitutes terminating action only for the repetitive inspection requirements of paragraph (d)(1) of this AD. However, rework of the diagonal brace lug in accordance with paragraph (d)(1) of this AD is still required within 15 or 18 months after the initial detection of the migrated or rotated bushing; repetitive detailed visual inspections are required within 9 months after accomplishment of the resealing or application of corrosion-inhibiting compound; and, if corrosion-inhibiting compound was applied in lieu of resealing the bushings in accordance with paragraph (d)(1) of this AD, reapplication of the corrosion-inhibiting compound is required at intervals not to exceed 9 months.

(1) Inspect prior to the accumulation of 5,000 total flight cycles; or within 5,000 flight cycles after rework of the diagonal brace lugs in accordance with Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997, or Revision 7, or Boeing Service Bulletin 747–54A2126, Revision 6, dated August 28, 1997. Or

(2) Inspect within 150 flight cycles or 60 days after the effective date of this AD, whichever occurs first.

(f) For airplanes identified as Groups 3, 4, and 5 in Boeing Alert Service Bulletin 747–

54A2126, Revision 7, dated November 20, 1998: Perform detailed visual, HFEC, and ultrasonic inspections; as applicable; to detect cracking, corrosion, and migrated or rotated bushings of the diagonal brace lugs or of the root radius of the clevis of the diagonal brace; in accordance with Table II of Figure 1 of Revision 7 of the alert service bulletin; at the time specified in paragraph (f)(1) or (f)(2) of this AD, whichever occurs later. Repeat the inspections thereafter at intervals not to exceed 1,000 flight cycles. Accomplishment of the applicable inspections constitutes terminating action for the repetitive inspection requirements of paragraph (b) of this AD. For airplanes on which any migrated or rotated bushing was detected during any inspection required by paragraph (b) of this AD, but on which the rework required by paragraph (c) of this AD has not been accomplished, accomplishment of the inspections required by paragraph (f) of this AD constitutes terminating action only for the repetitive inspection requirements of paragraph (d)(1) of this AD. However, rework of the diagonal brace lug in accordance with paragraph (d)(1) of this AD is still required within 15 or 18 months, as applicable, after the initial detection of the migrated or rotated bushing; repetitive detailed visual inspections are required within 9 months after accomplishment of the resealing or application of corrosion-inhibiting compound; and, if corrosion-inhibiting compound was applied in lieu of resealing the bushings in accordance with paragraph (d)(1) of this AD, reapplication of the corrosion-inhibiting compound is required at intervals not to exceed 9 months.

(1) Inspect prior to the accumulation of 9,000 total flight cycles; or within 9,000 flight cycles after rework of the diagonal brace lug in accordance with Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997, or Revision 7, or Boeing Service Bulletin 747–54A2126, Revision 6, dated August 28, 1997. Or

(2) Inspect within 60 days after the effective date of this AD.

(g) If any migrated or rotated bushing is detected during any of the inspections required by paragraph (e) or (f) of this AD, prior to further flight, rework the diagonal brace lug, in accordance with Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997, or Revision 7, dated November 20, 1998; or Boeing Service Bulletin 747–54A2126, Revision 6, dated August 28, 1997; except as provided in paragraph (h) of this AD. Thereafter, repeat the detailed visual, HFEC, and ultrasonic inspections required by paragraph (e) of this AD within 5,000 flight cycles, and repeat the detailed visual, HFEC, and ultrasonic inspections required by paragraph (f) of this AD within 9,000 flight cycles, as applicable. If the lug bore diameter is not within the rework limits, or if any cracking of the root radius of the clevis is detected, prior to further flight, replace the diagonal brace with a new diagonal brace or repair it, in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

(h) In lieu of accomplishing the requirements of paragraph (g) of this AD, perform ultrasonic and HFEC inspections to detect cracking or corrosion of the diagonal brace lug, in accordance with Boeing Alert Service Bulletin 747–54A2126, Revision 7, dated November 20, 1998.

(1) If no cracking or corrosion is detected during the inspections required by paragraph (h) of this AD, prior to further flight, reseal the bushings or apply corrosion-inhibiting compound in accordance with the alert service bulletin, and accomplish the actions specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD at the times specified in those paragraphs. If corrosion-inhibiting compound is applied, repeat the application at intervals not to exceed 9 months, in accordance with the alert service bulletin, until the actions required by paragraph (h)(1)(ii) of this AD have been accomplished.

(i) Thereafter, repeat the detailed visual, HFEC, and ultrasonic inspections required by paragraphs (e) and (f) of this AD, as applicable, at intervals not to exceed those specified in Table 1 and Table II of Figure 1 of the alert service bulletin, as applicable; except that the detailed visual inspection is required within 9 months after the resealing of the bushing or the application of corrosion-inhibiting compound. Accomplishment of such repetitive inspections terminates the repetitive inspection requirement of paragraph (d) of this AD.

(ii) Within 15 or 18 months (as applicable in accordance with the alert service bulletin) since the initial detection of the migrated or rotated bushing required by paragraph (e) or (f) of this AD, rework the diagonal brace lug in accordance with Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997, or Revision 7, dated November 20, 1998; or Boeing Service Bulletin 747–54A2126, Revision 6, dated August 28, 1997. Thereafter, repeat the detailed visual, HFEC, and ultrasonic inspections required by paragraph (e) of this AD within 5,000 flight cycles and repeat the detailed visual, HFEC, and ultrasonic inspections required by paragraph (f) of this AD within 9,000 landings, as applicable. If the lug bore diameter is not within the rework limits, or if any cracking of the root radius of the clevis is detected, prior to further flight, replace the diagonal brace with a new diagonal brace or repair it, in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

(2) If any cracking or corrosion is detected during the inspection required by paragraph (h) of this AD, prior to further flight, rework the diagonal brace lug in accordance with Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997, or Revision 7, dated November 20, 1998; or Boeing Service Bulletin 747–54A2126, Revision 6, dated August 28, 1997. Thereafter, repeat the detailed visual, HFEC, and ultrasonic inspections required by paragraph (e) of this AD within 5,000 landings and repeat the detailed visual, HFEC, and ultrasonic inspections required by paragraph (f) of this AD within 9,000 landings, as applicable. If the lug bore diameter is not within the rework limits, or if any cracking of the root radius of the clevis is detected, prior to further flight, replace the diagonal brace with a new diagonal brace or repair it, in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

(i) If any cracking or corrosion is detected during any of the inspections required by paragraph (a), (b), (e), or (f) of this AD, prior to further flight, rework the diagonal brace lug in accordance with Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997, or Revision 7, dated November 20, 1998; or Boeing Service Bulletin 747–54A2126, Revision 6, dated August 28, 1997. Thereafter, repeat the detailed visual, HFEC, and ultrasonic inspections required by paragraph (e) of this AD within 5,000 landings and/or repeat the detailed visual, HFEC, and ultrasonic inspections required by paragraph (f) of this AD within 9,000 landings, as applicable. If the lug bore diameter is not within the rework limits, or if any cracking of the root radius of the clevis is detected, prior to further flight, replace the diagonal brace or repair it, in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

(j) Accomplishment of a strut/wing modification in accordance with AD 95–10–16, amendment 39–9233; AD 95–13–05, amendment 39–9285; or AD 95–13–07, amendment 39–9287; as applicable; constitutes terminating action for the repetitive inspection requirements of this AD.

(k) If Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997, or Revision 7, dated November 20, 1998; or Boeing Service Bulletin 747–54A2126, Revision 6, dated August 28, 1997; specifies that corrective actions may be accomplished in accordance with an operator's ''equivalent procedure'': The inspection and rework must be accomplished in accordance with the procedures or the chapter of the Boeing manuals specified in the service bulletin.

(l)(1) 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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–19–08, amendment 39–10128, are approved as alternative methods of compliance with this AD.

(3) Alternative methods of compliance, approved previously in accordance with AD

95–10–16, amendment 39–9233, are not considered to be approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(m) 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.

(n) Except as provided by paragraphs (a)(2), (c), (d)(1), (d)(1)(ii), (d)(2), (g), (h)(1)(ii), (h)(2), (h)(2)(i), and (k) of this AD, the inspections, rework, and reseal shall be done in accordance with Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997; Boeing Service Bulletin 747–54A2126, Revision 6, dated August 28, 1997; or Boeing Alert Service Bulletin 747–54A2126, Revision 7, dated November 20, 1998.

(1) The incorporation by reference of Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of September 29, 1997 (62 FR 47927, September 12, 1997).

(2) The incorporation by reference of Boeing Service Bulletin 747–54A2126, Revision 6, dated August 28, 1997; and Boeing Alert Service Bulletin 747–54A2126, Revision 7, dated November 20, 1998; is 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) 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.

(o) This amendment becomes effective on January 15, 1999.

Issued in Renton, Washington, on December 23, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–34676 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–77–AD; Amendment 39–10975; AD 99–01–08]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D and JT3D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D and JT3D series turbofan engines. This action requires operators to remove and replace with serviceable parts, certain stage 7 through stage 15 high-pressure compressor (HPC) disks identified by part number and serial number. This amendment is prompted by a report of an uncontained failure of a stage 8 HPC disk during a takeoff roll that resulted in damage to the airplane. The actions specified in this AD are intended to prevent the failure of a high-pressure compressor disk due to Cadmium embrittlement, resulting in uncontained engine failure and damage to the airplane.

DATES: Effective January 5, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–77–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received a report of an uncontained failure of a stage 8 high-pressure compressor (HPC) disk, part number (P/N) 787008, installed on a Pratt & Whitney (PW) JT8D–9 turbofan engine. The laboratory testing revealed that the disk failed as a result of Cadmium embrittlement. Nickel-Cadmium (NiCd) coatings are used on JT8D and JT3D steel disks to inhibit corrosion. The coating process consists of many steps, the most fundamental of which are the electrolytic deposition of a Nickel base layer followed eventually by the electrolytic deposition of a Cadmium layer. The part is then baked in an oven. During the bake cycle the Nickel layer diffuses into the Cadmium which creates an alloy with a higher melting temperature than pure Cadmium and immobilizes the Cadmium to prevent the liquid metal embrittlement of the steel part. The Cadmium rich outer layer acts as the corrosion inhibitor. The diffused Nickel acts to immobilize the Cadmium and prevent Cadmium embrittlement of the steel. If the Nickel plating is not applied with sufficient thickness during the NiCd plating process, the undiffused Cadmium can attack the grain boundaries of the base metal. Failure results when the disk is exposed to engine operating temperatures and stresses. Analysis of this and other Cadmium embrittlement failures indicates that a disk exposed to Cadmium embrittlement will likely fail within 500 hours time-in-service (TIS). Based on the risks associated with a process anomaly at the repair facility that plated the disk, the FAA has determined that action is required to remove a number of disks plated at that facility since February 1996. The disks most at risk are those disks which have accumulated less than 500 hours TIS since they were last plated. Disks which have accumulated more than 500 hours TIS since plating will not be recalled by this AD. The FAA has identified stage 7 through stage 15 HPC disks by P/N and serial number (S/N) that have been NiCd plated by the repair facility from February 1996 through October 1998. This condition, if not corrected, could result in the failure of a high-pressure compressor disk due to Cadmium embrittlement, resulting in uncontained engine failure and damage to the airplane.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent the failure of a high-pressure compressor disk due to Cadmium embrittlement, resulting in uncontained engine failure and damage to the airplane. This AD requires removal and replacement of certain part-numbered and serial-numbered stage 7 through stage 15 HPC disks with serviceable parts.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–77–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 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, 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:

99–01–08 Pratt & Whitney: Amendment 39–10975. Docket 98–ANE–77–AD.

Applicability: Pratt & Whitney (PW) JT8D and JT3D series turbofan engines, with stage 7 through stage 15 high-pressure compressor (HPC) disks installed, identified by part number (P/N) and serial number (S/N) specified in Appendix 1. These engines are installed on but not limited to the following aircraft: Boeing 707, 727, and 737 series airplanes and McDonnell Douglas DC–8, DC–9, and MD–80 series airplanes.

Appendix 1

DISK PART NUMBER AND SERIAL NUMBER (SORTED BY DISK PART NUMBER)

Stage	Disk part No.	Disk serial No.
7	701407	7A7271
7	701507	4Z2030
7	701507	4Z2122
7	701507	8Z6454
7	766007	8B5265
7	774407	B207AA0307
7	774407	B207AA0350
7	774407	B207AA0379
7	774407	B207AA0578
7	774407	B207AA0643
7	774407	BENCAH1353
7	774407	BENCAH2320
7	774407	BENCAH2327
7	774407	BENCAH2851
7	774407	BENCAH4091
7	774407	BENCAJ8414
7	774407	BENCAJ8440

DISK PART NUMBER AND SERIAL NUMBER (SORTED BY DISK PART NUMBER)—Continued

Stage	Disk part No.	Disk serial No.
7	774407	BENCAK1631
7	774407	BENCAK1684
7	774407	BENCAK5135
7	774407	BENCAK6623
7	774407	BENCAK6643
7	774407	BENCAK8115
7	774407	H19093
7	774407	H19026
7	774407	H29904
7	774407	J17128
7	774407	J17407
7	774407	J39120
7	774407	J72011
7	774407	J72132
7	774407	K20050
7	774407	K20167
7	774407	K78491
7	774407	L72139
7	774407	M15364
7	774407	M15368
7	774407	M77985
7	774407	M83784
7	774407	M93463
7	774407	N14127
7	774407	N14190
7	774407	N14213
7	774407	N24114
7	774407	N23978
7	774407	N24091
7	774407	N37879
7	774407	N37919
7	774407	N70390
7	774407	N88161
7	774407	N88195
7	774407	N88335
7	774407	N88342
7	774407	N94974
7	774407	N95036
7	774407	P14716
7	774407	P14741
7	774407	P35486
7	774407	P54563
7	774407	P60347
7	774407	P60394
7	774407	P60446
7	774407	P70328
7	774407	P81247
7	774407	P81253
7	774407	P81392
7	774407	P81399
7	774407	P86295
7	774407	P86311
7	774407	R03089
7	774407	R12413
7	774407	R12418
7	774407	R12549
7	774407	R12557
7	774407	R19365
7	774407	R31290
7	774407	R31411
7	774407	R37414
7	774407	R37520
7	774407	R37554
7	774407	R46834
7	774407	R46893
7	774407	R46918
7	774407	R46943
7	774407	R47019
7	774407	R72171

DISK PART NUMBER AND SERIAL NUMBER (SORTED BY DISK PART NUMBER)—Continued

Stage	Disk part No.	Disk serial No.
7	774407	R72257
7	774407	S05566
7	774407	S05610
7	774407	S05659
7	774407	S10014
7	774407	S10050
7	774407	S13885
7	774407	S13910
7	774407	S14048
7	774407	S14063
7	774407	S14088
7	774407	S14173
7	774407	S36633
7	774407	S36810
7	774407	S36857
7	774407	S37128
7	774407	S37149
7	774407	S37168
7	774407	S37187
7	774407	S37312
7	774407	S37367
7	774407	S37389
7	774407	S37420
7	774407	S37469
7	774407	S37498
7	774407	T04409
7	774407	T04526
7	774407	T04566
7	774407	T04615
7	774407	T04632
7	774407	T04898
7	774407	T04899
7	774407	T04988
7	774407	T05055
7	774407	T05106
7	5006007–01	B207AA0068
7	5006007–01	B207AA0693
7	5006007–01	BENCAH0061
7	5006007–01	BENCAH3134
7	5006007–01	BENCAJ8558
7	5006007–01	BENCAJ8594
7	5006007–01	BENCAL0749
7	5006007–01	BENCAL2650
7	5006007–01	R54586
7	5006007–01	R79450
7	5006007–01	S11202
7	5006007–01	S11206
7	5006007–01	S57118
7	5006007–01	S57216
7	5006007–01	S57519
7	5006007–02	BENCAK9643
7	5006007–02	BENCAK9690
7	5006007–02	BENCAK9697
7	5006007–02	BENCAK9705
7	5006007–02	BENCAK9723
7	5006007–02	BENCAL3657
7	5006007–02	BENCAL5478
7	774407	BENCAH0521
7	774407	BENCAJ8454
7	774407	R57626
7	774407	T04885
8	738308	9B1363
8	738308	H03990
8	748608	7A9608
8	748608	7B9489
8	748608	8B0397
8	748608	B208AA0030
8	748608	B208AA0045
8	748608	B208AA0070

DISK PART NUMBER AND SERIAL NUMBER (SORTED BY DISK PART NUMBER)—Continued

Stage	Disk part No.	Disk serial No.
8	748608	BENCAJ8185
8	748608	G30014
8	748608	G62624
8	748608	G63907
8	748608	H29599
8	748608	H35085
8	748608	H64390
8	748608	H84992
8	748608	H86520
8	748608	J29857
8	748608	J29958
8	748608	J57418
8	748608	J57426
8	748608	J57469
8	748608	J57532
8	748608	J57660
8	748608	J57663
8	748608	J94763
8	748608	J94815
8	748608	M54646
8	748608	M54770
8	748608	M54821
8	748608	M54843
8	748608	N14562
8	748608	N14765
8	748608	N84308
8	748608	N84314
8	748608	N84317
8	748608	N84319
8	748608	N84373
8	748608	N84418
8	748608	P26025
8	748608	P26136
8	748608	P26153
8	748608	P26171
8	748608	P28471
8	748608	P28530
8	748608	P28534
8	748608	P28564
8	748608	P28596
8	748608	P28607
8	748608	P83853
8	748608	P94736
8	748608	P98927
8	748608	R18995
8	748608	R46153
8	748608	R73850
8	748608	S01136
8	748608	S01153
8	748608	S01185
8	748608	S50692
8	748608	S50748
8	748608	S78016
8	748608	S78066
8	748608	S78128
8	787008	K51696
8	787008	K52389
8	787008	L61543
8	787008	M76852
8	787008	M77423
8	787008	M77749
8	787008	M77791
8	787008	N33354
8	787008	N33408
8	787008	N33702
8	787008	N33760
8	787008	N89060
8	787008	N89386
8	787008	N90133

DISK PART NUMBER AND SERIAL NUMBER (SORTED BY DISK PART NUMBER)—Continued

Stage	Disk part No.	Disk serial No.
8	787008	N90152
8	787008F	N89050
8	787208	B228AA0194
8	787208	B228AA0343
8	787208	B228AA0371
8	787208	B228AA0540
8	787208	B228AA0574
8	787208	B228AA0605
8	787208	BENCAH4505
8	787208	BENCAH5428
8	787208	BENCAH5435
8	787208	BENCAJ5724
8	787208	BENCAK0065
8	787208	BENCAK0066
8	787208	BENCAK6165
8	787208	BENCAK6359
8	787208	BENCAK8796
8	787208	BENCAK9253
8	787208	BENCAL1567
8	787208	BENCAL1571
8	787208	BENCAL1579
8	787208	BENCAL1887
8	787208	BENCAL3339
8	787208	BENCAL5283
8	787208	BENCAM0672
8	787208	J47026
8	787208	K12730
8	787208	N06609
8	787208	N89709
8	787208	P43644
8	787208	P43665
8	787208	P43897
8	787208	P43936
8	787208	P43950
8	787208	P43954
8	787208	P44141
8	787208	P44694
8	787208	P45378
8	787208	P45593
8	787208	R23192
8	787208	R23234
8	787208	R23450
8	787208	R23452
8	787208	R23569
8	787208	R23837
8	787208	R24172
8	787208	R24201
8	787208	R24205
8	787208	R24390
8	787208	R24599
8	787208	R24827
8	787208	R91709
8	787208	S07732
8	787208	S39110
8	787208	S39281
8	787208	S39337
8	787208	S39409
8	787208	S39410
8	787208	S39487
8	787208	S39509
8	787208	S39534
8	787208	S39633
8	787208	S39676
8	787208	S39721
8	787208	S39942
8	787208	S39963
8	787208	S39996
8	787208	S40033
8	787208	S40041

DISK PART NUMBER AND SERIAL NUMBER (SORTED BY DISK PART NUMBER)—Continued

Stage	Disk part No.	Disk serial No.
8	788608	H36177
8	788708	7A2254
8	789508	G51990
8	789608	J46995
8	792038	B228AA0331
8	792038	B228AA0511
8	792038	B228AA1005
8	792038	BENCAJ8854
8	792038	BENCAJ8871
8	796348	K53240
8	797938	BENCAL2605
8	5005808–01	B228AA0901
8	5005808–01	BENCAJ1138
8	5005808–01	BENCAJ8902
8	5005808–01	S70327
9	628209	5X8746
9	701509	8Z5256
9	701509	9A6145
9	701509	H86825
9	701509	J00245
9	701509	J25666
9	701509	J87515
9	701509	J89031
9	701509	K34309
9	701509	K35061
9	701509	K55559
9	701509	K85824
9	701509	L31209
9	701509	L31751
9	701509	L55770
9	701509	M10469
9	701509	M40027
9	701509	M49712
9	701509	M61566
9	701509	M84762
9	701509	M86342
9	701509	M86842
9	701509	M86844
9	701509	N02758
9	701509	N02994
9	701509	N209AA0006
9	701509	N209AA0080
9	701509	N209AA0091
9	701509	N209AA0094
9	701509	N209AA0255
9	701509	N209AA0339
9	701509	N209AA0352
9	701509	N209AA0561
9	701509	N21068
9	701509	N21507
9	701509	N21508
9	701509	N22475
9	701509	N22570
9	701509	N22591
9	701509	N41297
9	701509	N42662
9	701509	N57120
9	701509	N79874
9	701509	N79893
9	701509	N81317
9	701509	N97653
9	701509	NENCAH0017
9	701509	NENCAH0187
9	701509	NENCAH0192
9	701509	NENCAH0222
9	701509	NENCAH0269
9	701509	NENCAH0280
9	701509	NENCAH0337
9	701509	NENCAH0422

DISK PART NUMBER AND SERIAL NUMBER (SORTED BY DISK PART NUMBER)—Continued

Stage	Disk part No.	Disk serial No.
9	701509	NENCAH0445
9	701509	NENCAH0451
9	701509	NENCAH0593
9	701509	NENCAH0737
9	701509	NENCAH0757
9	701509	NENCAH0913
9	701509	NENCAH0920
9	701509	NENCAH1014
9	701509	NENCAH1227
9	701509	NENCAH1357
9	701509	NENCAH1430
9	701509	P11360
9	701509	P11370
9	701509	P11443
9	701509	P11450
9	701509	P12878
9	701509	P51572
9	701509	P52444
9	701509	P52971
9	701509	P53248
9	701509	P77028
9	701509	P77207
9	701509	P78457
9	701509	P97645
9	701509	P98143
9	701509	P98661
9	701509	P98961
9	701509	P98991
9	701509	R17442
9	701509	R18113
9	701509	R45676
9	701509	R46466
9	701509	R72941
9	701509	R73009
9	701509	R73013
9	701509	R73420
9	701509	R73464
9	701509	R73467
9	701509	R73804
9	701509	R73934
9	701509	S00689
9	701509	S00741
9	701509	S00777
9	701509	S00798
9	701509	S18975
9	701509	S19201
9	701509	S50490
9	701509	S77602
9	701509	S77616
9	701509	S77651
9	739509	G79836
9	772509	H49185
9	772509	K56788
9	772509	P97497
9	772509	R73983
9	772509	S01209
9	772509	S50832
9	798509	B209AA0539
9	798509	BENCAH3770
9	798509	BENCAJ9383
9	798509	BENCAK9880
9	798509	BENCAL0717
9	798509	BENCAL0703
9	798509	BENCAL2372
9	798509	BENCAL6305
9	701509	BENCAH0448
9	701509N	R18236
9	772509	K23767
9	798509	BENCAJ9360

DISK PART NUMBER AND SERIAL NUMBER (SORTED BY DISK PART NUMBER)—Continued

Stage	Disk part No.	Disk serial No.
9	798509	P53159
10	701410	7Z0800
10	701410	7Z0806
10	701810	0A0377
10	701810	3B8966
10	701810	3B9144
10	701810	9Z9847
10	701810	A00862
10	701810	H39339
10	701810	H60642
10	701810	R22292
10	701810G	G82663
10	770510	4B4921
10	770510	G80187
10	772510	B210AA0014
10	772510	B210AA0202
10	772510	B210AA0273
10	772510	B210AA0637
10	772510	B210AA0640
10	772510	B210AA0749
10	772510	B210AA0752
10	772510	B210AA0429
10	772510	BENCAH0251
10	772510	BENCAH1404
10	772510	BENCAJ9735
10	772510	BENCAJ9784
10	772510	BENCAJ9868
10	772510	BENCAK5318
10	772510	BENCAK5762
10	772510	BENCAK5946
10	772510	BENCAK9105
10	772510	BENCAL0388
10	772510	BENCAL1598
10	772510	BENCAL1601
10	772510	BENCAL2427
10	772510	BENCAL4455
10	772510	BENCAL5993
10	772510	H34395
10	772510	H58784
10	772510	J23708
10	772510	J68609
10	772510	J87953
10	772510	J88767
10	772510	K03190
10	772510	K03586
10	772510	K24796
10	772510	K25271
10	772510	K35625
10	772510	K55848
10	772510	K66100
10	772510	K68068
10	772510	K85468
10	772510	L15000
10	772510	L56873
10	772510	L84428
10	772510	L86007
10	772510	M10049
10	772510	M10613
10	772510	M39974
10	772510	M56263
10	772510	M61659
10	772510	M84606
10	772510	M87097
10	772510	N03907
10	772510	N02538
10	772510	N02778
10	772510	N03133
10	772510	N21767
10	772510	N22275

DISK PART NUMBER AND SERIAL NUMBER (SORTED BY DISK PART NUMBER)—Continued

Stage	Disk part No.	Disk serial No.
10	772510	N41185
10	772510	N41208
10	772510	N41484
10	772510	N41613
10	772510	N42094
10	772510	N42143
10	772510	N42187
10	772510	N42838
10	772510	N57150
10	772510	N57830
10	772510	N57862
10	772510	N80227
10	772510	N80661
10	772510	N80671
10	772510	N81136
10	772510	N81150
10	772510	N81454
10	772510	N81456
10	772510	P11024
10	772510	P11818
10	772510	P11869
10	772510	P12016
10	772510	P12811
10	772510	P51804
10	772510	P51873
10	772510	P52670
10	772510	P53019
10	772510	P53213
10	772510	P76639
10	772510	P77620
10	772510	P77862
10	772510	P78050
10	772510	P97278
10	772510	P98630
10	772510	R17507
10	772510	R18502
10	772510	R18520
10	772510	R44856
10	772510	R44861
10	772510	R44864
10	772510	R45159
10	772510	R46345
10	772510	R72614
10	772510	R72630
10	772510	R72884
10	772510	R73138
10	772510	R73408
10	772510	R73612
10	772510	R73617
10	772510	R73862
10	772510	S01349
10	772510	S01364
10	772510	S01365
10	772510	S01406
10	772510	S01463
10	772510	S01486
10	772510	S19301
10	772510	S19305
10	772510	S19487
10	772510	S19630
10	772510	S50981
10	772510	S51203
10	772510	S70220
10	772510	S78451
10	772510	S78492
10	772510	S78780
10	772510	T18947
10	772510	T19138
10	772510	T19153
10	772510	T49020
10	772510	BENCAJ9732
10	772510	N81125
10	772510	S70249
11	701411	2B3335
11	701411	6Y6265
11	701411	6Y7124
11	701411	9Y4723
11	701811	A03782
11	701811	G33309
11	701811	H24029
11	701811	J28340
11	701811D	5A8129
11	772511	B211AA0058
11	772511	B211AA0106
11	772511	B211AA0119
11	772511	B211AA0240
11	772511	B211AA0621
11	772511	B211AA0744
11	772511	B211AA0944
11	772511	B211AA1224
11	772511	B211AA1227
11	772511	BENCAH4040
11	772511	BENCAK0466
11	772511	BENCAK7376
11	772511	BENCAK7377
11	772511	BENCAK7378
11	772511	BENCAK7391
11	772511	BENCAK7432
11	772511	BENCAK7436
11	772511	BENCAK7449
11	772511	BENCAK7493
11	772511	BENCAK7517
11	772511	BENCAL2882
11	772511	BENCAL2903
11	772511	BENCAL3047
11	772511	BENCAL3107
11	772511	J23871
11	772511	J60159
11	772511	J60844
11	772511	J88645
11	772511	K23851
11	772511	K25421
11	772511	K34786
11	772511	K35678
11	772511	K56219
11	772511	K86641
11	772511	L30533
11	772511	L31909
11	772511	L84584
11	772511	L85406
11	772511	LI4848
11	772511	M39922
11	772511	M40288
11	772511	M49491
11	772511	M61348
11	772511	M73855
11	772511	M86390
11	772511	N21317
11	772511	N02565
11	772511	N02849
11	772511	N03254
11	772511	N03566
11	772511	N03749
11	772511	N03884
11	772511	N21373
11	772511	N21747
11	772511	N22005
11	772511	N22023
11	772511	N22361
11	772511	N22749
11	772511	N41265
11	772511	N41900
11	772511	N42762
11	772511	N56596
11	772511	N57211
11	772511	N57249
11	772511	N57915
11	772511	N98569
11	772511	N98918
11	772511	N99538
11	772511	P10980
11	772511	P11984
11	772511	P12374
11	772511	P12389
11	772511	P12900
11	772511	P51911
11	772511	P52733
11	772511	P53057
11	772511	P66436
11	772511	P77051
11	772511	P77157
11	772511	P77977
11	772511	P78064
11	772511	P78528
11	772511	P78566
11	772511	R05712
11	772511	R18713
11	772511	R29689
11	772511	R29849
11	772511	R29855
11	772511	R29858
11	772511	R29957
11	772511	R30079
11	772511	R30091
11	772511	R30098
11	772511	R30396
11	772511	R30540
11	772511	R30753
11	772511	R30778
11	772511	R31032
11	772511	R44897
11	772511	R45822
11	772511	R46094
11	772511	R46488
11	772511	S03919
11	772511	S03920
11	772511	S04110
11	772511	S04209
11	772511	S04340
11	772511	S04487
11	772511	S04565
11	772511	S04576
11	772511	S04601
11	772511	S04625
11	772511	S80671
11	772511	S80726
11	772511	S80801
11	772511	S80817
11	772511	S80830
11	772511	T22255
11	772511	T22427
11	772511	T22430
11	772511	T22433
11	772511	T22695
11	772511	T22711
11	772511	T23028
11	772511	B211AA0681

DISK PART NUMBER AND SERIAL NUMBER (SORTED BY DISK PART NUMBER)—Continued

Stage	Disk part No.	Disk serial No.
11	772511	N97343
11	772511H	S03892
11	772511M	B211AA0066
11	772511M	B211AA0584
12	414212HC	5L5355
12	701412	1Z5717
12	701412	5Y5915
12	701812	1Z7175
12	701812	3A3910
12	701812	A02080
12	701812	H62635
12	701812	N28026
12	701812D	G93483
12	717312	2B3418
12	717312	G15036
12	717312	G29488
12	717312	G63557
12	769312	1Z5153
12	772512	H34015
12	772512	H77074
12	772512	J24654
12	772512	J38490
12	772512	J59514
12	772512	K02314
12	772512	K24837
12	772512	K55637
12	772512	K55648
12	772512	K86189
12	772512	L15523
12	772512	L30268
12	772512	L30307
12	772512	L31553
12	772512	L56280
12	772512	L56328
12	772512	L84937
12	772512	L86244
12	772512	M86432
12	772512	M10163
12	772512	M10415
12	772512	M10948
12	772512	M11260
12	772512	M11282
12	772512	M40263
12	772512	M48887
12	772512	M49046
12	772512	M49595
12	772512	M61285
12	772512	M61856
12	772512	M61955
12	772512	M84903
12	772512	M86222
12	772512	N02391
12	772512	N02431
12	772512	N02488
12	772512	N03222
12	772512	N03686
12	772512	N22344
12	772512	N22883
12	772512	N41245
12	772512	N41249
12	772512	N41463
12	772512	N57445
12	772512	N57460
12	772512	N58065
12	772512	N58102
12	772512	N58109
12	772512	N58117
12	772512	N80256
12	772512	N81365

DISK PART NUMBER AND SERIAL NUMBER (SORTED BY DISK PART NUMBER)—Continued

Stage	Disk part No.	Disk serial No.
12	772512	N97115
12	772512	N97124
12	772512	N97457
12	772512	N98208
12	772512	N98222
12	772512	N99001
12	772512	N99066
12	772512	P11199
12	772512	P12270
12	772512	P12312
12	772512	P51405
12	772512	P51433
12	772512	P51437
12	772512	P52633
12	772512	P53139
12	772512	P53173
12	772512	P77109
12	772512	P77978
12	772512	P78005
12	772512	P78202
12	772512	P97472
12	772512	P98163
12	772512	P98509
12	772512	P98706
12	772512	P98876
12	772512	R17547
12	772512	R18000
12	772512	R18009
12	772512	R18395
12	772512	R18404
12	772512	R19046
12	772512	R19047
12	772512	R45120
12	772512	R45947
12	772512	R46042
12	772512	R46055
12	772512	R73153
12	772512	R73459
12	772512	R73782
12	772512	R74102
12	772512	R74120
12	772512	R74356
12	772512	R74528
12	772512	S01701
12	772512	S01720
12	772512	S01963
12	772512	S02019
12	772512	S51348
12	772512	S51376
12	772512	S51391
12	772512	S51490
12	772512	S51499
12	772512	S51540
12	772512	S51542
12	772512	S78919
12	772512	S78924
12	798512	B212AA0948
12	798512	B212AA0032
12	798512	B212AA0209
12	798512	B212AA0234
12	798512	B212AA0255
12	798512	B212AA0276
12	798512	B212AA0283
12	798512	B212AA0436
12	798512	B212AA0439
12	798512	B212AA0442
12	798512	B212AA0497
12	798512	B212AA0739
12	798512	B212AA0788

DISK PART NUMBER AND SERIAL NUMBER (SORTED BY DISK PART NUMBER)—Continued

Stage	Disk part No.	Disk serial No.
12	798512	B212AA0808
12	798512	B212AA0826
12	798512	B212AA1042
12	798512	BENCAH1745
12	798512	BENCAH2182
12	798512	BENCAJ9560
12	798512	BENCAJ9619
12	798512	BENCAJ9680
12	798512	BENCAK8619
12	798512	BENCAK9455
12	798512	BENCAL0437
12	798512	BENCAL0445
12	798512	BENCAL0446
12	798512	BENCAL0450
12	798512	BENCAL2451
12	798512	BENCAL2462
12	798512	BENCAL5111
12	798512	BENCAL6030
12	798512	R46125
12	798512	S94444
12	798512	S94463
12	798512	S94550
12	798512	T19384
12	798512	T28481
12	798512	T28560
12	798512	T28581
12	798512	T43085
12	772512	N97437
12	772512G	S02004
12	798512	BENCAJ9509
12	798512	BENCAL2313
12	798512	BENCAL6575
13	701813	9B6665
13	701813	G92924
13	701813	H10764
13	701813	H63434
13	701813	H63596
13	701813E	H40915
13	762413	T02660
14	750414	H91643
14	750414	H92945
14	750414	N68876
14	750414	P95479
14	750414	T39660
15	750115	H530181
15	750415	J35404
15	750415	S97819

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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 (b) 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 the failure of a high-pressure compressor disk due to Cadmium embrittlement, resulting in uncontained engine failure and damage to the airplane, accomplish the following:

(a) Remove from service stage 7 through stage 15 high-pressure compressor (HPC) disks identified in Appendix 1 of this AD as follows:

(1) For disks with less than 250 hours time in service (TIS) since last NiCd plating, remove disk and replace with a serviceable part within 100 hours TIS after the effective date of this AD.

(2) For disks with greater than or equal to 250 hours and less than 500 hours TIS since last NiCd plating, remove disk and replace with a serviceable part within 150 hours TIS after the effective date of this AD.

(3) For disks with greater than or equal to 500 hours TIS since last NiCd plating no action is required.

(4) Disks removed from service in accordance with this AD are not eligible for installation in any engine.

(b) 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, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(d) This amendment becomes effective on January 5, 1999.

Issued in Burlington, Massachusetts, on December 23, 1998.

David A. Downey,

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

[FR Doc. 98–34706 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–39]

Amendment to Class E Airspace; Wise, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above Ground Level (AGL) at Wise, VA. The development of new Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) and the Localizer (LOC) at Lonesome Pine Airport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the GPS RWY 6 SIAP, GPS RWY 24 SIAP and a LOC RWY 24 SIAP to Lonesome Pine Airport.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 3, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Wise, VA, was published in the **Federal Register** (63 FR 59255). The development of a GPS RWY 6 SIAP, GPS RWY 24 and a LOC RWY 24 SIAP for Lonesome Pine Airport requires the amendment of the Class E airspace at Wise, VA. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Wise, VA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 6 SIAP, GPS RWY 24 and LOC RWY 24 SIAP to Lonesome Pine Airport.

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 significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Wise, VA [Revised]

Lonesome Pine Airport, Wise, VA
(Lat. 36° 59′ 15″ N., long. 82° 31′ 49″ W.)

That airspace extending upward from 700 feet above the surface within an 10-mile radius of Lonesome Pine Airport.

* * * * *

Issued in Jamaica, New York, on December 18, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–34691 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–41]

Amendment to Class E Airspace; Milton, WV

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Milton, WV. The development of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Ona Airpark has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the GPS RWY 07 SIAP to Ona Airpark.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 3, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Milton, WV, was published in the **Federal Register** (63 FR 59257). The development of the GPS RWY 07 SIAP for Ona Airpark requires the amendment of the Class E airspace at Milton, WV. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Milton, WV, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 07 SIAP to Ona Airpark.

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 significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA WV E5 Milton, WV [Revised]

Ona Airpark, Milton, WV

(Lat. 38°26′26″ N., long. 82°12′05″ W.)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Ona Airpark.

* * * * *

Issued in Jamaica, New York, on December 18, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–34690 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–42]

Amendment to Class E Airspace; Winchester, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Winchester, VA. The development of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Winchester Regional Airport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the GPS RWY 14 SIAP to Winchester Regional Airport.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 28, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Winchester, VA, was published in the **Federal Register** (63 FR 57627). The development of the GPS RWY 14 SIAP for Winchester Regional Airport requires the amendment of the Class E airspace at Winchester, VA. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning

between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Winchester, VA. to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 14 SIAP to Winchester Regional Airport.

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 significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Winchester, VA [Revised]

Winchester Regional Airport, VA
(Lat. 39°08′37″ N., long. 78°08′40″ W.)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Winchester Regional Airport.

* * * * *

Issued in Jamaica, New York, on December 18, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–34689 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 740, 742, 743, 772 and 774

[Docket No. 9809–11233–8318–02]

RIN 0694–AB80

Encryption Items

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule amends the Export Administration Regulations (EAR) for exports and reexports of encryption commodities and software to U.S. subsidiaries, insurance companies, health and medical end-users, on-line merchants and foreign commercial firms. This rule implements the Administration's initiative to update it's encryption policy, and will streamline U.S. encryption export and reexport controls.

DATES: This rule is effective: December 31, 1998. Comments must be received on or before March 1, 1999.

ADDRESSES: Written comments on this rule should be sent to Nancy Crowe, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044. Express mail address: Nancy Crowe, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, 14th Street and Pennsylanvia Ave, N.W., Room 2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: James Lewis, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–0092.

SUPPLEMENTARY INFORMATION: On September 16, 1998, the Administration announced a series of steps to update its encryption policy in a way that meets the full range of national interests. These steps will promote electronic commerce, support law enforcement and national security, and protect privacy. They also further streamline exports and reexports of key recovery products, and other recoverable encryption products, which allow for the recovery of plaintext, and permit exports and reexports of encryption of any key length (with or without key recovery) to several industry sectors. This interim rule amends the EAR for exports and reexports of encryption commodities and software to U.S. subsidiaries, insurance companies, health and medical end-users, on-line merchants and foreign commercial firms. Specifically, this rule amends the EAR in the following ways:

1. In § 740.8, Key Management Infrastructure, removes the key recovery agent requirements for License Exception KMI eligibility for exports and reexports of recovery encryption commodities and software. Further, key recovery commitment plans and the six month progress reviews are eliminated and exporters are no longer required to name or submit to BXA additional information on a key recovery agent prior to export. The products may be exported or reexported under License Exception KMI after a technical review. Note also that 56-bit products supported by a KMI plan that have been classified after a technical review and are eligible under License Exception KMI are now eligible for export and reexport under License Exception ENC (see § 740.17(a)(3) of the EAR).

2. Also in § 740.8, removes and adds to newly created License Exception ENC the paragraphs concerning financial-specific encryption commodities and software and general purpose encryption commodities and software for banks and financial institutions. This transfer will simplify the use of License Exceptions for encryption commodities and software and creates no change in policy.

3. In part 740, creates new License Exception ENC by adding § 740.17, Encryption commodities and software. This new License Exception is divided into two significant parts: a global

category including the use of License Exception ENC for exports and reexports of encryption commodities and software to all destinations, except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria; and a country specific category permitting the use of License Exception ENC for exports and reexports of encryption commodities and software to countries listed in Supplement No. 3 to part 740. This new License Exception allows the following exports and reexports of encryption commodities and software that are classified under ECCNs 5A002 and 5D002, after a technical review that considers the cryptographic functionality of the product:

a. Exports and reexports of encryption commodities, software and technology, including source code of any key length are also eligible under this license exception to U.S. subsidiaries for internal company proprietary use to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. Encryption chips, integrated circuits, toolkits, executable or linkable modules, which can modify or enhance the cryptographic functionality (e.g., the confidentiality algorithm, key space and key exchange mechanism) or incorporate the cryptographic function in another item are eligible for license exception ENC only for export to U.S. subsidiaries. Note that exports to ''strategic partners'' of U.S. companies, such as subcontractors and joint ventures, will be considered favorably under a license when the end-use is for the protection of U.S. company proprietary information. For the purposes of this regulation, consideration as a ''strategic partner,'' as defined in part 772, should not be deemed to alter or affect any legal relationship that might otherwise exist between the relevant parties.

b. Encryption commodities, including mass market and non-mass market, and non-mass market software incorporating symmetric algorithms with key lengths up to and including 56-bits, such as DES or equivalent (such as RC2, RC4, RC5 and CAST) to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. Encryption chips, integrated circuits, toolkits and executable or linkable modules are not authorized for export under License Exception ENC and will require a license or an Encryption Licensing Arrangement. Note that subsequent bundling, updates or releases may be exported and reexported under applicable provisions of the EAR without a separate technical review as long as the functional encryption capacity of the originally reviewed encryption commodities, including mass market and non-mass market, and non-mass market software has not been modified or enhanced.

c. Authorizes insurance companies to receive general purpose encryption commodities and software of any key length that have been classified after a technical review. This change corresponds with the addition of insurance companies to the definition of financial institutions in part 772. With this change, exports and reexports of general purpose encryption commodities and software are eligible under License Exception ENC to financial institutions (including insurance companies) in all destinations listed in Supplement No. 3 to part 740, and to branches of these entities located worldwide except countries that support international terrorism (Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria).

d. Encryption commodities and software of any key length to health and medical end-users in all destinations listed in Supplement No. 3 to part 740. Exports and reexports of such commodities and software are not eligible under License Exception ENC to non-U.S. biochemical and pharmaceutical manufacturers and non-U.S. military health and medical entities. Licenses for such entities will be considered on a case-by-case basis.

e. Encryption commodities and software of any key length for on-line merchants in all destinations listed in Supplement No. 3 to part 740. Such commodities and software must be limited to client-server applications (e.g., Secure Socket Layer (SSL) based applications) or applications specially designed for on-line transactions. End-use is limited to the purchase or sale of goods and software; and services connected with the purchase or sale of goods and software, including interactions between purchasers and sellers necessary for ordering, payment and delivery of goods and software. No other end-uses or customer to customer communications or transactions are allowed. Foreign on-line merchants or their separate business units who are engaged in the manufacturing and distribution of items or services controlled on the U.S. Munitions List are excluded. Foreign government end-users also are excluded from this License Exception.

Examples of permitted end-uses under License Exception ENC for on-line merchants include buying and selling goods and software through an electronic medium, which may involve the ordering of, and payment for goods and software; placing and receiving orders; pricing, configuration, validation and ordering of products; obtaining copies of invoices; reviewing shipping schedules; notification of shipments or changes; and placing reservations and purchasing airline tickets. It allows for contract manufacturers to directly access demand and inventory information; direct purchasing with trading partners; approval functions for requisitions which require approval; and on-line catalogue purchases, and the electronic exchange of purchase or sales information by multiple trading partners. It does not include such end-uses as general purpose messaging, collaborative research projects (e.g., collaborative engineering), data warehousing, remote computing services or electronic communications services.

4. In Supplement No. 3 to part 740, adds Czech Republic and United States to the list of countries to clarify that branches of Czech Republic and U.S. banks and financial institutions, located worldwide except in countries that support international terrorism (Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria) may receive general purpose encryption commodities and software limited to secure business financial communications or transactions and financial communications or transactions between the bank and/or financial institution and its customers. Supplement No. 3 is also amended to reflect the licensing policy for exports and reexports of recoverable encryption commodities and software to commercial entities located in certain countries and subsidiaries of commercial entities headquartered in certain countries, wherever located, except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.

5. In § 742.15, revises the licensing policy for exports and reexports of encryption items as follows:

a. Removes the business and marketing plan requirement for exports of non-recovery 56-bit DES or equivalent encryption items.

b. Authorizes upgrades of 40-bit mass-market encryption software that has already been classified after a technical review and released from EI controls. Such software may be upgraded to 56-bits for the confidentiality algorithm without an additional technical review.

c. Makes certain encryption commodities eligible for mass-market treatment.

d. For exports and reexports of general purpose encryption commodities and software of any key length that are not eligible under License Exception ENC, insurance companies are now eligible to receive

such products under an Encryption Licensing Arrangement. This is consistent with the addition of insurance companies to the definition of financial institutions in part 772. Such encryption commodities and software will receive favorable consideration when the end-use is limited to secure financial communications or transactions, provided that there are no concerns about the country or specific end-user.

e. For exports and reexports of encryption commodities and software of any key length not eligible under License Exception ENC, such commodities and software will generally be approved under an Encryption Licensing Arrangement to all health and medical end-users, except non-U.S. biochemical and pharmaceutical manufacturers and non-U.S. military health and medical entities, in all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.

f. For exports and reexports of encryption commodities and software of any key length not eligible under License Exception ENC, such commodities and software will generally be approved under an Encryption Licensing Arrangement to on-line merchants in all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. The end-use is limited to the purchase or sale of goods and software; and services connected with the purchase or sale of goods and software including interactions between purchasers and sellers necessary for ordering, payment and delivery of goods and software. No other end-uses or customer-to-customer communications or transactions are allowed.

g. Exports and reexports of recoverable encryption commodities and software of any key length for use by commercial entities will generally be approved under an Encryption Licensing Arrangement to destinations listed in Supplement No. 3 to part 740 for the protection of company proprietary information. Such encryption commodities and software will also generally be approved for export and reexport to worldwide foreign subsidiaries of commercial firms headquartered in certain countries, except to subsidiaries located in Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.

Note that any country or end-user prohibited in the past from receiving encryption commodities and software under a specific Encryption Licensing Arrangement is reviewed on a case-by-case basis, and may be considered by BXA for eligibility under future Encryption Licensing Arrangement requests. All other exports and reexports of encryption items are reviewed on a case-by-case basis under a license application.

6. Also in § 742.15, clarifies the reporting requirement for exports to certain end-users.

7. In part 772, revises the definition of financial institution to include the meaning of insurance company and adds definitions for business unit, health and medical end-user, on-line merchant, recoverable commodities and software, strategic partner (of a U.S. company), and U.S. subsidiary. Also clarifies that such definitions only apply to encryption items.

BXA will in the near future update these regulations to reflect changes to encryption controls in the Wassenaar Arrangement and to address public comments on the September 22, 1998 rule (63 FR 50516) that implemented new licensing policies for banks and financial institutions.

Rulemaking Requirements

1. This interim rule has been determined to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 52.5 minutes per submission; and 0694–0104, ''Commercial Encryption Items Transferred from the Department of State to the Department of Commerce.'' The Department has submitted to OMB an emergency request for approval of the changes to the collection of information under OMB control number 0694–0104. Comments on collection 0694–0104 will be accepted until March 1, 1999.

It will take companies 15 minutes to complete each certification. It will take companies 15 minutes to complete notifications. For reporting under License Exception KMI, it will take companies 1 hour to complete KMI reporting. For reporting under License Exception ENC, it will take companies 4 hours to complete ENC reporting.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department of Commerce encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close March 1, 1999. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Comments should be provided with 5 copies.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records

Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Henry Gaston, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–0500.

The reporting burden for this collection is estimated to be approximately 815 hours, including the time for gathering and maintaining the data needed for completing and reviewing the collection of information. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments regarding these burden estimates or any other aspect of the collection of information, including suggestions for reducing the burdens, should be forward to Nancy Crowe, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, D.C. 20044, and David Rostker, Office of Management and Budget, OMB/OIRA, 725 17th Street, NW, NEOB Rm. 10202,Washington, D.C. 20503.

List of Subjects

15 CFR Parts 740 and 743

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Parts 742, 772 and 774

Exports, foreign trade.

Accordingly, 15 CFR Chapter 7, Subchapter C, is amended as follows:

1. The authority citation for 15 CFR parts 740 and 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Executive Order 13026 (November 15, 1996, 61 FR 58767); Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

2. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

3. The authority citation for 15 CFR part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

4. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Executive Order 13026 (November 15, 1996, 61 FR 58767); Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

PART 740—[AMENDED]

5. Section 740.8 is amended:

a. By revising the section title;

b. By revising paragraph (b);

c. By removing paragraph (d); and

d. By redesignating paragraph (e) as paragraph (d) to read as follows:

§ 740.8 Key management infrastructure (KMI)

(a) * * *

(b) *Eligible commodities and software.* (1) Recovery encryption commodities and software of any key length controlled under ECCNs 5A002 and 5D002 that have been classified after a technical review through a classification request. Key escrow and key recovery commodities and software must meet the criteria identified in Supplement No. 4 to part 742 of the EAR.

(2) For such classification requests, indicate ''License Exception KMI'' in block 9 on Form BXA–748P. Submit the original request to BXA in accordance with § 748.3 of the EAR and send a copy of the request to:

Attn: KMI Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246

* * * * *

6. Part 740 is amended by adding a new § 740.17 to read as follows:

§ 740.17 Encryption commodities and software (ENC).

(a) *Exports and reexports of encryption commodities and software to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.*

(1) *Financial-specific encryption commodities and software of any key length.*

(i) *Scope.* You may export and reexport financial-specific encryption commodities and software (which are not eligible under the provisions of License Exception TSU for mass market software such as SET or similar protocols) of any key length that are restricted by design (e.g., highly field-formatted with validation procedures, and not easily diverted to other end-uses) for financial applications to secure financial communications/transactions for end-uses such as financial transfers, or electronic commerce.

(ii) *Eligible commodities and software.* Encryption commodities and software of any key length classified under ECCNs 5A002 and 5D002 after a technical review (see paragraph (c) of this section). These commodities and software must be specifically designed and limited for use in the processing of electronic financial (commerce) transactions, which implements cryptography in specifically delineated fields such as merchant's identification, the customer's identification and address, the merchandise purchased and the payment mechanism. It does not allow for encryption of data, text or other media except as directly related to these elements of the electronic transaction to support financial communications/transactions. Notwithstanding the provisions of paragraph (c)(2) of this section, financial-specific commodities and software that were made eligible for License Exception KMI after a technical review prior to December 31, 1998, are now eligible for export and reexport under License Exception ENC under the provisions of this paragraph (a)(1).

(iii) *Eligible destinations.* Upon approval of your classification request, you may export and reexport under License Exception ENC financial-specific encryption commodities and software, as defined in this paragraph (a)(1), of any key length to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.

(iv) *Reporting requirements.* There are no reporting requirements.

(2) *Encryption commodities and software of any key length for U.S. subsidiaries. (i) Scope.* You may export

and reexport encryption commodities and software of any key length under License Exception ENC to U.S. subsidiaries (as defined in part 772 of the EAR) subject to the conditions of this paragraph (a)(2). Note that distributors, resellers or other entities that are not manufacturers of the encryption commodities and software are permitted to use License Exception ENC for U.S. subsidiaries only in instances where the export or reexport meets the terms and conditions of this paragraph (a)(2).

(ii) *Eligible commodities and software.* Encryption commodities, software and technology of any key length classified under ECCNs 5A002, 5D002 and 5E002 after a technical review (see paragraph (c) of this section). This includes encryption chips, integrated circuits, toolkits, executable or linkable modules, source code and technology to U.S. subsidiaries for internal company proprietary use, including the development of new products.

(iii) *Eligible destinations; retransfers.* You may export and reexport under License Exception ENC encryption commodities, software and technology of any key length to U.S. subsidiaries for internal company proprietary use, including the development of new products, in all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. All items developed using U.S. encryption commodities, software and technology are subject to the EAR. For exports and reexports to strategic partners of U.S. companies (as defined in part 772) see § 742.15(b)(8) of the EAR. Retransfers to other end-users or end-uses are prohibited without prior authorization.

(iv) *Reporting requirements.* There are no reporting requirements.

(3) *Encryption commodities, including mass market and non-mass market, and non-mass market encryption software incorporating symmetric algorithms with key lengths up to and including 56-bits, such as DES or equivalent.* (i) *Scope.* You may export and reexport encryption commodities, including mass market and non-mass market commodities, and non-mass market software with key lengths up to and including 56-bits, such as DES or equivalent, under License Exception ENC subject to the conditions of this paragraph (a)(3). For information concerning the technical review of encryption mass market commodities and mass market software refer to § 742.15(b)(1) of the EAR. Note that encryption mass market software remains eligible under License Exception TSU.

(ii) *Eligible commodities and software.* (A) Mass market and non-mass market encryption commodities and non-mass market software having symmetric algorithms with key lengths up to and including 56-bits, such as DES or equivalent (such as RC2, RC4, RC5, and CAST) which are classified as a result of a technical review (see paragraph (c) of this section). The commodity or software must not allow the alteration of the cryptographic functionality by the user or any other program. Encryption chips, integrated circuits, toolkits and executable or linkable modules are not authorized for export under the provisions of paragraph (a)(3).

(B)(*1*) For mass market and non-mass market encryption commodities and non-mass market encryption software, exporters of 40-bit or less encryption commodities and software which have been made eligible for License Exception KMI or License Exception TSU or have been licensed for export under an Encryption Licensing Arrangement or a license prior to December 31, 1998, will be permitted to export and reexport these commodities and software under license exception ENC with increased key lengths up to and including 56-bits for the confidentiality algorithm, with key exchange mechanisms including symmetric algorithms with the same or double key length authorized for the confidentiality algorithm, and asymmetric algorithms for key exchange with key space of 512, 768 or up to and including 1024 bits without an additional technical review, provided that there is no other change in cryptographic functionality. Exporters must certify to BXA that the only change to the encryption is the increase in the key length for the confidentiality algorithm, the asymmetric or symmetric key exchange algorithms and that there is no other change in cryptographic functionality. Such certifications must be in the form of a letter from senior corporate management and include the original authorization number issued by BXA, the date of issuance and the information identified in paragraphs (a)(2) (iii) throught (v) of Supplement No. 6 to part 742 of the EAR. (If this information was submitted previously, then only identify the modifications.) BXA must receive such certification by March 31, 1999, and prior to any export of such upgraded product.

(*2*) The certification should be sent to:

Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Department of Commerce, 14th Street and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230, Attn: Encryption Upgrade

(*3*) A copy of the certification should be sent to:

Attn: ENC Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246

(C) After March 31, 1999, any increase (upgrade) in the confidentiality algorithm and the key exchange algorithm must be reviewed by BXA through a classification request (see § 748.3 of the EAR). In Block 9 of form BXA–748P, indicate ''Key Length Upgrade.''

(iii) *Eligible destinations.* License Exception ENC is available for exports and reexports of encryption commodities and software with key length up to and including 56-bits, such as DES or equivalent to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.

(iv) *Reporting requirements.* See paragraph (d) of this section for reporting requirements.

(b) *Exports and reexports of certain encryption commodities and software to countries listed in Supplement No. 3 to part 740 of the EAR.* (1) *General purpose encryption commodities and software of any key length for use by banks/financial institutions.* (i) *Scope.* You may export and reexport general purpose, non-voice encryption commodities and software of any key length to banks and financial institutions (as defined in part 772 of the EAR) in specified destinations, subject to the conditions of this paragraph (b)(1). Note that distributors, resellers or other entities who are not manufacturers of the encryption commodities and software are permitted to use License Exception ENC for banks and financial institutions only in instances where the export or reexport meets the terms and conditions of this paragraph (b)(1).

(ii) *Eligible commodities and software.* General purpose, non-voice encryption commodities and software of any key length classified under ECCNs 5A002 and 5D002 after a technical review (see paragraph (c) of this section). Note that software and commodities that have already been approved under an Encryption Licensing Arrangement to banks and financial institutions in specified countries may now be exported or reexported to other banks and financial institutions in those countries under the same Encryption Licensing Arrangement.

(iii) *Eligible destinations; retransfers.* Upon approval of your classification request, you may export and reexport

under License Exception ENC general purpose, non-voice encryption commodities and software, as defined in this paragraph (b)(1), of any key length to banks and financial institutions in all destinations listed in Supplement No. 3 to this part and to branches of such banks and financial institutions wherever established, except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. End-use is limited to secure business financial communications or transactions and financial communications/transactions between the bank and/or financial institution and its customers. No customer to customer communications or transactions are allowed. Retransfers to other end-users or end-uses are prohibited without prior authorization.

(iv) *Reporting requirements.* There are no reporting requirements.

(2) *Health and medical end-users.* (i) *Scope.* You may export and reexport encryption commodities and software of any key length under License Exception ENC to health and medical end-users (as defined in part 772 of the EAR) in specified destinations, subject to the conditions of this paragraph (b)(2). Note that distributors, resellers or other entities who are not manufacturers of the encryption commodities and software are permitted to use License Exception ENC for health and medical end-users only in instances where the export or reexport meets the terms and conditions of this paragraph (b)(2).

(ii) *Eligible commodities and software.* Encryption commodities and software of any key length classified under ECCNs 5A002 and 5D002 after a technical review (see paragraph (c) of this section).

(iii) *Eligible destinations; retransfers.* You may export and reexport under License Exception ENC encryption commodities and software of any key length to health and medical end-users in all destinations listed in Supplement No. 3 to this part. Non-U.S. biochemical and pharmaceutical manufacturers, and non-U.S. military health and medical entities are not eligible to receive encryption commodities and software under License Exception ENC (see § 742.15 of the EAR for licensing information on these end-users, as well as additional countries). End-use is limited to securing health and medical transactions to health and medical end-users. No customer to customer communications or transactions are allowed. Retransfers to other end-users or end-uses are prohibited without prior authorization.

(iv) *Reporting requirements.* See paragraph (d) of this section for reporting requirements for exports under this License Exception.

(3) *Encryption commodities and software of any key length for on-line merchants.* (i) *Scope.* You may export and reexport encryption commodities and software of any key length under License Exception ENC to on-line merchants (as defined in part 772 of the EAR) in specified destinations, subject to the conditions of this paragraph (b)(3). End-use is limited to: the purchase or sale of goods and software; and services connected with the purchase or sale of goods and software including interactions between purchasers and sellers necessary for ordering, payment and delivery of goods and software. No other end-uses or customer to customer communications or transactions are allowed. Foreign on-line merchants or their separate business units (as defined in part 772 of the EAR) who are engaged in the manufacturing and distribution of items or services controlled on the U.S. Munitions List are excluded. Foreign government end-users are also excluded from this License Exception. Note that distributors, resellers or other entities who are not manufacturers of the encryption commodities and software are permitted to use License Exception ENC for on-line merchants only in instances where the export or reexport meets the terms and conditions of this paragraph (b)(3).

(ii) *Eligible commodities and software.* Encryption commodities and software of any key length classified under ECCNs 5A002 and 5D002 after a technical review (see paragraph (c) of this section). Such commodities and software must be limited to client-server applications (e.g. Secure Socket Layer (SSL) based applications) or applications specially designed for on-line transactions for the purchase or sale of goods and software; and services connected with the purchase or sale of goods and software, including interactions between purchasers and sellers necessary for ordering, payment and delivery of goods and software. Notwithstanding the provisions of paragraph (c)(2) of this section, commodities and software that were eligible for export to on-line merchants under an Encryption Licensing Arrangement or license prior to December 31, 1998, are now eligible for export and reexport under License Exception ENC under the provisions of this paragraph (b)(3).

(iii) *Eligible destinations; retransfers.* You may export and reexport encryption commodities and software under License Exception ENC to on-line merchants in all destinations listed in Supplement No. 3 to this part, except to foreign on-line merchants or their separate business units who are engaged in the manufacturing and distribution of items or services controlled on the U.S. Munitions List. Retransfers to other end-users or end-uses are prohibited without prior authorization.

(iv) *Reporting requirements.* See paragraph (d) of this section for reporting requirements for exports under this License Exception.

(c) *Technical review to determine eligibility for License Exception ENC.* (1) You may initiate a technical review required by paragraph (a) or (b) of this section by submitting a classification request for your product in accordance with the provisions of § 748.3(b) of the EAR. Indicate ''License Exception ENC'' in Block 9: Special purpose, on form BXA–748P. Submit the original request to BXA in accordance with § 748.3 of the EAR and send a copy of the request to:

Attn: ENC Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246

(2) Commodities and software that have been made eligible for License Exception TSU or KMI or which have been approved for export under an Encryption Licensing Arrangement or a license prior to December 31, 1998 are eligible for export and reexport under all paragraphs of License Exception ENC, except paragraphs (a)(1) and (b)(3) of this section, without an additional technical review, provided that the export or reexport meets all the terms and conditions of this License Exception. For all other commodities and software, a technical review will determine eligibility for License Exception ENC by reviewing the confidentiality algorithm, key space, and key exchange mechanism.

(3) For export and reexport of encryption commodities and software under paragraph (a)(3) of this section, examples of eligible key exchange mechanisms include, but are not limited to, symmetric algorithms with the same or double the key length authorized for the confidentiality algorithm, asymmetric algorithms with key space of 512, 768 or up to and including 1024 bits, proprietary key exchange mechanisms, or others.

(4) For export and reexport of encryption commodities and software under paragraph (b)(3) of the License Exception ENC, exporters, in order to expedite review of the classification, should submit, as applicable, the following types of information to support the classification request:

(i) Information describing how the product is limited to a client-server application or application specially designed or tailored to the conditions outlined in the License Exception;

(ii) Information describing the end-user environment to which the application will be limited;

(iii) Information explaining how the product will not permit customer-to-customer communications or transactions above 56-bits;

(iv) Information on the process by which the merchant(s) or application will limit access to authorized users; or

(v) Details of the encryption system, including how it is limited to the application or cannot be diverted to other end-uses.

(d) *Reporting requirements.* (1) You must provide to BXA the names and addresses for exports to the following end-users:

(i) All military and government end-users for non-mass market commodities and non-mass market software exports authorized under paragraph (a)(3) of this section;

(ii) All health and medical end-users for exports authorized under paragraph (b)(2) of this section, and

(iii) All foreign on-line merchants for exports authorized under paragraph (b)(3) of this section.

(2) You must submit reports no later than February 1 and no later than August 1 of any given year. Specifically, the report must identify the end-user name and address and country of ultimate destination, as well as the classification or other authorization number. Send the report to the following address:

Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Department of Commerce, 14th Street and Pennsylvania Ave., N.W., Room 2705, Washington, D.C. 20230, Attn: Encryption Reports

7. Supplement No. 3 is revised to read as follows:

Supplement No. 3 to Part 740—Countries Eligible To Receive General Purpose Encryption Commodities and Software

Anguilla*	Finland**
Antigua*	France **
Argentina*	Germany**
Aruba*	Greece*
Austria**	Hong Kong
Australia**	Hungary*
Bahamas*	Iceland**
Barbados*	Ireland**
Belgium**	Italy**
Brazil*	Japan**
Canada**	Kenya*
Croatia	Luxembourg**
Czech Republic*	Monaco*
Denmark**	The Netherlands**
Dominica*	New Zealand**
Ecuador*	Norway**
Poland*	Sweden**
Portugal**	Switzerland**
St. Kitts & Nevis*	Trinidad & Tobago*
St. Vincent/Grenadines*	Turkey*
Seychelles*	Uruguay*
Singapore	United Kingdom**
Spain**	United States**

*Commercial entities and their branches located in these countries or any country listed in this Supplement and designated with one or two asterisks are eligible to receive ''recoverable'' encryption commodities and software of any key length for internal company proprietary use. See § 742.15(b)(7) of the EAR.

**Commercial entities headquartered in these countries and their branches wherever located (except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria) are eligible to receive ''recoverable'' encryption commodities and software of any key length for internal company proprietary use. See § 742.15(b)(7) of the EAR.

PART 742—[AMENDED]

8. Section 742.15 is amended:

a. By revising the first sentence of paragraph (a);

b. By revising the phrase ''Supplements No. 4, No. 5 and No. 7'' in the introductory paragraph (b) to read ''Supplement No. 4'';

c. By revising the phrase ''encryption software'' in the title to paragraph (b)(1) to read ''encryption commodities and software'';

d. By revising paragraph (b)(1)(i);

e. By adding new paragraphs (b)(1)(iii) and (b)(1)(iv);

f. By revising paragraph (b)(2);

g. By removing paragraph (b)(3);

h. By redesignating paragraphs (b)(4) and (5) as (b)(3) and (4);

i. By revising newly redesignated paragraphs (b)(3);

j. By revising the heading of newly redesignated paragraph (b)(4);

k. By removing the phrase ''non-recoverable'' in the first sentence of newly redesignated paragraph (b)(4).

l. By revising the phrase ''under License Exception KMI (see § 740.8 of the EAR)'' in newly redesignated paragraph (b)(4) to read ''License Exception ENC (see § 740.17(a)(1) of the EAR)'';

m. By redesignating paragraph (b)(6) and (7) as (b)(8) and (9);

n. By adding new paragraphs (b)(5), (6) and (7); and

o. By adding a new paragraph (b)(8)(iii) to read as follows:

§ 742.15 Encryption items.

* * * * *

(a) Licenses are required for exports and reexports to all destinations, except Canada, for items controlled under ECCNs having an ''EI'' (for ''encryption items'') under the ''Control(s)'' paragraph. * * *

(b) * * *

(1) * * *

(i) Consistent with E.O. 13026 of November 15, 1996 (61 FR 58767), certain encryption software that was transferred from the U.S. Munitions List to the Commerce Control List pursuant to the Presidential Memorandum of November 15, 1996, may be released from EI controls and thereby made eligible for mass market treatment after a technical review. Further, certain encryption commodities may be released from EI controls and thereby made eligible for mass market treatment after a technical review. To determine eligibility for mass market treatment, exporters must submit a classification request to BXA. 56-bit mass market encryption commodities and software using RC2, RC4, RC5, DES or CAST, and key exchange mechanisms including, but not limited to, symmetric algorithms with the same or double the key length authorized for the confidentiality algorithm, asymmetric algorithms with key space of 512, 768 or up to and including 1024 bits, proprietary key exchange mechanisms, or others, may be eligible for a 7-day review process, and company proprietary commodities and software implementations may be eligible for 15-day processing. Refer to Supplement No. 6 to part 742 and § 748.3(b)(3) of the EAR for additional information. Note that the technical review is for a determination to release encryption commodities and software in object code only unless otherwise specifically requested. Exporters requesting release of the source code should refer to paragraph (b)(3)(v)(E) of Supplement No. 6 to part 742.

(ii) * * *

(iii) If after a technical review, BXA determines that the encryption commodity is released from EI controls, the commodity is eligible for export under License Exception ENC and all provisions of the EAR applicable to other commodities. However, if BXA determines that the commodity is not released from EI controls, and no License Exception applies, a license is required for export and reexport to all destinations, except Canada, and license applications will be considered on a case-by-case basis.

(iv) Mass-market encryption software that has already been classified after a technical review and that has been released from EI controls under the provisions of this paragraph (b)(1) will be permitted for export and reexport under license exception TSU with increases of 56-bits for the confidentiality algorithm, the same or double the key length authorized for the confidentiality algorithm for symmetric

algorithms for key exchange mechanisms and with key spaces of 512, 768 or up to and including 1024 bits for asymmetric algorithms for key exchange without an additional technical review, provided that there is no other change in the cryptographic functionality. Exporters must notify BXA in writing of the increase in the key length for the confidentiality algorithm, the asymmetric or symmetric key exchange algorithms, and include the original authorization number issued by BXA and the information identified in paragraphs (a)(2)(iii) through (v) of Supplement No. 6 to part 742 of the EAR (if this information was submitted previously, then only identify the modifications). BXA must receive such notification by March 31, 1999.

(A) The notification should be sent to:

Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Department of Commerce, 14th Street and Pennsylvania Ave., N.W., Room 2705, Washington, D.C. 20230, Attn: Encryption Upgrade

(B) A copy of the certification should be sent to:

Attn: ENC Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246

(2) *Key escrow and key recovery encryption commodities and software.* Certain recovery encryption commodities and software of any key length that are classified under ECCNs 5A002 and 5D002 after a technical review are eligible for export and reexport under License Exception KMI. See § 740.8(b)(1) of the EAR for information on additional eligibility requirements.

(3) *General purpose encryption commodities and software of any key length for use by banks and financial institutions.*

(i) Commodities and software that were eligible for License Exception TSU or KMI or have been licensed for export or reexport under an Encryption Licensing Arrangement or a license prior to December 31, 1998, are now eligible for export and reexport under License Exception ENC under the provisions of § 740.17(b)(1) of the EAR.

(ii) For exports and reexports not eligible under a License Exception, exports and reexports of general purpose non-voice encryption commodities and software classified under ECCNs 5A002 and 5D002 of any key length will generally be approved under an Encryption Licensing Arrangement for use by banks and financial institutions (as defined in part 772 of the EAR) in all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. Applications for such commodities and software will receive favorable consideration when the end-use is limited to secure business financial communications or transactions and financial communications/transactions between the bank and/or financial institution and its customers provided that there are no concerns about the country or end-user. No customer to customer communications or transactions are allowed.

(iii) Note that any country or end-user prohibited in the past from receiving encryption commodities and software under a specific Encryption Licensing Arrangement will be reviewed on a case-by-case basis, and may be considered by BXA for eligibility under future Encryption Licensing Arrangement requests.

(iv) Note that distributors, resellers or other entities who are not manufacturers of the encryption commodities and software are permitted to use an existing Encryption Licensing Arrangement for exports and reexports of these products only when Encryption Licensing Arrangement has been granted to the manufacturer and the export and reexport meets the terms and conditions of this paragraph (b)(3).

(v) There are no reporting requirements for exports to banks and financial institutions.

(4) *Financial-specific encryption items of any key length.* * * *

(5) *Encryption commodities and software of any key length for use by health and medical end-users.* (i) Commodities and software that have been classified after a technical review through a classification request or have been licensed for export under an Encryption Licensing Arrangement or a license are eligible for export and reexport under License Exception ENC to health and medical end-users without an additional technical review, provided that the export or reexport meets all the terms and conditions of that License Exception. See § 740.17 of the EAR. Commodities and software that were eligible for License Exception TSU or KMI or have been licensed for export or reexport under an Encryption Licensing Arrangement or a license prior to December 31, 1998, are now eligible for export and reexport under License Exception ENC under the provisions of § 740.17(b)(2) of the EAR.

(ii) For exports and reexports that are not eligible under License Exception ENC, exports and reexports of encryption commodities and software classified under ECCNs 5A002 and 5D002 of any key length will generally be approved under an Encryption Licensing Arrangement for use by health and medical end-users (as defined in part 772 of the EAR) in all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria except for non-U.S. biochemical and pharmaceutical manufacturers and non-U.S. military health and medical entities. No customer to customer communications or transactions are allowed.

(iii) Note that any country or end-user prohibited in the past from receiving encryption commodities and software under a specific Encryption Licensing Arrangement will be reviewed on a case-by-case basis, and may be considered by BXA for eligibility under future Encryption Licensing Arrangement requests.

(iv) Note that distributors, resellers or other entities who are not manufacturers of the encryption commodities and software are permitted to use an existing Encryption Licensing Arrangement for exports and reexports of these products only when Encryption Licensing Arrangement has been granted to the manufacturer and the export and reexport meets the terms and conditions of this paragraph (b)(5).

(v) You must submit to BXA the name and address of the end-user.

(6) *Encryption commodities and software of any key length for on-line merchants.* (i) Commodities and software that were eligible for export to on-line merchants under an Encryption Licensing Arrangement prior to December 31, 1998, are now eligible for export and reexport under License Exception ENC under the provisions of § 740.17(b)(3).

(ii) Exports and reexports of encryption commodities and software classified under ECCNs 5A002 and 5D002 of any key length which are limited to client-server applications (e.g., Secure Socket Layer (SSL) based applications) or applications specially designed for on-line transactions for the purchase or sale of goods and software will be permitted under an Export Licensing Arrangement in all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria for use by foreign on-line merchants as defined in part 772 of the EAR. End-use is limited to: the purchase or sale of goods and software; and services connected with the purchase or sale of goods and software, including interactions between purchasers and sellers necessary for ordering, payment and delivery of goods and software. No other end-uses or customer to customer communications or transactions are allowed.

(iii) Applications for Encryption Licensing Arrangements for on-line

merchants will generally be approved, except for foreign on-line merchants or their separate business units (as defined in part 772 of the EAR) who are engaged in the manufacturing and distribution of items or services controlled on the U.S. Munitions List. Such end-users will be considered on a case-by-case basis.

(iv) Note that any country or end-user prohibited in the past from receiving encryption commodities and software under a specific Encryption Licensing Arrangement will be reviewed on a case-by-case basis, and may be considered by BXA for eligibility under future Encryption Licensing Arrangement requests.

(v) Note that distributors, resellers or other entities who are not manufacturers of the encryption commodities and software are permitted to use an existing Encryption Licensing Arrangement for exports and reexports of these products only when Encryption Licensing Arrangement has been granted to the manufacturer and the export and reexport meets the terms and conditions of this paragraph (b)(6).

(v) You must submit to BXA the name and address of the end-user.

(7) *Recoverable encryption commodities and software of any key length for use by commercial entities.* (i) Exports and reexports of recoverable encryption commodities and software (as defined in part 772 of the EAR) classified under ECCNs 5A002 and 5D002 of any key length will generally be approved under an Encryption Licensing Arrangement to destinations designated with a ''*'' or ''**'' in Supplement No. 3 to part 740 of the EAR to foreign commercial entities for internal company proprietary use. Such encryption commodities and software will generally be approved for export and reexport to foreign subsidiaries of commercial firms headquartered in countries designated with a ''**'' in Supplement No. 3 to part 740 of the EAR that are located in any destination except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. Exports and reexports to telecommunication and internet service providers is permitted under this policy for internal company proprietary use. Use by service providers to provide service to customers is excluded from this policy, but exports may be possible under a license or an Encryption Licensing Arrangement on a case-by-case basis. This policy of approval excludes those foreign commercial firms or their separate business units (as defined in part 772 of the EAR) engaged in the manufacturing and distribution of items or services controlled by the U.S. Munitions List.

(ii) Note that any country or end-user prohibited in the past from receiving encryption commodities and software under a specific Encryption Licensing Arrangement will be reviewed on a case-by-case basis, and may be considered by BXA for eligibility under future Encryption Licensing Arrangement requests.

(iii) Note that distributors, resellers or other entities who are not manufacturers of the encryption commodities and software are permitted to use an existing Encryption Licensing Arrangement for exports and reexports of these products only when Encryption Licensing Arrangement has been granted to the manufacturer and the export and reexport meets the terms and conditions of this paragraph (b)(7).

(iv) You must submit to BXA the name and address of the end-user.

(8) *All other encryption items.* * * *

(iii) Exports and reexports of encryption commodities and software of any key length to ''strategic partners'' of U.S. companies will receive favorable consideration when the end-use is for the protection of U.S. company proprietary information.

* * * * *

9. Supplement No. 4 to part 742 is amended by revising paragraph (8) to read as follows:

Supplement No. 4 to Part 742—Key Escrow or Key Recoverable Products Criteria

* * * * *

(8) The product's cryptographic function's key(s) or other material/information required to decrypt ciphertext shall be accessible to government officials under proper legal authority.

10. Part 742 is amended by removing and reserving Supplement No. 5 and Supplement No. 7.

11. Supplement No. 6 to part 742 is revised to read as follows:

Supplement No. 6 to Part 742—Guidelines for Submitting a Classification Request for Mass Market Encryption Commodities and Software

Classification requests for release of certain mass market encryption commodities and software from EI controls must be submitted on Form BXA–748P, in accordance with § 748.3 of the EAR. To expedite review of the request, clearly mark the envelope ''Attn.: Mass Market Encryption (Commodity) or (Software) Classification Request''. In Block 9: Special Purpose of the Form BXA–748P, you must insert the phrase ''Mass Market Encryption (Commodity) or (Software). Failure to insert this phrase will delay processing. In addition, the Bureau of Export Administration recommends that such requests be delivered via courier service to: Bureau of Export Administration, Office of Exporter Services, Room 2705, 14th Street and Pennsylvania Ave., N.W., Washington, D.C. 20230. In addition, send a copy of the request and all supporting documents by Express Mail to: Attn: Mass Market Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246.

(a) Requests for mass market encryption commodities and software that meet the criteria in paragraph (a)(2) of this Supplement will be processed in seven (7) working days from receipt of a properly completed request. Those requests for mass market encryption commodities and software that meet the criteria of paragraph (a)(1) of this Supplement only will be processed in fifteen (15) working days from receipt of a properly completed request. When additional information is requested, the request will be processed within 15 working days of the receipt of the requested information.

(1) A mass market product that meets the criteria established in this paragraph will be processed in fifteen (15) working days from receipt of the properly completed request:

(i) The commodity or software must be mass market. Mass market commodities and software that are available to the public via sales from stock at retail selling points by means of over-the-counter transactions, mail order transactions, or telephone call transactions;

(ii) The commodity or software must be designed for installation by the user without further substantial support by the supplier. Substantial support does not include telephone (voice only) help line services for installation or basic operation, or basic operation training provided by the supplier; and

(iii) The commodity or software includes encryption for data confidentiality.

(2) A mass market commodity or software product that meets all the criteria established in this paragraph will be processed in seven (7) working days from receipt of the properly completed request:

(i) The commodity or software meets all the criteria established in paragraph (a)(1) (i) through (iii) of this Supplement;

(ii) The confidentiality algorithm must be RC2, RC4, RC5, DES or CAST with a key space no longer than 56-bits. The RC2, RC4 and RC5 algorithms are proprietary to RSA Data Security, Inc. To ensure that the subject commodity or

software is properly licensed and correctly implemented, contact RSA Data Security, (415) 595–8782. The CAST algorithm is proprietary to Entrust Technologies, Inc. To ensure that the subject software is properly licensed and correctly implemented, contact Entrust Technologies, Inc., (972) 994–8000;

(iii) If any combination of RC2, RC4, RC5, DES or CAST are used in the same commodity or software, their functionality must be separate. That is, no data can be operated sequentially on by both routines or multiply by either routine;

(iv) The commodity or software must not allow the alteration of the confidentiality mechanism and its associated key spaces by the user or any other program;

(v) The key exchange used in confidentiality must be:

(A) A public key algorithm with a key space less than or equal to a 512-bit, 768-bit or up to and including 1024 bit modulus and/or;

(B) A symmetric algorithm with a key space less than or equal to 112-bits; and

(vi) The commodity or software must not allow the alteration of the key management mechanism and its associated key space by the user or any other program.

(b)(1) To submit a classification request for a product that is eligible for the seven-day handling, you must provide the following information in a cover letter to the classification request. Send the original to the Bureau of Export Administration. Send a copy of the application and all supporting documentation by Express Mail to:

Attn.: Mass Market Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246

(2) Instructions for the preparation and submission of a classification request that is eligible for seven day handling are as follows:

(3) If the commodity or software product meets the criteria in paragraph (a)(2) of this Supplement, you must call the Department of Commerce on (202) 482–0092 to obtain a test vector, or submit to BXA a copy of the encryption subsystem source code. The test vector or source code must be used in the classification process to confirm that the software has properly implemented the approved encryption algorithms.

(4) Upon receipt of the test vector, the applicant must encrypt the test plain text input provided using the product's encryption routine (RC2, RC4, RC5, DES or CAST) with the given key value. The applicant should not pre-process the test vector by any compression or any other routine that changes its format. Place the resultant test cipher text output in hexadecimal format on an attachment to form BXA–748P.

(5) You must provide the following information in a cover letter to the classification request:

(i) Clearly state at the top of the page ''Mass Market Encryption (Commodity) (Software)—7 Day Expedited Review Requested'';

(ii) State that you have reviewed and determined that the commodity or software subject to the classification request meets the criteria of paragraph (a)(2) of this Supplement;

(iii) State the name of the single commodity or software product being submitted for review. A separate classification request is required for each product;

(iv) State how the commodity or software has been written to preclude user modification of the encryption algorithm, key management mechanism, and key space;

(v) Provide the following information for the commodity or software product:

(A) Whether the commodity or software uses the RC2, RC4, RC5, DES or CAST algorithm and how the algorithm(s) is used. If any combination of these algorithms are used in the same product, and also state how the functionality of each is separated to assure that no data is operated by more than one algorithm;

(B) Pre-processing information of plaintext data before encryption (e.g. the addition of clear text header information or compression of the data);

(C) Post-processing information of cipher text data after encryption (e.g. the addition of clear text header information or packetization of the encrypted data);

(D) Whether a public key algorithm or a symmetric key algorithm is used to encrypt keys and the applicable key space;

(E) For classification requests regarding source code:

(*1*) Reference the applicable executable product that has already received a technical review;

(*2*) Include whether the source code has been modified by deleting the encryption algorithm, its associated key management routine(s), and all calls to the algorithm from the source code, or by providing the encryption algorithm and associated key management routine(s) in object code with all calls to the algorithm hidden. You must provide the technical details on how you have modified the source code;

(*3*) Include a copy of the sections of the source code that contain the encryption algorithm, key management routines, and their related calls; and

(F) Provide any additional information which you believe would assist in the review process.

(c) Instructions for the preparation and submission of a classification request that is eligible for 15-day handling are as follows:

(1) If the commodity or software product meets only the criteria in paragraph (a)(1) of this Supplement, you must prepare a classification request. Send the original to the Bureau of Export Administration. Send a copy of the application and all supporting documentation by Express Mail to:

Attn.: Mass Market Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246

(2) You must provide the following information in a cover letter to the classification request:

(i) Clearly state at the top of the page ''Mass Market Encryption (Commodity)(Software)—15 Day Expedited Review Requested'';

(ii) State that you have reviewed and determined that the commodity or software subject of the classification request, meets the criteria of paragraph (a)(1) of this Supplement;

(iii) State the name of the single commodity or software product being submitted for review. A separate classification request is required for each product;

(iv) State that a duplicate copy, in accordance with paragraph (c)(1) of this Supplement, has been sent to the 15-day Encryption Request Coordinator; and

(v) Ensure that the information provided includes brochures or other documentation or specifications relating to the commodity or software, as well as any additional information which you believe would assist in the review process.

(3) Contact the Bureau of Export Administration on (202) 482–0707 prior to submission of the classification to facilitate the submission of proper documentation.

PART 743—[AMENDED]

12. Section 743.1 is amended:

a. By revising the phrase ''GOV and KMI (under the provisions of § 740.8(b)(2)(ii) and (iii) only)'' in paragraph (b) to read ''ENC''; and

b. By removing the phrase '', 5A002, 5B002, 5D002, and 5E002'' in paragraph (c)(1)(v).

PART 772—[AMENDED]

13. Part 772 is amended by revising the definition of ''Financial Institution'' and adding, in alphabetical order, new definitions for ''Business Unit'',

''Health/medical end-user'', ''On-line merchant'', ''Recoverable commodities and software'', ''Strategic partner,'' and ''U.S. subsidiary''.

* * * * *

Business Unit. As applied to encryption items, means a unit of a business which, whether or not separately incorporated, has:

(a) A distinct organizational structure which does not overlap with other business units of the same business;

(b) A distinct set of accounts; and

(c) Separate facilities for purchase, sale, delivery, and production of goods and services.

* * * * *

Financial Institution. As applied to encryption items, means any of the following:

(a) A broker, dealer, government securities broker or dealer, self-regulatory organization, investment company or investment adviser, which is regulated or supervised by the Securities and Exchange Commission or a self-regulatory organization that is registered with the Securities and Exchange Commission; or

(b) A broker, dealer, government securities broker or dealer, investment company, investment adviser, or entity that engages in securities activities that, if conducted in the United States, would be described by the definition of the term ''self-regulatory organization'' in the Securities Exchange Act of 1934, which is organized under the laws of a foreign country and regulated or supervised by a foreign securities authority; or

(c) A U.S. board of trade that is designated as a contract market by the Commodity Futures Trading Commission or a futures commission merchant that is regulated or supervised by the Commodity Futures Trading Commission; or

(d) A U.S. entity engaged primarily in the business of issuing a general purpose charge, debit, or stored value card, or a branch of, or affiliate controlled by, such an entity; or

(e) A branch or affiliate of any of the entities listed in paragraphs (a), (b), or (c) of this definition regulated or supervised by the Securities and Exchange Commission, the Commodity Futures Trading Commission, or a foreign securities authority; or

(f) An affiliate of any of the entities listed in paragraph (a), (b), (c), or (e), of this definition engaged solely in the business of providing data processing services to one or more bank or financial institutions, or a branch of such an affiliate; or

(g) A company organized and regulated under the laws of any of the United States and its branches and affiliates whose primary and predominant business activity is the writing of insurance or the reinsuring of risks; or a company organized and regulated under the laws of a foreign country and its branches and affiliates whose primary and predominant business activity is the writing of insurance or the reinsuring of risks.

* * * * *

Health/medical end-user. As applied to encryption items, means any entity, including civilian government agencies, the primary purpose of which is the provision of medical or other health services. The term medical or other health services includes the following items or services:

(a) Physicians' services and services and supplies furnished as an incident to a physician's professional service (such as laboratory services), of kinds which are commonly furnished in physicians' offices; services provided by a physician assistant or by a nurse practitioner; including services which would be physicians' services if furnished by a physician and which are performed by a physician assistant under the supervision of a physician, or services which would be physicians' services if furnished by a physician and which are performed by a nurse practitioner or clinical nurse specialist in collaboration with a physician; certified nurse-midwife services or services of a certified registered nurse anesthetist;

(b) Hospital services incident to physicians services rendered to outpatients and hospitalization services incident to such services; ambulance services;

(c) Psychologist services or clinical social worker services; or

(d) Health cost reimbursers (e.g., health insurers, HMOs).

* * * * *

On-line merchant. As applied to encryption items, means an entity regularly engaged in lawful commerce that uses means of electronic communications (e.g., the Internet) to conduct commercial transactions.

* * * * *

Recoverable commodities and software. As applied to encryption items, means any of the following:

(a) A stored data product containing a recovery feature that, when activated, allows recovery of the plaintext of encrypted data without the assistance of the end-user; or

(b) A product or system designed such that a network administrator or other authorized persons who are removed from the end-user can provide law enforcement access to plaintext without the knowledge or assistance of the end-user. This includes, for example, products or systems where plaintext exists and is accessible at intermediate points in a network or infrastructure system, enterprise-controlled recovery systems, and products which permit recovery of plaintext at the server where a system administrator controls or can provide recovery of plaintext across an enterprise.

Note to this definition: ''Plaintext'' indicates that data that is initially received by or presented to the recoverable product before encryption takes place.

* * * * *

Strategic partner (of a U.S. company). As applied to encryption items, means a foreign-based entity that:

(a) Has a business need to share the proprietary information with one or more U.S. companies; and

(b) Is contractually bound to the U.S. company (e.g., has an established pattern of continuing or recurring contractual relations).

* * * * *

U.S. subsidiary. As applied to encryption items, means

(a) A foreign branch of a U.S. company; or

(b) A foreign subsidiary or entity of a U.S. entity in which:

(1) The U.S. entity beneficially owns or controls (whether directly or indirectly) 25 percent or more of the voting securities of the foreign subsidiary or entity, if no other persons owns or controls (whether directly or indirectly) an equal or larger percentage; or

(2) The foreign entity is operated by the U.S. entity pursuant to the provisions of an exclusive management contract; or

(3) A majority of the members of the board of directors of the foreign subsidiary or entity also are members of the comparable governing body of the U.S. entity; or

(4) The U.S. entity has the authority to appoint the majority of the members of the board of directors of the foreign subsidiary or entity; or

(5) The U.S. entity has the authority to appoint the chief operating officer of the foreign subsidiary or entity.

PART 774—[AMENDED]

14. In Supplement No. 1 to part 774, Category 5—Telecommunications and Information Security is amended by revising the License Requirements section of ECCNs 5A002 and 5D002 to read as follows:

5A002 Systems, equipment, application specific ''assemblies'', modules or integrated circuits for ''information security'', and specially designed components therefor.

License Requirements

REASON FOR CONTROL: NS, AT, EI

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
AT applies to entire entry.	AT Column 1.

EI applies to encryption items transferred from the U.S. Munitions List to the Commerce Control List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date. Refer to § 742.15 of this subchapter.

* * * * *

5D002 Information Security—''Software''.

License Requirements

REASON FOR CONTROL: NS, AT, EI

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
AT applies to entire entry.	AT Column 1.

EI applies to encryption items transferred from the U.S. Munitions List to the Commerce Control List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date. Refer to § 742.15 of the EAR.

Note: Encryption software is controlled because of its functional capacity, and not because of any informational value of such software; such software is not accorded the same treatment under the EAR as other ''software''; and for export licensing purposes, encryption software is treated under the EAR in the same manner as a commodity included in ECCN 5A002. License Exceptions for commodities are not applicable.

Note: Encryption software controlled for EI reasons under this entry remains subject to the EAR even when made publicly available in accordance with part 734 of the EAR, and it is not eligible for the General Software Note (''mass market'' treatment under License Exception TSU for mass market software). After a technical review, certain encryption software may be released from EI controls and made eligible for the General Software Note treatment as well as other provisions of the EAR applicable to software. Refer to § 742.15(b)(1) of the EAR, and Supplement No. 6 to part 742 of the EAR.

* * * * *

Dated: December 23, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 98–34669 Filed 12–30–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 46 and 131

[Docket No. RM99–4–000; Order No. 601]

Filing Requirements Under Parts 46 and 131 for Persons Holding Interlocking Directorates

December 18, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission. (Commission) is revising its regulations for filings by persons holding interlocking directorates. These revisions: delete reference to a provision which no longer exists; eliminate the need for notarization; simplify and clarify a form and its instructions; reduce the number of photocopies to be filed; and permit changes to be made on an electronic version (presently a diskette) instead of by hand on a printed form. The Commission believes that, by allowing these revisions, it will improve administrative efficiency.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT:

Hadas Z. Kozlowski (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, Telephone: (202) 208–1029

Patricia W. Morris (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, Telephone: (202) 208–6990

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.

The 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 the 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, DC 20426.

UNITED STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION

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

Filing Requirements Under Parts 46 and 131 for Persons Holding Interlocking Directorates

Docket No. RM99–4–000

ORDER NO. 601

FINAL RULE

(Issued December 18, 1998)

I. Introduction

This Final Rule revises Parts 46 and 131 of the Commission's regulations.[1] These revisions simplify and clarify both Part 46 of the regulations and FERC Form No. 561 (Form No. 561), and reduce from two to one the number of copies of this form which must be filed along with one original. In addition, the Final Rule encourages, but does not require, that changes to the so-called pre-filed Form No. 561[2] be made on an electronic version rather than by hand. Finally, this Final Rule deletes reference, in Part 46, to section 131.60

[1] 18 CFR Parts 46 and 131.

[2] Currently, the Commission sends annually to each person holding an interlocking directorate a copy of the Form No. 561 submitted by that person in the prior year, *i.e.*, a pre-filed Form No. 561.

of the Commission's regulations, which has been deleted, and eliminates the need for notarization.

II. Information Collection Statement

The Office of Management and Budget (OMB) regulations require OMB to approve certain reporting and recordkeeping (collections of information) imposed by agency rule.[3] The collection of information that is the subject of this Final Rule, Form No. 561, most recently received OMB approval on December 11, 1998 for the period through December 31, 2001.

Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to these collections of information, unless the collections of information display a valid OMB control number.

Title: FERC No. Form 561, Annual Report of Interlocking Positions.

Action: Proposed Data Collection.

OMB Control No.: 1902–0099.

Respondents: Persons who hold certain defined positions with public utilities.

Frequency of Responses: Annually.

Reporting Burden: There are currently 1600 officers and directors of public utilities engaged in the generation, transmission, and sale of electric power who file reports with the Commission on an annual basis. The Commission estimates an average overall response rate of 0.5 hours, for a total burden of 800 hours ($1600 \times 1 \times 0.5 = 800$).

The Final Rule, if adopted, would simplify and streamline the existing reporting requirements to reduce by one half the burden on industry.

Necessity of Information: The Final Rule revises the filing requirements in 18 CFR Part 46 and 131, necessary for fulfilling the requirements of Section 211 of the Public Utility Regulatory Policies Act which amended Part III, Section 305 of the Federal Power Act. The information is collected by the Commission in order to exercise oversight of interlocking directorates involving public utilities and their related activities. This oversight is for officers and directors of public utilities who also hold an officer, director, partner, appointee, or representative position with any other delineated entity.

The Commission has submitted a copy of this Final Rule to OMB for informational purposes only.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 (Attention: Michael Miller, Office of the Chief Information Officer, (202) 208–1415), or send comments to the Office of Management and Budget, Room 10202 NEOB, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, (202) 395–3087, fax: (202) 395–7285).

III. Background

Section 305(c) of the Federal Power Act, as amended by section 211 of the Public Utility Regulatory Policies Act of 1978,[4] provides that, on or before April 30 of each year, any person who during the previous calendar year was an officer or director of a public utility and who held, during such calendar year, the position of officer, director, partner, appointee, or representative of any other delineated entity (*i.e.*, an interlocking directorate), shall file with the Commission a written statement concerning such positions held by such person. Such statement must be available to the public.

Part 46 of the Commission's regulations sets forth these filing requirements. Section 46.4 requires that each holder of an interlocking directorate must annually file the information detailed in section 46.6, in the form specified in section 131.31, *i.e.*, Form No. 561.

This Final Rule revises sections 46.6(d) and 131.31.

IV. Discussion

As currently written, section 46.6(d)(1) provides, among other things, that the original written statement filed by the holder of an interlocking directorate shall be ''verified under oath in accordance with § 131.60 of this chapter.'' Section 131.60, however, no longer exists. Moreover, the Commission does not believe it necessary that this statement be notarized. Accordingly, the Final Rule removes this provision.

Similarly, the Commission no longer believes it necessary for the filed original written statement to be accompanied by two copies; one is sufficient. Accordingly, the Final Rule amends section 46.6(d)(1) to require only an original and one copy to be filed.

The Final Rule also amends Form No. 561, at section 131.31, similarly to eliminate the notarization section and the requirement for the filing of two copies. Additionally, there are sections on the current form that are labeled ''DOE USE ONLY,'' which are unnecessary, and more space is provided for ''FERC Docket Number'' than currently is necessary. The Final Rule also makes certain minor wording changes to Form No. 561 and the accompanying instructions to clarify them, and corrects the title of section 131.31. Consequently, the Final Rule redesigns Form No. 561 to simplify it, and modifies the accompanying instructions accordingly.

Finally, the Commission believes that it would be in the public interest to permit holders of interlocking directorates to make changes to Form No. 561 electronically, rather than by hand. To accomplish this, the Final Rule renumbers section 46.6(d)(2) as 46.6(d)(3) and adds a new section 46.6(d)(2). If this option is selected, the changes should be made to the pre-filled electronic version provided by the Commission,[5] and filed with the Commission, along with a signed original printout of that amended form and one copy. The Commission emphasizes that filing electronic amendments will be optional, not mandatory, but will be preferred.

V. National Environmental Policy Act Analysis

The Commission concludes that promulgating this Final Rule does not represent a major Federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[6] This Final Rule is procedural in nature and does not substantially change the effect of the regulation being amended. In addition, the Final Rule involves information gathering, analysis, and dissemination. Therefore, this Final Rule falls within the categorical exemptions provided in the Commission's regulations.[7] Consequently, neither an environmental impact statement nor an environmental assessment is required.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[8] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Most of the persons holding interlocks required to comply with this Final Rule are not officers or directors of small entities, as defined by the RFA. Moreover, this Final Rule is procedural

[3] 5 CFR 1320.12.

[4] 16 U.S.C. § 825d(c).

[5] Presently, ''electronic version'' means the pre-filled diskette sent annually by the Commission. In the future, however, the Commission may make alternative methods of electronic filing available.

[6] 42 U.S.C. § 4332.

[7] 18 CFR 380.4(a)(2)(ii), (a)(5).

[8] 5 U.S.C. § 601–612.

and ministerial in nature and will not add any burdens to any entities; rather it will reduce the burden on all persons to whom it applies. Therefore, the Commission certifies that promulgating this Final Rule does not represent a major Federal action having a significant economic impact on a substantial number of small entities.

VII. Administrative Findings and Effective Date

Because this rule does not itself alter the substantive rights or interests of any interested persons, but rather merely reduces the burden on those persons who must file Form No. 561, the Commission finds that prior notice and comment are unnecessary under the Administrative Procedure Act.[9]

Because this rule does not alter the substantive rights or interests of any interested persons but rather relieves a restriction otherwise applicable to those persons who must file Form No. 561, and because it reduces the burden on those who must file Form No. 561, the Commission finds good cause to allow this rule to become effective upon less than 30 days' notice.[10] This Final Rule therefore will be made effective January 1, 1999.

VIII. Congressional Notification

The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates.[11] That reporting requirement does not apply to this Final Rule, however. The Commission finds that this Final Rule, which reduces the burden on persons who must file Form No. 561, does not substantially affect the rights or obligations of non-agency parties, and therefore falls within a statutory exception for rules relating to agency procedures or practices that do not substantially affect the rights or obligations of non-agency parties.[12]

[9] 5 U.S.C. § 553(b)(B).

[10] 5 U.S.C. §§ 553(d)(1), (3).

[11] 5 U.S.C. § 801.

[12] 5 U.S.C. § 804(3)(C).

List of Subjects in 18 CFR Parts 46 and 131

Antitrust, Electric utilities, Holding Companies, Reporting and recordkeeping requirements; Electric Power.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends Parts 46 and 131, Chapter I, Title 18, *Code of Federal Regulations,* as set forth below.

PART 46—PUBLIC UTILITY FILING REQUIREMENTS AND FILING REQUIREMENTS FOR PERSONS HOLDING INTERLOCKING POSITIONS

1. The authority citation for Part 46 continues to read as follows:

Authority: Federal Power Act, as amended, 16 U.S.C. 792–828c; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645; Department of Energy Organization Act; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 142 (1978).

2. In § 46.6, paragraph (d)(1) is revised, paragraph (d)(2) is redesignated as (d)(3), and a new paragraph (d)(2) is added to read as follows:

§ 46.6 Contents of the written statement and procedures for filing.

* * * * *

(d)(1) Each person shall file an original and one copy of such written statement with the Office of Secretary of the Commission on or before April 30 of each year immediately following the calendar year during any portion of which such person held a position described in § 46.4. The original of such statement shall be dated and signed by such person. The copy shall bear the date that appeared on the original; the signature on the copy may be stamped or typed on the copy.

(2) Instead of submitting changes to the Commission on the pre-printed Form No. 561 sent annually by the Commission, a person may choose to make changes to the pre-filled electronic version provided by the Commission. This electronic version, along with the signed original and one copy (as required by Paragraph (d)(c)) shall also be filed with the Commission.

* * * * *

PART 131—FORMS

1. The authority citation for Part 131 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 131.31 is revised to read as follows:

§ 131.31 FERC Form No. 561, Annual report of interlocking positions.

(See section 46.4 of this chapter.)

BILLING CODE 6717–01–M

BILLING CODE 6717-01-C

FEDERAL ENERGY REGULATORY COMMISSION
ANNUAL REPORT OF INTERLOCKING POSITIONS

Form Approved
OMB No. 1902-0099

This report is mandatory under Section 305(c)(1) of the Federal Power Act. Failure to report may result in criminal fines, civil penalties and other sanctions as provided by law. The Federal Energy Regulatory Commission does not consider this report to be of a confidential nature. PLEASE READ THE INSTRUCTIONS ATTACHED BEFORE COMPLETING THIS FORM.

RESPONDENT INFORMATION

1 Full Name (Last, First, and Middle Initial)	2 Business Address (Street, City, State, and Zip Code)
3 Reporting Year	
4 Docket # / 5 Latest Date Authorized	
6 Mail to Company	

PUBLIC UTILITY DATA

(1) Name of Public Utility	(2) Position Code(s)	(1) Name of Public Utility	(2) Position Code(s)

INTERLOCKING ENTITY DATA

(3) Name of Entity	(4) Position Code(s)	(5) Type Code	(6) Total Revenue($)

Signature:	Date:

Format Number FERC 561 (REVISED 12/98)

INSTRUCTIONS FOR COMPLETING ANNUAL REPORT OF INTERLOCKING POSITIONS

GENERAL INFORMATION:

Purpose of Report

The data collected by this report will be used by the Federal Energy Regulatory Commission's staff for the review and oversight of interlocking positions between public utilities and certain other entities as described below.

Who Must Submit

This report must be completed by all persons holding interlocking positions between public utilities and certain other entities (described in the specific instructions) during any portion of the calendar year.

When to Submit

Submit this report on or before April 30 of each year for the preceding calendar year. (For example, the report for the year 1999 would be filed on or before April 30, 2000.)

What and Where to Submit

Submit an original and one (1) copy of this report to: Federal Energy Regulatory Commission, Office of the Secretary, Attention FERC 561, 888 First Street NE, Washington, DC 20426

Sanctions

This report is mandatory and is prescribed by Section 305(c)(1) of the Federal Power Act and 18 CFR 46.4. Failure to report may result in certain penalties and other sanctions as provided by law.

Where to Send Comments on Public Reporting Burden

The public reporting burden for this collection of information is estimated to average 0.25 hours per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information to: Federal Energy Regulatory Commission, Attn: Federal Energy Regulatory Commission Information Clearance Officer, 888 First Street NE, Washington, DC 20426.

You shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

GENERAL INSTRUCTIONS

1. Prepare this report in conformity with the requirements prescribed in 18 CFR 46.4.

2. Leave blank any columns that are not applicable.

SPECIFIC INSTRUCTIONS

Item and Instruction

Respondent Information

1 and 2 Enter your full name and your business address.

3 Enter the calendar year for which this report is filed.

4 and 5 If you are authorized by this Commission to hold the position of officer or director in accordance with Part 45 of the Commission's regulations: enter in space 4 the complete FERC docket number of such authorization; enter in space 5 the latest date of such authorization. Otherwise, leave these spaces blank.

6 Enter the public utility or public utility holding company to which you want next year's Form 561 sent.

Public Utility Data

Col (1) and Col (2) Enter in column (1) the name of each public utility in which you hold an executive position. In column (2) enter the appropriate code for each such position, according to the list below:

Code and Name

Dir Director
CEO Chief Executive Officer
PRES President
VP Vice President
SEC Secretary
TREA Treasurer
GM General Manager
COMP Comptroller
PURA Chief Purchasing Agent
OEP Other Executive Position

Interlocking Entity Data

Col (3) and Col (4) Enter in Column (3) the name of each entity in which you hold an interlocking position. Enter the appropriate code for each executive position you hold in the entity named in Column (3), using the list below:

Code and Name

DIR Director
CEO Chief Executive Officer
PRES President
VP Vice President
SEC Secretary
TREA Treasurer
GM General Manager
COMP Comptroller
PURA Chief Purchasing Agent
PART Partner
APPT Appointee
REP Representative
OEP Other Executive Position

Col (5) Enter in Column (5) the appropriate code type for each entity listed in Column (3), using the list below:

Code and Name

FIN Investment bank; bank holding company; foreign bank or subsidiary thereof doing business in the United States; other organization primarily engaged in the business of providing financial services or credit; mutual savings bank; or savings and loan association
FINI Insurance company
SECU Entity authorized by law to underwrite or participate in the marketing of securities of a public utility
ELEQ Entity which produces/supplies electric equipment for the use of any public utility
FUEL Entity which produces/supplies coal, natural gas, nuclear fuel, or other fuel for the use of any public utility
20CL Entity specified in 18 CFR 46.3 (one of the 20 largest purchasers of electric energy from a utility)
CNEN Entity which is controlled by any one of the above named entities
305B Entity referred to in Section 305(b) of the Federal Power Act (not otherwise identified above)

Col (6) For each entity that supplies electric equipment (ELEQ) named in Column (3) enter the aggregate amount of revenues from producing or supplying electrical equipment to any public utility named in column (1) in the subject calendar year, rounded to the nearest $100,000. Otherwise, leave this column blank.

Signature The original of this report must be dated and signed. The copy must bear the date that appeared on the original. The signature on the copy may be stamped or typed on the copy.

[FR Doc. 98–34131 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 54

[Docket No. 93N–0445]

RIN 0910–AB77

Financial Disclosure by Clinical Investigators

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; action on petition for reconsideration.

SUMMARY: The Food and Drug Administration (FDA) is revising the requirements regarding financial disclosure by clinical investigators in order to add material to the codified language that was inadvertently omitted and to clarify the compliance dates to, in some cases, restrict the retroactive application of certain requirements of the rule. FDA is making these changes in order to respond to concerns raised by the Pharmaceutical Research Manufacturers Association (hereinafter referred to as ''PhRMA''). By making these changes, FDA will be reducing the administrative burden for manufacturers and other affected parties while, at the same time, ensuring that the agency obtains the information that is most relevant to its review of clinical data submitted in marketing applications.

DATES:

Effective Date: This regulation becomes effective February 2, 1999.

Comment Date: Submit written comments on the information collection provisions in the rule published on

February 2, 1998 (63 FR 5233), by February 1, 1999.

Compliance Date: Compliance with collection of information on any equity interest in a publicly traded corporation that exceeds $50,000 as defined in § 54.2(b) (21 CFR 54.2(b)) as published at 63 FR 5250 (February 2, 1998) is required for covered clinical trials that are ongoing as of February 2, 1999.

Compliance with collection of information on significant payments of other sorts as defined in § 54.2(f), as published at 63 FR 5250 (February 2, 1998) is required for those payments made on or after February 2, 1999.

ADDRESSES: Submit written comments on the information collection provisions of this final rule to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Mary C. Gross, Office of External Affairs (HF–60), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3440, FAX 301–594–0113.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 2, 1998 (63 FR 5233), FDA published a final rule entitled ''Financial Disclosure by Clinical Investigators'' (hereinafter referred to as ''the February 2, 1998, final rule''). The February 2, 1998, final rule required the sponsor (hereinafter referred to as ''the applicant'') of a marketing application for any drug product, including any biological product, or any device to submit certain information concerning the compensation to, and financial interests of, clinical investigators conducting certain clinical studies. This requirement applied to any covered clinical study of a drug or device submitted in a marketing application that the applicant or FDA relies on to establish that the product is effective, including studies that show equivalence to an effective product, or that make a significant contribution to evidence of safety. The February 2, 1998, final rule required applicants to certify to the absence of certain financial interests of clinical investigators and/or disclose those financial interests, when covered clinical studies were submitted to FDA in support of a marketing application. The purpose of the February 2, 1998, final rule is to help ensure that financial interests and compensation arrangements of clinical investigators that could affect the reliability of data submitted to FDA in support of product marketing are identified and disclosed by the applicant. If the applicant does not include certification or disclosure, or both if required, or does not certify that it was not possible to obtain the information, the agency may refuse to file the application.

In the February 2, 1998, final rule, all reporting requirements applied to any marketing application submitted on or after February 2, 1999. This final rule will change the reporting requirements by greatly reducing the need to gather required information retrospectively for studies already completed. Specifically, information on the equity interests of investigators in a publicly traded corporation, as described in § 54.2(b), must be collected only for those covered clinical studies that are ongoing as of February 2, 1999. In addition, manufacturers will only be required to report any significant payments of other sorts as described in § 54.2(f) made on or after February 2, 1999.

FDA is also revising the definition of ''covered clinical studies'' in § 54.2(e). With regard to studies that make a significant contribution to the demonstration of safety, the agency has concluded that only those studies in which a single investigator makes a significant contribution to the demonstration of safety will be included in the definition of covered clinical study. This change would generally exclude phase 1 tolerance studies or pharmacokinetic studies (unless they are critical to an efficacy determination), large open safety studies conducted at multiple sites, treatment protocols and parallel track protocols from the definition of covered clinical study and, therefore, eliminate the need to collect and report information on the financial interests of investigators in those trials. Finally, in order to obtain information only about investigators who had significant roles in covered clinical studies, FDA is amending the definition of ''clinical investigator'' in § 54.2(d) to clarify that it is intended to include only listed or identified investigators or subinvestigators who are directly involved in the treatment or evaluation of research subjects. These changes are being made in part in response to a petition for reconsideration submitted to the agency by PhRMA on August 3, 1998. The Health Industry Manufacturers Association submitted a comment to the rule supporting the petition on August 17, 1998.

II. Petition for Reconsideration

FDA received a petition for reconsideration on August 3, 1998, from PhRMA requesting that some provisions of the final rule be reconsidered and changed. The petition argued that these provisions imposed substantial logistical and information collection burdens on sponsors and applicants without providing any significant benefit to the public. As discussed in section V of this document, PhRMA had also submitted a comment under the Paperwork Reduction Act of 1995 (the PRA) on the information collection provisions of the rule. The comment made essentially the same arguments as the petition, although it was slightly broader. Aspects of the PhRMA comment not included in the petition are addressed in section V of this document.

In the petition, PhRMA asked that the agency reconsider requiring applicants to retrospectively collect information; that is, PhRMA asked that the final rule be applied only to studies commenced after the February 2, 1999, effective date of the rule. The petition also sought to modify the final rule in several respects. Specifically, PhRMA requested that the rule not apply to large multicenter studies, subinvestigators who do not have primary responsibility for a clinical trial, and that it not apply to payments of less than $1,000 to individuals and less than $2,500 to sponsors' associated institutions when sponsors are collecting information about ''significant payments of other sorts'' as defined in § 54.2(f). PhRMA also asked FDA to respond to the petition by September 28, 1998, or stay the effective date of the final rule pending reconsideration, with 12 months of lead time for implementation when the stay is lifted.

Under § 10.33(b) and (g) (21 CFR 10.33(b) and (g)), a petition for reconsideration must be submitted within 30 days after the date of the decision involved. However, § 10.33(b) also provides that, for good cause, the Commissioner of Food and Drugs may consider an untimely petition for reconsideration. Although PhRMA's petition was submitted well after the deadline, FDA finds that good cause exists because of the strength of certain arguments in the petition concerning the desirability of modifications to some aspects of the February 2, 1998, rule.

III. Response to Petition

FDA has carefully evaluated the petition for reconsideration and reviewed the administrative record of the February 2, 1998, final rule to determine whether the standard in § 10.33(d) for granting a petition for reconsideration has been met. As explained in the following paragraphs, the agency concludes that the standard has been met with respect to some of the actions requested in the petition for

reconsideration. Specifically, the agency concludes that: (1) The petitioner's position is not frivolous and is being pursued in good faith; (2) with respect to certain provisions of the February 2, 1998, final rule, the agency did not adequately consider certain information or views in the administrative record; (3) the petition has demonstrated sound public policy grounds supporting reconsideration of those provisions; and (4) reconsideration of those provisions is not outweighed by public health or other public interests. Therefore, the agency is revising parts of the final rule based on arguments in the petition for reconsideration. By making these revisions, the agency will also reduce the information collection burden associated with implementation of this final rule.

A. Retrospective Collection of Information

FDA received some comments on the proposed rule that asked FDA to apply the rule prospectively, to avoid penalizing applicants and clinical investigators whose clinical investigations were concluded or already in progress. FDA responded in the February 2, 1998, final rule that it was important to know about the financial arrangements and payments that were considered to be problematic in a timely manner and that implementation should not be long deferred. The agency also stated that in order to give applicants time to comply with the final rule and to avoid delayed submissions, applicants would not be required to comply with the final rule until 1 year after the publication date of the final rule. The agency recognized that there may be times where, despite the applicant's diligent efforts to collect this information, the applicant may be unable to obtain it. FDA amended the final rule to permit an applicant who can show conclusively why this information could not be obtained to certify that the applicant acted diligently to obtain the information, but was unable to do so and to include the reason why such information could not be obtained.

Based on arguments presented in the petition for reconsideration, FDA is revising this final rule with regard to collection of information on equity interests in a publicly traded company when such interests exceed $50,000 in value as defined in § 54.2(b). Sponsors will be required to collect information regarding such interests only in those covered clinical studies that are ongoing as of February 2, 1999. FDA is also revising the final rule with regard to collection of information concerning significant payments of other sorts, defined under § 54.2(f), so that submission of this information is required only for payments made on or after February 2, 1999.

Collection of information described under § 54.2(a), ''compensation affected by the outcome of clinical studies'', and § 54.2 (c), ''proprietary interests in the tested product'', will be required for investigators participating in covered clinical studies, whether they are ongoing or already completed, if the studies are used to support applications that are submitted on or after February 2, 1999. In addition, sponsors will be required under § 54.2(b) to collect information on any ownership interest whose value cannot be readily determined through reference to public prices (generally interests in a nonpublicly traded corporation) for investigators participating in all covered clinical studies, whether they are ongoing or already completed, if they are used to support applications that are submitted on or after February 2, 1999. FDA is not changing these requirements because the agency believes that the information required under § 54.2(a), (b), (with regard to any ownership interest whose value cannot be readily determined through reference to public prices) and (c) is the most critical to the agency and therefore, its collection should not be deferred. By modifying the compliance dates of § 54.2(b) (equity interests that exceed $50,000 in a publicly traded corporation) and (f) (significant payments of other sorts), FDA has eliminated the potential administrative burden to sponsors of reconstructing records after the fact, thereby reducing the information collection burden on regulated industry without compromising the integrity of the final rule.

B. Clinical Investigator Definition

In the September 22, 1994 (59 FR 48708) proposed rule, FDA defined clinical investigator to mean any investigator who is directly involved in the treatment or evaluation of research subjects, or who could otherwise influence the outcome of the research. Spouses and dependent children were also included under the definition of clinical investigator. The proposed rule asked for comment on whether the definition of clinical investigator should include business partners of the investigator who might share in profits from the investigator's arrangements or financial interests. Most comments objected to including business partners under the definition of clinical investigator. Several comments on the proposed rule found the definition to be too broad and stated that, as proposed, the definition would involve all study personnel and pose an enormous administrative burden. One comment recommended limiting the scope of the definition to the principal investigator only.

In the February 2, 1998, final rule, FDA agreed with comments that stated that including business partners under this definition was unnecessary and potentially burdensome. FDA also agreed with those comments that supported narrowing the definition. The February 2, 1998, final rule defined clinical investigator to mean any listed or identified investigator who is directly involved in the treatment or evaluation of research subjects. The definition also included the investigator's spouse and dependent children. It was not intended to include hospital or office staff who may provide occasional care to subjects.

In the petition for reconsideration, PhRMA argued that the final rule should not apply to subinvestigators because it would be too burdensome to collect and report financial information concerning subinvestigators. In addition, the petition asserted that subinvestigators often play a limited role in the conduct of a trial and do not have a significant effect on the trial's outcome and therefore should be excluded.

After careful consideration of this request, the agency disagrees with the reasoning in the petition about subinvestigators and declines to adopt the request that they all be excluded from the final rule. FDA believes that it is appropriate to clarify the definition of clinical investigator, however, in light of this request. The agency wishes to make clear that individuals included in the definition of clinical investigator are only those who actually and directly participate in the conduct of the trial and not those who may occasionally provide treatment to subjects.

The agency believes that most of the individuals participating in the conduct of a clinical trial could be described as subinvestigators. If the position recommended in the petition were adopted, the agency would likely receive financial information for no more than a handful of individuals for each trial, regardless of how many individuals were actually directly involved in the treatment or evaluation of research subjects. FDA believes that subinvestigators generally perform a significant amount of the work involved in the conduct of a trial and can therefore influence its results. It would not be prudent to exclude all subinvestigators because to do so would mean that much of the most meaningful

and relevant information would not be reported which, in turn, would greatly weaken the agency's ability to assess the reliability of clinical trial data. For this reason, FDA will not eliminate subinvestigators from the definition of ''clinical investigator.''

The agency believes that it has addressed the issue raised in the petition of the burden involved in reporting information concerning subinvestigators in several ways. First, as will be discussed more fully as follows, by narrowing the definition of covered clinical study to exclude large open safety studies conducted at multiple sites, treatment protocols, and parallel track protocols, the agency has eliminated the need for collecting and reporting information from the large number of individuals, many of whom are subinvestigators, who typically participate in those types of studies. Second, the change being made to eliminate the need for retrospective reporting of equity interests in publicly traded companies will also make the information on subinvestigators easier to collect. With these steps, FDA has considerably reduced the administrative burden associated with this final rule while maintaining the agency's ability to obtain the information it needs to assess the reliability of clinical trial data.

C. Covered Clinical Study Definition

In the September 1994 proposed rule, ''clinical study'' was defined as any study involving human subjects, including a study to establish bioavailability or bioequivalence, submitted in a marketing application subject to this part, that either the sponsor identifies as one that the sponsor relies on to establish that the product meets the regulatory requirements for marketing, or FDA identifies as one that it intends to rely on to support its decision to permit the marketing of the product. Under the proposal, studies submitted as publications or in brief summary form would generally not be considered ''covered clinical studies'' unless FDA informed the sponsor otherwise. The agency further proposed that a sponsor could consult with FDA as to which clinical studies constituted ''covered clinical studies'' for purposes of complying with financial disclosure requirements. Several comments recommended that FDA limit the scope of the rule with respect to covered studies. One comment said that the rule appeared to include large-scale open label studies, such as studies involving some cardiovascular therapies, compassionate use studies and parallel track studies, all of which might be submitted in support of a new drug application (NDA). The comment noted that investigators in such studies could number in the thousands and said that it would be an unwarranted burden to require an applicant to obtain financial information from each clinical investigator.

FDA responded in the preamble to February 2, 1998, final rule that in general, large open studies, treatment protocols, and other such studies with large numbers of investigators would not be covered studies. The preamble further states that because these studies generally have large numbers of investigators, no single investigator has a major responsibility for the data. The agency said in the preamble that although it is not impossible that a financial interest could be important in these studies, it is relatively unlikely, and the agency has concluded that the effort needed to obtain financial information for these investigators should not be undertaken. It has been brought to the agency's attention that the codified language of the regulation at § 54.2(e) did not fully reflect those preamble statements. The petitioners have asked FDA to reconsider whether the final rule should apply to these types of large, multicenter studies. FDA acknowledges that some material was inadvertently omitted from the codified language in the February 2, 1998, final rule and accordingly is adding language to the definition of ''covered clinical study'' to reflect the agency's original intention. The definition of ''covered clinical study'' has been amended to indicate that generally it does not include phase I tolerance studies or pharmacokinetic studies, most clinical pharmacology studies (unless they are critical to an efficacy determination), large open safety studies conducted at multiple sites, treatment protocols, and parallel track protocols.

D. Tracking Small Gifts in Calculating $25,000 Threshold for ''Significant Payments of Other Sorts''

The petitioners have asked that FDA amend the definition of significant payments of other sorts'' in § 54.2(f) so that sponsors are not required to collect or report information concerning individual payments less than $1,000 to physicians or less than $2,500 to institutions so that such payments are not counted in determining whether the $25,000 reporting threshold has been reached. The petitioners argued that the administrative burden of tracking such payments is unjustified. FDA declines to amend the final rule in this way. Payments under $1,000 or $2,500 respectively, if numerous or when added to a fairly large grant or to the value of equipment provided to the investigator, could bring the total amount of significant payments of other sorts to $25,000 or more. The agency believes that the aggregate amount of such payments is important, not the size of individual payments. In addition, FDA is reluctant to create a mechanism that could be used to circumvent the reporting requirement entirely by making many small payments to an investigator or institution. The agency has changed the compliance date regarding these payments, however, so that sponsors will begin to collect and report information regarding ''significant payments of other sorts'' only on such payments made on or after February 2, 1999. The agency believes this modification reasonably addresses sponsors' concerns about the burdensomeness of the requirement.

E. Request for Response by September 28, 1998 or Request to Stay the Rule

FDA does not believe there is a need to stay the rule indefinitely because by making the changes described previously, the agency has both clarified the requirements of the rule and significantly decreased the administrative burden associated with collecting this information. The agency finds that the petitioners have not demonstrated a need to delay the effective date for this rule and therefore declines to grant this request.

IV. Analysis of Impact

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (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; and distributive impacts and equity). The agency believes that the final rule is consistent with the regulatory philosophy and principles identified in the Executive Order and concludes that it is not a significant regulatory action as defined. The Regulatory Flexibility Act requires agencies to prepare a regulatory flexibility analysis for each rule, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. As explained in the February 2, 1998, final rule, the agency believes that this final rule will

not have a significant economic impact on a substantial number of small entities. Nevertheless, the rule may impose significant costs on a few small businesses. Because FDA cannot adequately quantify all of this impact, it prepared a regulatory flexibility analysis as part of its economic assessment. Title II of the Unfunded Mandates Reform Act (in section 202) requires that agencies prepare a written assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate or by the private sector of $100 million (adjusted annually for inflation). Because the rule will not result in expenditures of this amount, FDA is not required to prepare a cost-benefit analysis under this Act.

FDA is publishing these revisions in response to a petition for reconsideration of some of the rules' requirements on the grounds that they imposed a substantial burden on sponsors. The agency has amended the requirements in the final rule so that the information collection requirements for reporting equity interests in publicly held corporations that exceed $50,000 in value will apply to studies ongoing as of February 2, 1999, and the requirements regarding significant payments of other sorts will apply to payments made on or after February 2, 1999 (see section III.A and III.D of this document, respectively).

These changes will substantially reduce the affected industry's near term regulatory burden. Nevertheless, the agency has not reduced its earlier cost estimate, because its original impact analysis did not fully reflect the cost of collecting retrospective information on equity interests in publicly held corporations or of making significant payments of other sorts. The agency now believes that its original figure of less than $450,000 annually may have understated the reporting costs of the rule as published on February 2, 1998, but reasonably reflects that reporting costs of the final rule as amended. The revised definitions for ''clinical investigator'' and ''covered clinical study'' do not result in any change to the cost analysis because they continue to reflect the agency's earlier intent.

V. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the PRA of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given as follows with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Financial Disclosure by Clinical Investigators (21 CFR part 54)

Description: In the February 2, 1998, final rule, FDA issued regulations requiring the sponsor of any drug (including a biological product) or device marketing application to submit information concerning the compensation to, and financial interests of, any clinical investigator directly involved in the treatment or evaluation of subjects enrolled in certain clinical studies. This final rule revises the requirements of the February 2, 1998, final rule to reduce the information collection burden imposed on sponsors of drug and medical device products. The revisions are described in section III of this document.

As modified by this revised final rule, the requirement to disclose information about compensation to, and financial interests of, clinical investigators will apply to any study of a drug or device in humans submitted in a marketing application or reclassification petition that the applicant or FDA relies on to establish that the product is effective and to any study in which a single investigator makes a significant contribution to the demonstration of safety. The regulations require applicants to certify to the absence of certain financial interests of clinical investigators or disclose those financial interests as required, when covered clinical studies are submitted to FDA in support of product marketing. The purpose of the regulations is to ensure that financial interests and arrangements of clinical investigators that could affect the reliability of the data submitted to FDA in support of product marketing are identified and disclosed. The regulations will become effective on February 2, 1999.

FDA will evaluate the information provided about each covered clinical study in an application to determine the impact of any disclosed financial interests on the reliability of the study. If FDA determines that the financial interests of any clinical investigator raise serious questions about the integrity of the data, FDA may take any action it deems necessary to resolve those questions, including initiating agency audits of the questioned data; requesting that the applicant submit further analyses of data that evaluate the effect of the clinical investigator's data on overall study outcome; requesting that the applicant conduct additional independent studies to confirm the results of the questioned study; or refusing to consider the data from the questioned study in deciding whether to approve the application.

Description of Respondents: Respondents are sponsors of marketing applications containing clinical data from studies covered by the regulation. These sponsors represent pharmaceutical, biologic, and medical device firms. Many of these firms are small entities, especially those which manufacture medical devices and biotechnology products. Respondents are also clinical investigators who provide financial information to the sponsors of marketing applications.

The applicant will incur reporting costs in order to comply with the final rule. Applicants will be required to submit, for example, a complete list of clinical investigators for each covered study, a list that is already submitted in a marketing application. For investigators not employed by the applicant and/or the sponsor of the covered study, the applicant must either certify to the absence of certain financial arrangements with clinical investigators or disclose those arrangements to FDA.

FDA expects that almost all applicants will submit a certification statement under 21 CFR 54.4(a)(1) and (a)(2). Preparation of the statement using the following Form FDA 3454 will represent little effort and should require no more than 1 hour per study.

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Food and Drug Administration

Form Approved: OMB No. XXXX-XXXX
Expiration Date: XX/XX/XX

CERTIFICATION: FINANCIAL INTERESTS AND ARRANGEMENTS OF CLINICAL INVESTIGATORS

TO BE COMPLETED BY APPLICANT

With respect to all covered clinical studies (or specific clinical studies listed below (if appropriate)) submitted in support of this application, I certify to one of the statements below as appropriate. I understand that this certification is made in compliance with 21 CFR part 54 and that for the purposes of this statement, a clinical investigator includes the spouse and each dependent child of the investigator as defined in 21 CFR 54.2(d).

Please mark the applicable checkbox.

☐ (1) As the sponsor of the submitted studies, I certify that I have not entered into any financial arrangement with the listed clinical investigators (enter names of clinical investigators below or attach list of names to this form) whereby the value of compensation to the investigator could be affected by the outcome of the study as defined in 21 CFR 54.2(a). I also certify that each listed clinical investigator required to disclose to the sponsor whether the investigator had a proprietary interest in this product or a significant equity in the sponsor as defined in 21 CFR 54.2(b) did not disclose any such interests. I further certify that no listed investigator was the recipient of significant payments of other sorts as defined in 21 CFR 54.2(f).

Clinical Investigators		

☐ (2) As the applicant who is submitting a study or studies sponsored by a firm or party other than the applicant, I certify that based on information obtained from the sponsor or from participating clinical investigators, the listed clinical investigators (attach list of names to this form) did not participate in any financial arrangement with the sponsor of a covered study whereby the value of compensation to the investigator for conducting the study could be affected by the outcome of the study (as defined in 21 CFR 54.2(a)); had no proprietary interest in this product or significant equity interest in the sponsor of the covered study (as defined in 21 CFR 54.2(b)); and was not the recipient of significant payments of other sorts (as defined in 21 CFR 54.2(f)).

☐ (3) As the applicant who is submitting a study or studies sponsored by a firm or party other than the applicant, I certify that I have acted with due diligence to obtain from the listed clinical investigators (attach list of names) or from the sponsor the information required under 54.4 and it was not possible to do so. The reason why this information could not be obtained is attached.

NAME	TITLE
FIRM / ORGANIZATION	
SIGNATURE	DATE

Paperwork Reduction Act Statement

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. Public reporting burden for this collection of information is estimated to average 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the necessary data, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information to the address to the right:

Department of Health and Human Services
Food and Drug Administration
5600 Fishers Lane, Room 14C-03
Rockville, MD 20857

Please **DO NOT RETURN** this form to this address.

FORM FDA 3454 (10/98)

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TABLE 1.—ESTIMATED NUMBER OF APPLICATIONS, CLINICAL TRIALS, AND INVESTIGATORS SUBJECT TO THE PROPOSED RULE BY TYPE OF APPLICATION[1]

Application Type	Total Number of Applications	Number of Applications Affected	Number of Trials	Number of Investigations
Drugs				
New drug application (NDA), new molecular entity (NME)	35	35	3 to 10	3 to 100
NDA nonNME	100	100	1 to 3	10 to 30
NDA efficacy supplement	100	100	1 to 3	10 to 30
Abbreviated new drug application (ANDA)	400	240	1.1	2
ANDA supplement	2,500	120	1	2
Rx switch	20	10	2	4
Biologics				
Product license application (PLA)	25	25	3 to 10	3 to 100
PLA efficacy supplement	10	10	1 to 3	3 to 100
Medical Devices				
Premarket approval (PMA)	50	50	1	10 to 20
PMA supplement	40	10	1	3 to 10
Reclassification devices	8	4	1	3 to 10
510(k)	6,000	300	1	20

[1] Source: Agency estimates.

When certification is not possible and disclosure is made using the following Form FDA 3455, the applicant must describe the financial arrangements or interests and the steps that were taken to minimize the potential for bias in the affected study. As the applicant will be fully aware of those arrangements and the steps taken to address them, describing them will be straightforward. The agency estimates that it will take about 4 hours to prepare this narrative.

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Food and Drug Administration

Form Approved: OMB No. XXXX-XXXX
Expiration Date: XX/XX/XX

DISCLOSURE: FINANCIAL INTERESTS AND ARRANGEMENTS OF CLINICAL INVESTIGATORS

TO BE COMPLETED BY APPLICANT

The following information concerning _____ , who participated as a clinical investigator in the submitted study _____ , _____ , is submitted in accordance with 21 CFR part 54.

Name of clinical investigator

Name of clinical study

The named individual has participated in financial arrangements or holds financial interests that are required to be disclosed as follows:

Please mark the applicable checkboxes.

☐ any financial arrangement entered into between the sponsor of the covered study and the clinical investigator involved in the conduct of the covered study, whereby the value of the compensation to the clinical investigator for conducting the study could be influenced by the outcome of the study;

☐ any significant payments of other sorts made on or after February 2, 1999 from the sponsor of the covered study such as a grant to fund ongoing research, compensation in the form of equipment, retainer for ongoing consultation, or honoraria;

☐ any proprietary interest in the product tested in the covered study held by the clinical investigator;

☐ any significant equity interest as defined in 21 CFR 54.2(b), held by the clinical investigator in the sponsor of the covered study.

Details of the individual's disclosable financial arrangements and interests are attached, along with a description of steps taken to minimize the potential bias of clinical study results by any of the disclosed arrangements or interests.

NAME	TITLE
FIRM / ORGANIZATION	
SIGNATURE	DATE

Paperwork Reduction Act Statement

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. Public reporting burden for this collection of information is estimated to average 4 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the necessary data, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information to:

Department of Health and Human Services
Food and Drug Administration
5600 Fishers Lane, Room 14C-03
Rockville, MD 20857

<--Please **DO NOT RETURN** this form to this address.

FORM FDA 3455 (10/98)

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Until the agency begins to collect information on the financial arrangements between investigators and applicants, it cannot know the actual number of disclosable arrangements. Therefore, it is not possible to predict the total cost to industry of preparing these explanatory statements with any certainty because the financial arrangements described in this rule are uncommon. FDA estimates that from 1 to 10 percent of the applications would need disclosure statements, and has used the extremely conservative estimate of 10 percent in Table 2 of this document.

Investigators must provide sponsors of the covered studies with sufficient accurate information to make the required disclosure or certification. Because much of the information required can be obtained from the applicant's own records, the costs incurred by the clinical investigator will be minimal. Clinical investigators are required to do one of two things: (1) Provide a statement that they, their spouse, and their dependent children did not have a significant equity interest as defined in § 54.2(b) in the sponsor of the covered study, or (2) disclose any such interest. Clinical investigators are accustomed to supplying such information in even greater detail when applying for research grants. Most people know the financial holdings of their immediate family, and records of such interests are generally accessible because they are needed for preparing tax records. FDA estimates that the time required for this task may range from 5 to 15 minutes.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
54.4(a)(1) and (a)(2)	1,000	1	1	1	1,000
54.4(a)(3)	100	1	1	4	400
54.4 (Clinical Investigators)	46,000	1	1	.10	4,600
Total					6,000

[1] There are capital costs or operating and maintenance costs associated with this collection of information.

The sponsors of covered studies will be required to maintain complete records of compensation agreements with any compensation paid to nonemployee clinical investigators, including information showing any financial interests held by the clinical investigator, for a period of 2 years after the date of approval of the application. This time is consistent with the current recordkeeping requirements for other information related to marketing applications for human drugs, biologics, and medical devices. FDA judged the incremental costs associated with this new activity to be negligible because firms already maintain records of compensation as standard business practice, and the required records pertaining to the financial interests of the investigators will typically consist of only one additional piece of paper per investigator. Currently, sponsors of covered studies must maintain many records with regard to clinical investigators, including protocol agreements and investigator resumes or curriculum vitae, and the inclusion of information required by this rulemaking would add little to this recordkeeping burden. FDA estimates that on average 15 minutes will be required for each recordkeeper to add this record to clinical investigators' files.

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	No. of Responses per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
54.6	1,000	1	1,000	.25	250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In the February 2, 1998, final rule (63 FR 5233 at 5249), FDA requested comments on the information collection provisions of the final rule. The agency received three comments in response to this request. As discussed previously, one of the comments was very similar to the petition for reconsideration to which this revised final rule responds. The issues raised by that comment that have already been discussed in earlier sections of this document will not be addressed again here.

One comment suggested that FDA use different criteria for disclosure of equity interests depending on the amount of sponsor capital. FDA disagrees. The $50,000 threshold was chosen to represent a dollar amount that could be important to an investigator. During the rulemaking, many comments were received on the issue of the appropriate threshold. Some suggested that FDA's rule should be made consistent with the Public Health Service final rule and the National Science Foundation statement of policy on Objectivity in Research published on July 11, 1995 (a considerably more stringent requirement than the disclosure requirement in FDA's final rule); others suggested different dollar thresholds, such as $10,000, or particular percentages of company equity. One comment suggested that investigators be banned from owning an equity interest in a sponsor that exceeded $25,000 a year. FDA's original proposal of a percent equity threshold was deleted from the final rule because the agency recognized that for many corporations this would represent an unrealistically large interest (e.g., 5 percent of a $10 million company is $500,000). Based on discussions with FDA's Science Board and comments received on FDA's proposed rule, FDA continues to believe that a $50,000 disclosure threshold strikes the appropriate balance between the agency's need to be aware of, and to help minimize, the potential for bias in clinical data.

This comment also stated that FDA underestimated the amount of time necessary to collect, analyze, and store the information needed to comply with the February 2, 1998, final rule. FDA agrees that the time estimates in that document may have been too low because FDA was not able to accurately predict the burden associated with collecting information from past covered clinical trials. FDA continues to believe that the majority of applicants will certify to the absence of covered financial interests and that sponsors will incorporate the collection of this information into the routine administration of their studies. FDA agrees that additional time would have been needed to gather information from investigators in past studies prior to the revisions made by this final rule. As FDA is revising the rule to eliminate most retrospective reporting, however, the burden will be significantly less than it would have been under the February 2, 1998, final rule. The agency has reevaluated its burden estimate and concludes that, although the estimate in the February 2, 1998, final rule (63 FR 5233 at 5249) underestimated the burden of retrospective reporting at that time, it now accurately reflects the lessened burden of the financial disclosure regulations as revised by this final rule. Therefore, the agency is not modifying its burden estimate.

Finally, this comment requests guidance from FDA on what the comment characterizes as ambiguities in the final rule. FDA has provided clarification through revisions made to this final rule. FDA declines to issue a guidance document before the rule becomes effective; however, FDA will assess the need for guidance after the agency and those subject to the rule have gained some experience with it's implementation.

A second comment suggested that FDA modify section 9 of Form FDA 1572, ''Statement of Investigator,'' to add a commitment that the investigator will comply with the financial disclosure regulations and to state whether the investigator holds a significant equity interest in the sponsor. The comment stated that this change to Form FDA 1572 would eliminate the need for investigators to complete additional documentation.

FDA does not agree with the comments' recommendation that Form FDA 1572 be changed. Clinical investigators are already required to comply with the financial disclosure regulations and, as part of this obligation, must provide financial information to the sponsor under 21 CFR 312.53(c)(4) and 312.64(d) of the final rule. The agency has developed FDA Forms 3454 and 3455 in an effort to facilitate the collection of this information. FDA also notes that the proposed change would not eliminate the need for the investigator to provide the details of any significant equity interests as required by the final rule. Therefore, the recommended change would make Form FDA 1572 more burdensome without reducing the burden under the final rule.

A third comment submitted by two clinical investigators from a government agency asked that a division within a Federal Government agency be exempted from reporting financial interests to FDA because it does not submit marketing applications to FDA for products tested under its investigational new drug application (IND's) and because, according to the comment, its phase III studies are designed, monitored, and assessed in such a way that the studies are not subject to the same potential bias found in smaller, investigator-initiated or company-sponsored studies. A government researcher conducting a clinical study under an IND held by a government agency does not have to report financial interests or arrangements to FDA, as it is the submission of a marketing application that triggers the disclosure requirement. If, however, the study were used to support an application, the applicant would be required to report any covered financial interests of the clinical investigators. FDA declines to make a change in response to this comment.

The information collection provisions of the February 2, 1998, final rule, as modified by this final rule, have been submitted to OMB for review. Individuals and organizations may submit comments on the information collection provisions by February 1, 1999. Comments should be directed to the Office of Information and Regulatory Affairs, OMB (address above).

Prior to the effective date of the final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 21 CFR Part 54

Biologics, Drugs, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 54 is amended as follows:

PART 54—FINANCIAL DISCLOSURE BY CLINICAL INVESTIGATORS

1. The authority citation for 21 CFR part 54 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360, 360c–360j, 371, 372, 373, 374, 375, 376, 379; 42 U.S.C. 262.

2. Section 54.2 is amended by revising paragraphs (d) and (e) to read as follows:

§ 54.2 Definitions.

* * * * *

(d) *Clinical investigator* means only a listed or identified investigator or subinvestigator who is directly involved in the treatment or evaluation of research subjects. The term also includes the spouse and each dependent child of the investigator.

(e) *Covered clinical study* means any study of a drug or device in humans submitted in a marketing application or reclassification petition subject to this part that the applicant or FDA relies on to establish that the product is effective (including studies that show equivalence to an effective product) or any study in which a single investigator makes a significant contribution to the demonstration of safety. This would, in general, not include phase l tolerance studies or pharmacokinetic studies, most clinical pharmacology studies (unless they are critical to an efficacy determination), large open safety studies conducted at multiple sites, treatment protocols, and parallel track protocols. An applicant may consult with FDA as to which clinical studies constitute ''covered clinical studies'' for purposes of complying with financial disclosure requirements.

* * * * *

Dated: November 24, 1998.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 98–34546 Filed 12–30–98; 8:45 am]

BILLING CODE 4160–01–F

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

U.S. Agency for International Development

22 CFR Part 228

RIN 0412–AA40

Rules on Source, Origin and Nationality for Commodities and Services Financed by USAID: Special Source Rules Requiring Procurement from the United States

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

ACTION: Final rule.

SUMMARY: USAID is amending its regulation on source, origin and nationality for commodities and services financed by USAID by dropping the requirement that vehicles must be manufactured by, and bear the nameplates of, Chrysler, Ford or General Motors in order to be considered U.S.-manufactured vehicles eligible for USAID financing. The rule served little practical purpose since these are the only vehicles manufactured in the U.S. that are generally available for export from the United States. Foreign corporations manufacturing vehicles in the U.S. are doing so for U.S. consumption. Removing the requirement simplifies the rules and has no significant impact.

DATES: Effective March 1, 1999.

FOR FURTHER INFORMATION CONTACT:

Kathleen O'Hara, Office of Procurement, Policy Division (M/OP/P) USAID, Washington, DC 20523–7801. Telephone: (202) 712–4759, facsimile: (202) 216–3395, e-mail address: koharausaid.gov.

SUPPLEMENTARY INFORMATION: This change is being published as a final rule since the regulation is being amended to reflect a change the Agency has made in its internal policy documents. However, we welcome any comments from the public. This rule will not have an impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is not a major rule under 5 U.S.C. 804. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

List of Subjects in 22 CFR Part 228

Administrative practice and procedure, Commodity procurement, Grant programs—foreign relations.

Accordingly 22 CFR part 228 is amended as follows:

PART 228—[AMENDED]

1. The authority citation continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

§ 228.13 [Amended]

2. Sec. 228.13 is amended by removing the last two sentences in the paragraph (b).

Dated: November 17, 1998

Marcus L. Stevenson,

Procurement Executive.

[FR Doc. 98–34718 Filed 12–30–98; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8803]

RIN 1545–AW83

Retention of Income Tax Return Preparers' Signatures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide income tax return preparers with two alternative means of meeting the requirement that a preparer retain the manually signed (by the preparer) copy of the return or claim. The regulations are necessary to inform preparers of the two alternatives and provide preparers with the guidance needed to comply with the alternatives. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective December 31, 1998.

Applicability Date: For dates of applicability, see § 1.6695–1T(g) of these regulations.

FOR FURTHER INFORMATION CONTACT: Marc C. Porter (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to the penalty for failure to sign an income tax return under section 6695(b) of the Internal Revenue Code. Section 6695(b) provides that any person who is an income tax return preparer with respect to a return or claim for refund, who is required by regulations prescribed by the Secretary to sign the return or claim, and who fails to comply with those regulations, must pay a penalty of $50 for such failure, unless it is shown that the failure is due to reasonable cause and not willful neglect. The maximum penalty imposed with respect to documents filed during a calendar year will not exceed $25,000.

Section 7701(a)(36)(A) provides that, in general, the term ''income tax return preparer'' means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax or claim for refund imposed by subtitle A. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim is treated as if it were the preparation of such return or claim.

Section 1.6695–1(b)(1) and (c) generally provides that an income tax return preparer, with respect to a return or claim for refund, must manually sign the return or claim (which may be a photocopy) in the appropriate space provided on the return or claim after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature.

Section 1.6695–1(b)(4)(i) provides that the manual signature requirement may be satisfied by a photocopy of a copy of the return or claim for refund if the copy is manually signed by the income tax return preparer after completion of its preparation. The taxpayer may file a photocopy of this manually signed return with the IRS, see Rev. Proc. 78–370 (1978–2 C.B. 335). The employer of the preparer or the partnership in which the preparer is a partner, or the preparer (if not employed or engaged by a preparer and not a partner of a partnership which is a preparer), must retain the manually signed copy of the return or claim.

Explanation of Provisions

The regulations provide that, if an income tax return preparer presents for a taxpayer's signature a return or claim for refund that has a copy of the preparer's manual signature, the preparer may either retain a photocopy of the manually signed copy of the return or claim for refund or use an electronic storage system meeting the requirements of section 4 of Rev. Proc. 97–22, (1997–1 C.B. 652) or procedures subsequently prescribed by the Commissioner, to store and produce a copy of the return or claim manually signed by the preparer.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information: The principal author of these regulations is Marc C. Porter, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6695–1T also issued under 26 U.S.C. 6695(b) * * *

Par. 2. Section 1.6695–1 is amended by revising paragraph (b)(4)(i) to read as follows:

§ 1.6695–1 Other assessable penalties with respect to the preparation of income tax returns for other persons.

* * * * *

(b) * * *

(4)(i) [Reserved]. For further guidance on acceptable methods of meeting the manual signature requirement of paragraphs (b)(1) and (2) of this section, see § 1.6695–1T(b)(4)(i).

* * * * *

Par. 3. Section 1.6695–1T is added to read as follows:

§ 1.6695–1T Other assessable penalties with respect to the preparation of income tax returns for other persons (temporary).

(a) through (b)(3) [Reserved]. For further guidance, see § 1.6695–1(a) through (b)(3).

(b)(4)(i) The manual signature requirement of § 1.6695–1(b)(1) and (2) may be satisfied by a photocopy of a copy of the return or claim for refund which copy is manually signed by the preparer after completion of its preparation. After a copy of the return or claim for refund is signed by the preparer and before it is photocopied, no person other than the preparer may alter any entries on the copy other than to correct arithmetical errors discernible on the return or claim for refund. The employer of the preparer or the partnership in which the preparer is a partner, or the preparer (if not employed or engaged by a preparer and not a

partner of a partnership which is a preparer), must retain the manually signed copy of the return or claim for refund. In the alternative, for a return or claim for refund presented to a taxpayer for signature after December 31, 1998 and for returns or claims for refund retained on or before that date, the person required to retain the manually signed copy of the return or claim for refund may choose to retain a photocopy of the manually signed copy of the return or claim for refund, or use an electronic storage system to store and produce a copy of the manually signed return or claim for refund. For purposes of this paragraph (b)(4)(i), an electronic storage system must meet the electronic storage system requirements prescribed in section 4 of Rev. Proc. 97–22 (1997–1 C.B. 652)(see § 601.601(d)(2) of this chapter) or procedures subsequently prescribed by the Commissioner. A record of any arithmetical errors corrected must be retained and made available upon request by the person required to retain the manually signed copy of the return or claim for refund.

(b)(4)(ii) through (f) [Reserved]. For further guidance, see § 1.6695–1(b)(4)(ii) through (f).

(g) *Effective date.* This section applies to income tax returns and claims for refund presented to a taxpayer for signature after December 31, 1998 and for returns or claims for refund retained on or before December 31, 1998. This section expires on December 31, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 17, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–34360 Filed 12–30–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 35a, and 301

[TD 8804]

RIN 1545–AW39

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Parts 1 and 35a and of Certain Regulations Under Income Tax Treaties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule; delay of effective date, technical amendments, and partial withdrawal.

SUMMARY: This document contains changes delaying the effective date and making technical amendments to final regulations (TD 8734), which were published in the **Federal Register** for October 14, 1997, relating to the withholding of income tax on certain U.S. source income payments to foreign persons. The Department of the Treasury and the IRS believe it is in the best interest of tax administration to extend the effective date of the final withholding regulations to ensure that both taxpayers and the government can complete changes necessary to implement the new withholding regime. As extended by this document, the final withholding regulations will apply to payments made after December 31, 1999. This document also withdraws two amendments which have already been dealt with in TD 8772, which was published in the *Federal Register* for June 30, 1998.

DATES: *Effective Dates:* The amendments in this final rule are effective January 1, 2000. As of December 31, 1998, the effective date of the final regulations published at 62 FR 53387, October 14, 1997, is delayed from January 1, 1999, until January 1, 2000; however, the effective date of the addition of § 31.9999–0 and § 35a.9999–0 and the removal of § 35a.9999–0T remains October 14, 1997.

Withdrawal: Effective December 31, 1998, the amendments removing §§ 1.6045–1T and 1.6045–2T published at 62 FR 53387, October 14, 1997, are withdrawn.

FOR FURTHER INFORMATION CONTACT: Lilo Hester, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this amendment provide guidance under sections 1441, 1442, and 1443 of the Internal Revenue Code (Code) on certain U.S. source income paid to foreign persons, the related tax deposit and reporting requirements under section 1461 of the Code, and the related changes under sections 163(f), 165(j), 871, 881, 1462, 1463, 3401, 3406, 6041, 6041A, 6042, 6045, 6049, 6050A, 6050N, 6109, 6114, 6402, 6413, and 6724 of the Code.

Need for Changes

On April 13, 1998, in Notice 98–16 (1998–15 I.R.B. 12), the IRS and Treasury announced their decision to extend the effective date of the final regulations, and to make correlative changes to the transition rules for obtaining new withholding certificates and statements containing the necessary information and representations required by the final regulations. As published in the **Federal Register** on October 14, 1997 (62 FR 53387), the final regulations were generally applicable to payments made after December 31, 1998, and generally granted withholding agents until after December 31, 1999, to obtain the new withholding certificates and statements required under those regulations. This amendment serves to make the final regulations applicable to payments made after December 31, 1999, and to require mandatory use of the new withholding certificates and statements after December 31, 2000. In addition, this amendment serves to address typographical errors, and to withdraw the removal of §§ 1.6045–1T and 1.6045–2T since those sections were already removed on June 30, 1998, in TD 8772 (63 FR 35517).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Finally, it has been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations because the regulations do not impose a collection of information on small entities. Pursuant to 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations (61 FR 17614) was submitted to the Small

Business Administration for comment on its impact on small business.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 35a

Employment taxes, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Accordingly, under the authority of 26 U.S.C. 7805, 26 CFR parts 1, 31, 35a, and 301 are amended by making the following correcting amendments:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.871–14, paragraph (h) is revised to read as follows:

§ 1.871–14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

* * * * *

(h) *Effective date*—(1) *In general.* This section shall apply to payments of interest made after December 31, 1999.

(2) *Transition rule.* For purposes of this section, the validity of a Form W–8 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form W–8 that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (h)(2), however, does not apply to extend the validity period of a Form W–8 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (h)(2), a withholding agent or payor may choose to not take advantage of the transition rule in this paragraph (h)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, may choose to obtain withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 3. In § 1.1441–1 as revised at 62 FR 53424, paragraph (f) is revised to read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(f) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1999.

(2) *Transition rules*—(i) *Special rules for existing documentation.* For purposes of paragraphs (d)(3) and (e)(2)(i) of this section, the validity of a withholding certificate (namely, Form W–8, 8233, 1001, 4224, or 1078 , or a statement described in § 1.1441–5 in effect prior to January 1, 2000 (see § 1.1441–5 as contained in 26 CFR part 1, revised April 1, 1998)) that was valid on January 1, 1998 under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (f)(2)(i), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (f)(2)(i), a withholding agent may choose to not take advantage of the transition rule in this paragraph (f)(2)(i) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in paragraph (e)(4)(ii) of this section, regardless of when the certificate is obtained.

(ii) *Lack of documentation for past years.* A taxpayer may elect to apply the provisions of paragraphs (b)(7)(i)(B), (ii), and (iii) of this section, dealing with liability for failure to obtain documentation timely, to all of its open tax years, including tax years that are currently under examination by the IRS. The election is made by simply taking action under those provisions in the same manner as the taxpayer would take action for payments made after December 31, 1999.

Par. 4. In § 1.1441–4 as amended at 62 FR 53450, paragraph (g) is revised to read as follows:

§ 1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.

* * * * *

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 1999.

(2) *Transition rules.* The validity of a Form 4224 or 8233 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form 4224 or 8233 that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a Form 4224 or 8223 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998) and, therefore, to

require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 5. In § 1.1441–5 as revised at 62 FR 53452, paragraph (g) is revised to read as follows:

§ 1.1441–5 Withholding on payments to partnerships, trusts, and estates.

* * * * *

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 1999.

(2) *Transition rules.* The validity of a withholding certificate that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 6. In § 1.1441–6 as revised at 62 FR 53458, paragraph (g) is revised to read as follows:

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

* * * * *

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 1999.

(2) *Transition rules.* For purposes of this section, the validity of a Form 1001 or 8233 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form 1001 or 8233 is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a Form 1001 or 8233 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate or in interpretation of the law under the regulations under § 1.894–1T(d). Notwithstanding the first three sentences of this paragraph (g)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 7. In § 1.1441–8 as redesignated and amended at 62 FR 53464, paragraph (f) is revised to read as follows:

§ 1.1441–8 Exemption from withholding for payments to foreign governments, international organizations, foreign central banks of issue, and the Bank for International Settlements.

* * * * *

(f) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1999.

(2) *Transition rules.* For purposes of this section, the validity of a Form 8709 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form 8709 that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (f)(2), however, does not apply to extend the validity period of a Form 8709 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (f)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (f)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 8. In § 1.1441–9, paragraph (d) is revised to read as follows:

§ 1.1441–9 Exemption from withholding on exempt income of a foreign tax-exempt organization, including foreign private foundations.

* * * * *

(d) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1999.

(2) *Transition rules.* For purposes of this section, the validity of a Form W–8, 1001, or 4224 or a statement that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form W–8, 1001, or 4224 or a statement that is valid on or after January 1, 1999 remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1,

1998) or, if earlier, until December 31, 2000. The rule in this paragraph (d)(2), however, does not apply to extend the validity period of a Form W–8, 1001, or 4224 or a statement that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (d)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (d)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 9. In § 1.1443–1 as revised at 62 FR 53466, paragraph (c) is revised to read as follows:

§ 1.1443–1 Foreign tax-exempt organizations.

* * * * *

(c) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1999.

(2) *Transition rules.* For purposes of this section, the validity of an affidavit or opinion of counsel described in § 1.1443–1(b)(4)(i) in effect prior to January 1, 2000 (see § 1.1443–1(b)(4)(i) as contained in 26 CFR part 1, revised April 1, 1998) that is valid on December 31, 1998 is extended until December 31, 2000. However, a withholding agent may choose to not take advantage of the transition rule in this paragraph (c)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

§ 1.6041–3 [Amended]

Par. 10. Section 1.6041–3 as amended at 62 FR 53472 is further amended by removing the last sentence of the introductory text.

Par. 11. In § 1.6042–3 as amended at 62 FR 53475, paragraph (b)(5) is revised to read as follows:

§ 1.6042–3 Dividends subject to reporting.

* * * * *

(b) * * *

(5) *Effective date*—(i) *General rule.* The provisions of this paragraph (b) apply to payments made after December 31, 1999.

(ii) *Transition rules.* The validity of a withholding certificate (namely, Form W–8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (b)(5)(ii), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (b)(5)(ii), a payor may choose not to take advantage of the transition rule in this paragraph (b)(5)(ii) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 12. In § 1.6045–1 as amended at 62 FR 53476, paragraph (g)(5) is revised to read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

* * * * *

(g) * * *

(5) *Effective date*—(i) *General rule.* The provisions of this paragraph (g) apply to payments made after December 31, 1999.

(ii) *Transition rules.* The validity of a withholding certificate (namely, Form W–8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (g)(5)(ii), however, does not apply to extend the validity period of a form that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(5)(ii), a payor may choose not to take advantage of the transition rule in this paragraph (g)(5)(ii) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 13. Effective December 31, 1999, the amendments removing §§ 1.6045–1T and 1.6045–2T, published at 62 FR 53480, are withdrawn.

Par. 14. In § 1.6049–5 as amended at 62 FR 53483, paragraph (g) is revised to read as follows:

§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(g) *Effective date*—(1) *General rule.* The provisions of paragraphs (b)(6) through (15), (c), (d), and (e) of this

section apply to payments made after December 31, 1999.

(2) *Transition rules.* The validity of a withholding certificate (namely, Form W–8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2), a payor may choose not to take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, may require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

PARTS 1, 31, 35a, and 301 [AMENDED]

Par. 15. In the list below, for each section indicated in the left column (which was added, revised, or amended at 62 FR 53387), remove the language in the middle column and add the language in the right column:

Section	Remove	Add
1.871–14(c)(2)(iii)	1.1441–1(c)(3)(ii)	1.1441–1(e)(3)(ii).
1.871–14(c)(3)(ii), *Example*, first and sixth sentences.	October 12, 1999	October 12, 2000.
1.871–14(c)(3)(ii), *Example*, sixth sentence	December 31, 1999	December 31, 2000.
1.871–14(c)(3)(ii), *Example*, sixth and seventh sentences.	June 15, 2003	June 15, 2004.
1.1441–1(b)(2)(iii)(B), fifth sentence	Savings clause	Saving clause.
1.1441–1(b)(2)(iv)(E), second sentence	Actually maintain	Actually maintains.
1.1441–1(b)(3)(iii)(B), first sentence	That cannot reliably	Cannot reliably.
1.1441–1(b)(3)(iii)(C), last sentence	1.1441–4(e)	1.1441–4(d).
1.1441–1(b)(3)(x), *Example 1*, seventh and ninth sentences.	W s	W's.
1.1441–1(b)(3)(x), *Example 2*, sixth and seventh sentences.	W s	W's.
1.1441–1(b)(3)(x), *Example 3*, third sentence	X, nc.	X, Inc.
1.1441–1(b)(4)(i), first sentence	1.871–7(b)(2)(i)	1.871–7(b)(2).
1.1441–1(b)(4)(xix)	January 1, 1999	January 1, 2000.
1.1441–1(b)(4)(xix)	April 1, 1997	April 1, 1998.
1.1441–1(b)(5)(viii)	I.R.B. 1996–49	1996–2 C.B. 227.
1.1441–1(b)(7)(v), *Example 1,* first, fourth, and eighth sentences.	June 15, 1999	June 15, 2000.
1.1441–1(b)(7)(v), *Example 1,* third and ninth sentences.	September 30, 2001	September 30, 2002.
1.1441–1(b)(7)(v), *Example 1,* ninth sentence	March 15, 2000	March 15, 2001.
1.1441–1(b)(7)(v), *Example 2*, first, fourth, and seventh sentences.	June 15, 1999	June 15, 2000.
1.1441–1(b)(7)(v), *Example 2*, third and seventh sentences.	September 30, 2001	September 30, 2002.
1.1441–1(b)(7)(v), *Example 2*, seventh and ninth sentences.	March 15, 2000	March 15, 2001.
1.1441–1(c)(6)(ii)(B)	January 1, 1999	January 1, 2000.
1.1441–1(c)(6)(ii)(B)	April 1, 1997	April 1, 1998.
1.1441–1(e)(4)(ii)(A)	September 30, 1999	September 30, 2000.
1.1441–1(e)(4)(ii)(A)	December 31, 2002	December 31, 2003.
1.1441–1(e)(4)(vi), sixth sentence	Provided the acceptable	Provided on the acceptable.
1.1441–1(e)(4)(ix)(A)(*2*), second sentence	§ 31.3406(c)1(c)(3)(ii)	§ 31.3406(c)–1(c)(3)(ii).
1.1441–1(e)(5)(i), penultimate sentence	Reportable payments	Reportable amounts.
1.1441–1(e)(5)(v)(A), third sentence	The intermediary	The qualified intermediary.
1.1441–1(e)(5)(v)(A), fourth sentence	The intermediary to	The qualified intermediary to.
1.1441–1(e)(5)(v)(B), introductory text, third sentence.	Paragraph (b)(3)(vi)	Paragraph (e)(3)(vi).
1.1441–1(e)(5)(v)(B)(*1*), second sentence	Withholding agent	Qualified intermediary.
1.1441–1(e)(5)(v)(C), first sentence	The intermediary	The qualified intermediary.
1.1441–2(a), last sentence	871(h)(5)(B)	871(h)(5)(B) or a member of a clearing organization which member is the beneficial owner of the obligation.
1.1441–2(b)(1)(ii), fifth sentence	Someone's	Someone's.
1.1441–2(b)(3)(iv)	December 31, 1998	December 31, 1999.
1.1441–2(f)	December 31, 1998	December 31, 1999.
1.1441–3(h)	December 31, 1998	December 31, 1999.

Section	Remove	Add
1.1441–4(a)(2)(i), second sentence	United States	United States and is includable in the beneficial owner's gross income for the taxable year.
1.1441–5(a)(6), second sentence	Withholding partnership	Withholding foreign partnership.
1.1441–5(c)(2)(ii)(B), sixth sentence	Qualified intermediary	Withholding foreign partnership.
1.1441–5(c)(2)(ii)(B), sixth sentence	Customers	Partners.
1.1441–5(c)(3)(iii)(D)	That the partners	That the amounts allocable to the partners.
1.1441–5(d)(4), *Example 2*, second sentence	Depending of	Depending on.
1.1441–6(b)(1), first sentence	§ 1.1441–1(e)(1)(ii)(B)	§ 1.1441–1(e)(1)(ii)(A)(*2*).
1.1441–6(c)(2)(ii), first sentence	Upon a certificate	Upon receipt of a certificate.
1.1441–6(d), second sentence	Rate of tax	Rate of withholding.
1.441–7(g)	December 31, 1998	December 31, 1999.
1.1461–1(b)(2)(v)	Foreign partnership shall	Foreign partnership (whether or not a withholding foreign partnership) shall.
1.1461–1(b)(2)(vi), paragraph heading	*Banks, securities dealers, or insurance companies.*	*Banks, or insurance companies.*
1.1461–1(c)(4)(iv), first sentence	Certificate attached to the intermediary's or partnership withholding certificate that is from a qualified intermediary or a withholding foreign partnership.	Certificate or documentary evidence attached to the intermediary's or partnership withholding certificate.
1.1461–1(i)	December 31, 1998	December 31, 1999.
1.1461–2(a)(1), third sentence	An adjustment to	A refund of.
1.1461–2(a)(3), first sentence	Beneficial owner	Beneficial owner or payee.
1.1461–2(a)(4), *Example 1*(i), second sentence	December 1999	December 2000.
1.1461–2(a)(4), *Example 1*(i), third sentence	February 10, 2000	February 10, 2001.
1.1461–2(a)(4), *Example 1*(ii), first, second, and last sentences.	1999	2000.
1.1461–2(a)(4), *Example 1*(ii), first sentence	March 15, 2000	March 15, 2001.
1.1461–2(a)(4), *Example 1*(ii), third sentence	2000	2001.
1.1461–2(a)(4), *Example 2*, second and last sentences.	2000	2001.
1.1461–2(a)(4), *Example 2*, second sentence	June 2000	June 2001.
1.1461–2(a)(4), *Example 2*, third sentence	July 15, 2000	July 15, 2001.
1.1461–2(a)(4), *Example 2*, third sentence	1999	2000.
1.1461–2(a)(4), *Example 2*, last sentence	March 15, 2001	March 15, 2002.
1.1461–2(a)(4), *Example 3*, last sentence	February 15, 2000	February 15, 2001.
1.1461–2(a)(4), *Example 3*, last sentence	March 15, 2000	March 15, 2001.
1.1461–2(d)	December 31, 1998	December 31, 1999.
1.1462–1(c)	December 31, 1998	December 31, 1999.
1.1463–1(a), last sentence	§ 1.1441–7(b)(7)	§ 1.1441–7(b).
1.1463–1(b)	December 31, 1989	December 31, 1999.
1.1464–1(b)	§ 1.1461–4	§ 1.1461–2.
1.6041–4(d)	December 31, 1998	December 31, 1999.
1.6041A–1(d)(3)(i)(B), first sentence	If payments made	If payments are made.
1.6041A–1(d)(3)(iv), paragraph heading	Amount paid	Amounts paid.
1.6041A–1(d)(3)(v)	December 31, 1998	December 31, 1999.
1.6043–2(a), first, second, and last sentences	966	1099.
1.6045–1(d)(6)(ii)(B)	December 31, 1998	December 31, 1999.
1.6045–1(g)(3)(iv), second sentence	*Example 7*	*Example 6.*
1.6045–1(g)(4), *Example 7*(ii), last sentence	Y s	Y's.
1.6049–4(c)(1)(ii)(A), second sentence	Certificate meeting the certification requirements of paragraphs (c)(2)(ii)(A) (*1*) through (*5*) of this section.	Certificate stating that each member of the partnership meets the requirements of paragraphs (c)(1)(ii)(A)(*1*) through (*4*) of this section.
1.6049–4(d)(3)(ii)(B)	December 31, 1998	December 31, 1999.
1.6049–5(b)(12), first sentence	Returns of information are not required for payments that.	Payments that.
1.6049–5(c)(4)(i), first sentence	The payor may	The bank or other financial institution may.
1.6049–5(c)(4)(ii), second sentence	Then the financial institution	Then the bank or other financial institution.
1.6049–5(c)(4)(v)	January 1, 1999	January 1, 2000.
1.6049–5(d)(2)(ii), second and last sentences	Publicly traded	Actively traded.
1.6049–5(d)(2)(ii), eighth sentence	Is less than 31	Is equal to or less than 31.
1.6049–5(e)(1)(i), introductory text	The amount	An amount is described in this paragraph (e)(1)(i) if it.
1.6049–5(e)(1)(ii)	The amount	An amount is described in this paragraph (e)(1)(ii) if it.
1.6049–5(e)(4), second sentence	Specifically identifies	Specifically identify.
1.6049–5(e)(5), *Example 5*, last sentence	Of is section	Of this section.
1.6049–5(e)(5), *Example 9*, second sentence	A holds	A holds.
1.6049–5(e)(5), *Example 9*, third sentence	Paid to a	Paid to A.
1.6049–5(e)(5), *Example 9* , third sentence	A's	A's.
1.6049–5(e)(5), *Example 9*, last sentence	To a by DB	To A by DB.
1.6050N–1(e), first sentence	Is applies to	Applies to.
1.6050N–1(e), last sentence	December 31, 1998	December 31, 1999.

Section	Remove	Add
31.3401(a)(6)–1(e), paragraph heading	January 1, 1999	January 1, 2000.
31.3401(a)(6)–1(e), first sentence	January 1, 1999	January 1, 2000.
31.3401(a)(6)–1(f), paragraph heading	December 31, 1998	December 31, 1999.
31.3401(a)(6)–1(f), first sentence	December 31, 1998	December 31, 1999.
31.3406(g)–1(e), first sentence	December 31, 1998	December 31, 1999.
31.3406(h)–2(d), penultimate sentence	December 31, 1998	December 31, 1999.
31.9999–0	January 1, 1999	January 1, 2000.
301.6114–1(b)(4)(ii)(C), introductory text	December 31, 1998	December 31, 1999.
301.6114–1(b)(4)(ii)(D)	December 31, 1998	December 31, 1999.
301.6724–1(g)(2) Q–11	January 1, 1999	January 1, 2000.
301.6724–1(g)(2) Q–11	April 1, 1997	April 1, 1998.
301.6724–1(g)(2) A–11	January 1, 1999	January 1, 2000.
301.6724–1(g)(2) A–11	April 1, 1997	April 1, 1998.
301.6724–1(g)(3), first sentence	December 31, 1998	December 31, 1999.
301.6724–1(g)(3), last sentence in both places	January 1, 1999	January 1, 2000.
301.6724–1(g)(3), last sentence	April 1, 1997	April 1, 1998.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 7, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–34359 Filed 12–30–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–077]

RIN 2115–AE47

Temporary Drawbridge Regulations; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is temporarily adding a drawbridge operation regulation governing the Rock Island Railroad and Highway Drawbridge, Mile 482.9, Upper Mississippi River. The drawbridge will remain closed to navigation from 8 a.m. on December 28, 1998 until 8 a.m. March 1, 1999. This closure is necessary to perform annual maintenance and repair work on the bridge. Winter conditions and Corps of Engineers' lock closures upstream and downstream from the bridge preclude normal waterway traffic.

DATES: This temporary rule is effective from 8 a.m. on December 28, 1998 until 8 a.m. on March 1, 1999.

ADDRESSES: The public docket and all documents referred to in this notice will be available for inspection and copying at room 2.107f in the Robert A. Young Federal Building at Director, Western Rivers Operations (ob), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator; Director, Western Rivers Operations, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, telephone 314–539–3900 extension 378.

SUPPLEMENTARY INFORMATION: On November 16, 1998, Department of Army, Rock Island District, Corps of Engineers, requested a temporary change to the operation of the Rock Island Railroad and Highway Drawbridge across the Upper Mississippi River, Mile 482.9 at Rock Island, Illinois. The Corps requested that the bridge be temporarily closed to navigation between December 28, 1998 and March 1, 1999 in order to perform necessary maintenance and bridge repair activities.

In accordance with 5 U.S.C. 533, a notice of proposed rulemaking has not been published and good cause exists for making this rule effective in less than 30 days from publication. Following normal rulemaking procedures would be impractical. Delaying implementation of the regulation will not benefit navigation and would result in unnecessary delays in repairing the bridge.

Discussion of Regulation

The Rock Island Railroad and Highway Drawbridge has a vertical clearance of 23.8 feet above normal pool in the closed to navigation position. Navigation on the waterway consists of commercial tows and recreational watercraft. Presently the draw opens on signal for passage of river traffic. This temporary drawbridge operation amendment has been coordinated with the commercial waterway operators who do not object. Winter conditions on the Upper Mississippi River coupled with the closure of Corps' Locks No. 11, 12, 19, 20, 24, 25 until 1 March 1999, will preclude any significant navigation demands for drawspan openings. The Rock Island Railroad & Highway Drawbridge is located downstream of Lock 12 and upstream of Lock 19. Performing maintenance on the bridge during the winter when no vessels are impacted is preferred to bridge closures or advance notification requirements during the commercial navigation season.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of the rule to be so minimal that a full Regulatory Evaluation under paragraph 10e is unnecessary. This is because river traffic will be extremely limited by lock closures and ice during the period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 6012 *et seq.*), the Coast Guard was required to consider whether this action will have a significant economic impact on a substantial number of small entities. ''Small entities'' include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and (2) governmental jurisdictions with populations of less than 50,000. Because it expects the impact of this action to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this action

will not have economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism concern to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This temporary rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2, Figure 2–1, (32), (a) of the National Environmental Policy Act Implementing Procedures, Commandant Instruction M16475.1C.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. Sec. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.225 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective 8 a.m. on December 28, 1998, through 8 a.m. on March 1, 1999, § 117.5–T–08–077 is added to read as follows:

§ 117.5–T–08–077 Upper Mississippi River.

Rock Island Railroad & Highway Drawbridge, Mile 482.9, Upper Mississippi River. From 8 a.m. on December 28, 1998, through 8 a.m. on March 1, 1999, the drawspan may be maintained in the closed to navigation position and need not open for vessel traffic.

Dated: December 16, 1998.

Paul J. Pluta,

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

[FR Doc. 98–34631 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–86–01–9830a; FRL–6207–3]

Approval and Promulgation of Implementation Plans State of North Carolina: Approval of Miscellaneous Revisions to the Forsyth County Air Quality Control Ordinance and Technical Code

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On October 10, 1997, the North Carolina Department of Environment and Natural Resources submitted revisions to the Forsyth County Air Quality Control Ordinance and Technical Code. These revisions include the updating of several regulations, deletion of previously referenced material, rewriting of several regulations, and the correction of several regulations. The purpose of these revisions is to make the revised regulations consistent with the North Carolina State Implementation Plan (SIP).

DATES: This direct final rule is effective on March 1, 1999 without further notice, unless EPA receives adverse comment by February 1, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Randy Terry at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the locations below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file NC086–01–9830. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

North Carolina Department of Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

Forsyth County Environmental Affairs Department, 537 North Spruce Street, Winston-Salem, NC 27101–1362.

FOR FURTHER INFORMATION CONTACT: Randy Terry, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303. The telephone number is (404) 562–9032.

SUPPLEMENTARY INFORMATION: On October 10, 1997, the State of North Carolina Department of Environment and Natural Resources submitted revisions to amend or repeal multiple sections in the Forsyth Country Technical Code. These amendments address Subchapters 3A–Air Quality Control, 3D–Air Pollution Control Requirements, and 3Q–Air Quality Permits. The amendments are as follows:

Subchapter 3A—Air Quality Control

.0110 CFR Dates and .0112 ASTM Dates

These regulations were updated to reference the Federal regulations in effect on May 20, 1997.

Subchapter 3D—Air Pollution Control Requirements

.0512 Particulates From Wood Products Finishing Plants

This regulation was amended to change a reference from commission to Director.

.0518 Miscellaneous Volatile Organic Compound Emissions

This regulation was amended to change a rule citation within this rule from .0902 (d), (e) or (f) to .0902 (e), (f) or (g).

The original rule included the following language.

''This paragraph shall not apply to sources subject to the requirements of Section .0900 of this Subchapter because of Rule .0902 (d), (e) or (f).''

The language in the revised rule is as follows.

''This paragraph shall not apply to sources subject to the requirements of Section .0900 of this Subchapter because of Rule .0902 (e), (f) or (g).''

.0530 Prevention of Significant Deterioration

This regulation was amended to incorporate the most recent version of 40 CFR 51.166. The rule was revised to reference the 40 CFR 51.166 rule effective on March 15, 1996.

.0902 Applicability

Paragraph (a) was rewritten to list all of the Regulations in Section .0900 Volatile Organic Compounds that apply in Forsyth County.

Paragraph (b) was revised to add the title (Vapor Return Piping System for Vapor Recovery) of rule .0953 alongside a citation of that rule number.

Paragraph (c) is a new section created and is reserved.

The paragraph originally listed as (c) has been recodified as (d). This section also changes a reference from paragraph (g) of this rule to paragraphs (a), (b), (c), or (h).

The original rule included the following language.

''With the exceptions stated in Paragraph (g) of this Rule''

The revised rule includes the following language.

''With the exceptions stated in Paragraphs (a), (b), (c), or (h) of this Rule''

The paragraph originally listed as (d) was deleted.

The language originally listed as in paragraph (f) was deleted and new language was adopted. The new language describes the procedure the Director of the North Carolina Division of Air Quality must follow if a violation of the ambient air quality standard is measured in Forsyth County.

Paragraphs (g) and (h) were recodified as paragraphs (h) and (i) respectively and a new paragraph (g) was created and reserved.

.0907 Compliance Schedules for Sources in Nonattainment Areas

.0910 Alternative Compliance Schedules, .0911 Exception From Compliance Schedules

These regulations were repealed because they were no longer applicable to any areas within Forsyth County.

.0909 Compliance Schedules for Sources in New Nonattainment Areas

This regulation was amended to change a specific rule citation from .0902 (d), or (e) to 0902 (e), (f) or (g) in order to remain consistent with the most recent revisions to rule .0902.

Subparagraph (1) under paragraph (b) was deleted and reserved.

Subparagraph (2) under paragraph (b) was revised to change previous references of rule .0946; Compliance Schedule: Gasoline Service Stations Stage I to now reference rules .0953; Vapor Return Piping for Stage II Vapor Recovery or .0954; Stage II Vapor Recovery.

Subparagraph (3) under paragraph (b) was adopted and exempts sources required to comply with the requirements of Section .0900 under rule .0902(a).

.0954 Stage II Vapor Recovery

This regulation was amended to change a specific rule citation from .0902 (d), or (e) to .0902 (e), (f) or (g) in order to remain consistent with the most recent revisions to rule .0902.

.1903 Permissible Open Burning

This regulation is amended to clarify that material shall not be taken off-site for open burning at another location without a permit.

Subchapter 3Q—Air Quality Permits

.0102 Activities Exempt From Permit Requirements

.0102(a)(1)(A) is being adopted and states that although 40 CFR Part 60 Subpart Dc, industrial, commercial, and institutional steam generating units may be located at a facility that is not required to be permitted under Subchapter 3Q .0500, the units are not exempt from permit requirements.

.0102(a)(1)(B) is adopted and states that although 40 CFR Part 60 Subpart Kb, volatile organic liquid storage vessels may be located at a facility that is not required to be permitted under Subchapter 3Q, .0500, the units are not exempt from permit requirements.

.0102(a)(1)(C) is adopted and states that 40 CFR Part 60 Subpart AAA, new residential wood heaters are not exempt from permit requirements.

Subparagraph (2) under paragraph (a) is revised to reflect that national emission standards for hazardous air pollutants have been moved from Subchapter .0525 to .1110.

The language in subparagraph (5) under paragraph (a) has been deleted and subparagraph (5) has been reserved.

.0104 Where to Obtain and File Permit Applications

This regulation was amended to change a rule citation from .0602 to .0603 to correctly refer customers to the regulation that lists the number of copies of applications to be filed.

.0107 Confidential Information

This regulation was amended to make it clearer by changing wording but not intent.

.0307 Public Participation Procedures

This regulation was amended to correct a clerical error and change a specific rules citation from .0307(b)(4) to .0037(c)(4). This change now correctly refers customers to the list of information that must be identified in the public notice.

.0312 Application Processing Schedule

This regulation was amended to include language for renewals of permits. A paragraph was added that requires the Director to issue or deny the permit within 90 days of receipt of a complete application, or 10 days after receipt of requested additional information, or by the expiration date of the permit, whichever is later.

.803 Coating, Solvent Cleaning, Graphic Arts Operations

This regulation was amended to change all references from average method to total. For reporting purposes, all information on emissions of volatile organic compounds of hazardous air pollutants is now to be submitted as a twelve month rolling total. The twelve month rolling average method is no longer acceptable.

Final Action

EPA is approving the aforementioned changes to the SIP because the Agency has determined that this action conforms with requirements of the Clean Air Act and EPA guidance.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However in the proposed rule section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision, should relevant adverse comments be filed. This rule will be effective without further notice unless the Agency receives relevant adverse comments by February 1, 1999.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 1, 1999 and no further action will be taken on the proposed rule.

I. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review''.

B. Executive Order 12875

Under E.O. 12875, 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 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 written communications from the governments, and a statement supporting the need to issue the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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 a 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 E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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 rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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 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 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 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 E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electronic Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. 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).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this Act for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 28, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart—II—North Carolina

2. Section 52.1770, is amended by adding paragraph (c)(96) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(96) The miscellaneous revisions to the North Carolina State Implementation Plan, which were submitted on October 10, 1997.

(i) Incorporation by reference.

Subchapter 31A—Air Quality Control

.0110 CFR Dates and .0112 ASTM Dates effective on July 28, 1997.

Subchapter 3D—Air Pollution Control Requirements

.0501(g); Compliance With Emission Control Standards .0512 Particulate From Wood Products Finishing Plants, .0518(e) and (g); Miscellaneous Volatile Organic Compound Emissions, .0530(a), (1), (o), and (s); Prevention of Significant Deterioration, .0902(a) through (i); Applicability, .0907 Compliance Schedules for Sources in Nonattainment Areas, .0909(a) through (c), (g) and (h); Compliance Schedules for Sources in New Nonattainment Areas, .0910 Alternative Compliance Schedules, .0911 Exception From Compliance Schedules, .0954(a) and (f) Stage II Vapor Recovery, and .1903(b)(2)(E); Permissible Open Burning effective on July 28, 1997.

Subchapter 3Q—Air Quality Permits

.0102(a) through (e); Activities Exempt From Permit Requirements, .0104(b); Where to Obtain and File Permit Applications, .0107(b); Confidential Information, .0307(i); Public Participation Procedures, .0312(a)(1)(C); Application Processing Schedule, .0603(e); Transportation Facility Procedures .803(f)(2) (A) through (C) Coating, Solvent Cleaning, and Graphic Arts Operations effective on July 28, 1997.

(ii) Other material. None.

[FR Doc. 98–34311 Filed 12–30–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–191–9827a; FRL–6208–5]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Nashville/Davidson County Portion of the Tennessee SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Nashville/Davidson County portion of Tennessee's State Implementation Plan (SIP) concerning air pollution control regulations by the Metropolitan Nashville/Davidson County government. This regulatory revision to the SIP amends various definitions in Section 10.56, ''Air Pollution Control,'' of the Metropolitan Code of Laws. The revisions were submitted to EPA on April 7, 1997, by the State of Tennessee through the Tennessee Department of Air Pollution Control (TDAPC).

DATES: This direct final rule will become effective March 1, 1999 without further notice, unless EPA receives relevant adverse comments by February 1, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Gregory O. Crawford at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file TN–191–01–9827. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303, Gregory O. Crawford, (404) 562–9046.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531, (615) 532–0554.

Metropolitan Government of Nashville and Davidson County, Metropolitan Health Department, 311 23rd Avenue, North, Nashville, Tennessee 37203, (615) 340–5653.

FOR FURTHER INFORMATION CONTACT: Gregory O. Crawford at (404) 562–9046 or E-mail (crawford.gregory@epamail.epa.gov).

SUPPLEMENTARY INFORMATION: On April 7, 1997, the State of Tennessee, through the TDAPC, submitted revisions to amend Chapter 10.56, ''Air Pollution Control,'' of the Metropolitan Code of Laws. To be consistent with federal requirements, the State of Tennessee amended the definition of volatile organic compounds (VOCs) and deleted various words in Chapter 10.56, ''Air Pollution Control,'' of the Metropolitan Code of Laws.

EPA is approving rule revisions to Sections 10.56.010, 10.56.080(B), 10.56.160 and 10.56.280(D). The revisions are consistent with EPA guidance and are therefore being approved. The following is a description of the revisions. The regulations are discussed in more detail in the official SIP submittal that is available at the Region 4 office listed under the **ADDRESSES** section of this notice.

Section 10.56.010 deletes the definition of volatile organic compounds and references the definition in Title 40, Code of Federal Regulation, Part 51, Subpart F.

Section 10.56.080(B) deletes the words ''construction permit and.''

Section 10.56.160 deletes the section containing ''Primary Standards of Gaseous Fluorides'' from Table 10.56.160. The Primary Standards of Gaseous Fluorides are being deleted from the table because these compounds are not regulated under the SIP.

Section 10.56.280(D) deletes the words ''located in a nonattainment area or.'' This deletion removes redundancy in the rule located in the section.

I. Final Action

EPA is approving the aforementioned changes to the SIP.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective March 1, 1999 without further notice unless the Agency receives relevant adverse comments by February 1, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Only parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 1, 1999 and no further action will be taken on the proposed rule.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under Executive Order 12875, 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to 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 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 a 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, 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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 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. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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 rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action

approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. 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).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 30, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart RR—Tennessee

2. Section 52.2220, is amended by adding paragraph (c)(164) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(164) Revisions to the Nashville/Davidson County portion of the Tennessee State Implementation Plan submitted to EPA by the State of Tennessee on April 7, 1997.

(i) Incorporation by reference. Chapter 10.56, Sections 10.56.010, 10.56.080(B), 10.56.160, 10.56.280(D), effective March 12, 1997.

(ii) Other material. None.

[FR Doc. 98–34309 Filed 12–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207–0108a; FRL–6203–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the California State Implementation Plan (SIP). The revision concerns Monterey Bay Unified Air Pollution Control District's (MBUAPCD) Rule 431. This rule controls emissions of oxides of nitrogen (NO_x) and carbon monoxide (CO) from electric power boilers. This action will incorporate the rule into the Federally approved SIP. The intended effect of approving this rule is to regulate emissions of NO_x and CO in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, and SIPs for national primary and secondary ambient air quality standards.

DATES: This direct final rule is effective on March 1, 1999 without further notice, unless EPA receives adverse comments by February 1, 1999. If EPA received such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revision and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Monterey Bay Unified Air Pollution Control District, Rule Development, 24580 Silver Cloud Ct., Monterey, CA 93940–6536.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP includes MBUAPCD's Rule 431, Emissions from Electric Power Boilers. This rule was submitted by the California Air Resources Board (CARB) to EPA on March 10, 1998.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. 40 CFR 81.305 provides the attainment status designations for air districts in California. MBUAPCD is listed as being in attainment for the National Ambient Air Quality Standards (NAAQS) for ozone, NO_2, and CO; therefore stationary sources in the air district are not subject to the Reasonably Available Control Technology (RACT) requirements of section 182(b)(2).

On March 10, 1998, the State of California submitted to EPA MBUAPCD's Rule 431, Emissions from Electric Power Boilers which was amended by MBUAPCD on December 17, 1997. This submitted rule was found to be complete on May 21, 1998 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51

Appendix V[1] and is being finalized for approval into the SIP. By today's document, EPA is taking direct final action to approve this submittal. This final action will incorporate this rule into the Federally approved SIP.

NO_X emissions contribute to the production of ground level ozone and smog. MBUAPCD's Rule 431 controls emissions NO_X and CO from electric power boilers. The rule was adopted as part of MBUAPCD's effort to maintain attainment of the National Ambient Air Quality Standards (NAAQS) for ozone and CO. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a NO_X and CO rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans) respectively. The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents. Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions in areas designated as nonattainment for ozone. Since MBUAPCD is in attainment for ozone, RACT requirements do not apply.

While MBUAPCD is in attainment with the NO_2, CO, and ozone NAAQS, the emission limits and enforceability elements such as applicability, test methods, recordkeeping, and compliance determinations are still appropriate as part of the MBUAPCD's ozone attainment plan. Rule 431 is amended from the previous SIP approved rule to: (1) change the applicability from utility owner to non-utility owner; (2) delete provisions that no longer apply (i.e., for old units removed from service); and (3) incorporate acid rain program requirements for continuous emission monitoring system (CEMs). A more detailed discussion can be found in the Technical Support Document (TSD) for Rule 431, dated October 27, 1998.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, MBUAPCD's Rule 431, Emissions from Electric Power Boilers, is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(f) and the NO_X Supplement to the General Preamble.

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

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective March 1, 1999 without further notice unless the Agency receives adverse comments by February 1, 1999.

If the EPA received such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 1, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, 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 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 written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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 a 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 E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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 rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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 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 EPA to develop an effective process permitting elected and

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5824) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

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 E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. 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).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the director of the Federal Register on July 1, 1982.

Dated: December 4, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(254)(i)(G)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(254) * * *

(i) * * *

(G) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 431, adopted on December 17, 1997.

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[FR Doc. 98–34552 Filed 12–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–207–0088; FRL; 6211–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a revision to the California State Implementation Plan. This action is an administrative change that revises three administrative rules in the Antelope Valley Air Pollution Control District (AVAPCD or District). The intended effect of approving this action is to federally recognize the newly established AVAPCD and to notify the public that the AVAPCD has assumed all air pollution control responsibilities from the South Coast Air Quality Management District in the Los Angeles County portion of the Mojave Desert Air Basin effective July 1, 1997.

DATES: This action is effective on March 1, 1999 unless adverse or critical comments are received by February 1, 1999. If EPA receives such comments,

then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814

Antelope Valley Air Pollution Control District, 315 West Pondera Street, Suite C, Lancaster, CA 93539–1409

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone (415–744–1189).

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP are: AVAPCD Rule 101, Title, Rule 102, Definition of Terms, and Rule 103, Definition of Geographical Areas, submitted on March 10, 1998, by the California Air Resources Board.

II. Background

Portions of the South Coast Air Basin are currently nonattainment for ozone, particulate matter, and other national ambient air quality standards (40 CFR 81.305). As a result, the South Coast AQMD has submitted and EPA has approved many rules to fulfill the requirements for nonattainment areas described in section 110 and elsewhere in the Clean Air Act.

The AVAPCD assumed all air pollution control responsibilities from the South Coast Air Quality Management District (SCAQMD) in the Los Angeles County portion of the Mojave Desert Air Basin (previously in a portion of the former Southeast Desert Air Basin) effective July 1, 1997. The AVAPCD adopted the SCAQMD Rulebook on July 1, 1997 when it assumed the air pollution control responsibilities from SCAQMD in the Antelope Valley. The amendments reflect Antelope Valley's air quality designation and classification.

This document addresses EPA's direct-final action for the following AVAPCD rules: Rule 101, Title; Rule 102, Definition of Terms; and Rule 103, Definition of Geographical Areas. The amendments to Rules 101 and 102 remove references to the SCAQMD and Executive Officer, and provide certain cross-references in the AVAPCD Rule Book. These rules were adopted by AVAPCD on August 19, 1997 and September 16, 1997, and submitted by the State of California for incorporation into its SIP on March 10, 1998. These rules were found to be complete on May 21, 1998, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V[1] and is being finalized for approval into the SIP. These rules were originally adopted as part of efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements appears in various EPA policy guidance documents.[2]

EPA has previously reviewed many rules from AVAPCD's predecessor agency, SCAQMD, and incorporated them into the federally approved SIP for SCAQMD pursuant to section 110(k)(3) of the CAA. The AVAPCD recognizes that all SIP revisions submitted by its predecessor agency SCAQMD and approved by the United States Environmental Protection Agency (USEPA) prior to July 1, 1997, remain in effect and are fully enforceable in the AVAPCD jurisdiction until USEPA approves SIP revisions submitted by AVAPCD to supersede them.

In a Resolution dated July 1, 1997, the AVAPCD Board affirms that the Rules and Regulations of the SCAQMD will be effective in the AVAPCD until AVAPCD adopts rules and regulations that supercede them.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, AVAPCD Rule 101, Title; Rule 102, Definition of Terms; and Rule 103, Definition of Geographical Areas, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective March 1, 1999 without further notice unless the Agency receives relevant adverse comments by February 1, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the rule. Any parties interested in commenting on the rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 1, 1999, and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, 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 the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of

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[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section (110)(k)(1) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987). ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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 a 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 E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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 rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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 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 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 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 E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. 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).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Date: December 4, 1998.

Laura Yoshii,

Acting Regional Administrator, EPA, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(254)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(254) * * *

(i) * * *

(E) Antelope Valley Air Pollution Control District.

(*1*) Resolution No. 97–01 dated July 1, 1997.

(*2*) Rules 101 and 102 amended on August 19, 1997 and Rule 103 amended on September 16, 1997.

* * * * *

[FR Doc. 98–34698 Filed 12–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 143

[WH–FRL–6212–4]

RIN 2040–AC77

Withdrawal of the National Primary Drinking Water Regulations: Analytical Methods for Regulated Drinking Water Contaminants; Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comments, we are withdrawing the direct final rule entitled ''National Primary Drinking Water Regulations: Analytical Methods for Regulated Drinking Water Contaminants''. We published the direct final rule on September 3, 1998 (63 FR 47097–47114). We stated in the direct final rule that if we received adverse comment by November 2, 1998, we would publish a timely notice of withdrawal in the **Federal Register**. We subsequently received adverse comments on the direct final rule. We will address those comments in a subsequent final action based on the parallel proposal also published on September 3, 1998 (63 FR 47115). We will not institute a second comment period on this action.

DATES: As of December 31, 1998, EPA withdraws the direct final rule published at 63 FR 47097–47114 on September 3, 1998.

FOR FURTHER INFORMATION CONTACT: Jitendra Saxena, Ph.D., Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC–4607), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 260–9579.

SUPPLEMENTARY INFORMATION: EPA published the analytical methods direct final and companion proposed rule on September 3, 1998. The rule proposed the use of 93 analytical methods for measurement of chemical and microbiological contaminants in drinking water; of these 43 are updated versions of American Society for Testing and Materials (ASTM), Standard Methods for Examination of Water and Wastewater (Standard Methods or SM) and Environmental Protection Agency (EPA) methods, and 50 are ASTM and SM methods with minor editorial or nomenclature changes. EPA proposed to withdraw earlier versions of the EPA methods but earlier versions of ASTM and SM would continue to be approved. The rule also provided for corrections of method citations and minor correction or clarification changes to current regulations. Additional methods for monitoring secondary drinking water contaminants were recommended.

The companion proposed rule (63 FR 47115) section of the September 3, 1998, package invited comment on the substance of the direct final rule and stated that if adverse comments were received by November 2, 1998, the rule would not become effective and a notice would be published in the **Federal Register** to withdraw the direct final rule before the January 4, 1999, effective date. The EPA subsequently received adverse comments on the final rule.

List of Subjects

40 CFR Part 141

Environmental protection, Analytical methods, Chemicals, Incorporation by reference, Indians—lands, Intergovernmental relations, Radiation protection, Reporting and record keeping requirements, Water supply.

40 CFR Part 143

Environmental protection, Analytical methods, Chemicals, Incorporation by reference, Indians—lands, Water supply.

Dated: December 22, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–34421 Filed 12–30–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 980804203–8406–01; I.D. 122298A]

RIN 0648–AK97

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Bag Limit Reduction

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

ACTION: Emergency interim rule; request for comments.

SUMMARY: This emergency interim rule reduces the daily bag limit for red snapper possessed in or from the exclusive economic zone (EEZ) of the Gulf of Mexico from five fish to four fish. The intended effects are to avoid angler confusion and excessive fishing mortality, slow the rate of harvest, extend the recreational fishing season, and help ensure that more of the recreational quota is available during a later period for recreational fishing. This will provide for better management, minimize the potential for significant economic losses that would occur with an earlier closure of the recreational fishery, and increase social and economic benefits derived from the available recreational quota.

DATES: This rule is effective January 1, 1999, through June 29, 1999.

ADDRESSES: Comments on this emergency interim rule must be mailed to, and copies of documents supporting this action, such as the economic analysis and environmental assessment, may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Requests for copies of a minority report submitted by seven members of the Council and/or a minority report submitted by one member of the Council should be sent to the Gulf of Mexico Fishery Management Council, Suite 1000, 3018 U.S. Highway 301 North, Tampa, FL 33619, Phone: 813–228–2815; Fax: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 727–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Council Recommendations for Red Snapper Management Measures

At its November 1998 meeting, the Council considered a NMFS stock assessment for Gulf of Mexico red snapper and heard substantial testimony from charter vessel operators and a chamber of commerce regarding the need to extend the recreational red snapper fishing season as late into the calendar year as practicable. The Council requested an emergency rule to delay opening the 1999 red snapper recreational fishery in the Gulf of Mexico EEZ from January 1 until March 1; to implement bag limits of zero fish for captain and crew of for-hire vessels and four fish for other persons not fishing under the commercial quota (recreational bag limit); and to implement a minimum size limit of 14 inches (35.6 cm), total length, for persons fishing under the recreational or commercial quotas for red snapper in the EEZ. The Council also voted to include those measures, as well as a change in the timing of the fall commercial season, in a regulatory amendment to be implemented through a framework notice and comment rulemaking procedure of the FMP.

Reduction of the Recreational Bag Limit

This emergency rule to reduce the recreational bag limit to four fish per person would reduce angler confusion, increase the number of fishing trips on which red snapper would be harvested, and extend the length of the open season. Without this emergency action, the recreational fishery would open on January 1, 1999, with a 5–fish bag limit. If NMFS approves and implements the Council's regulatory amendment after January 1, the 5–fish bag limit would be reduced to four fish part way through the season. This mid-season change could create confusion in the fishery and lead to fishing mortality in excess of the 4–fish bag limit by fishermen unaware of the bag limit reduction. Implementation of this emergency interim rule would avoid that confusion and provide for consistent catch limits during the open season.

In addition, if the recreational red snapper season were to open on January 1 with a 5–fish bag limit and a 15–inch (38.1 cm) minimum size limit for the entire season, preliminary projections suggest that approximately 391,000 red snapper angler trips could be taken to harvest red snapper. Approximately 244,000 of those trips are for-hire angler trips. Under this scenario, the season is projected to close on August 17, 1999. However, a January 1 opening with a 15–inch (38.1 cm) minimum size limit and a 4–fish bag limit is expected to allow 441,000 angler trips to harvest red snapper, of which 275,000 (62 percent) are for-hire trips. This 4–fish bag limit scenario is projected to extend the 1999 season through September 10. Compared to a 5–fish bag limit for all of 1999, the expected benefits of a 4–fish bag limit are an additional 23 fishing days and 50,000 red snapper harvest angler trips across all modes, including a gain of 31,000 for-hire trips on which red snapper are harvested.

A minority report signed by seven Council members suggested that the 4–fish bag limit would not need to be implemented by emergency rule if the season opening date were delayed until March 1. However, because neither the minority report signed by seven Council members nor the minority report signed by one Council member provided substantive objections to implementation of a 4–fish bag limit through an emergency rule, and because of the benefits of the reduced bag limit, NMFS is issuing this emergency rule.

Analysis of Other Council-Recommended Measures

The Council requested emergency implementation of a delay of the recreational season opening date from January 1 to March 1. Subsequent analyses by NMFS indicated a net loss in the number of in-season trips catching red snapper if the season opening date were delayed until March 1. NMFS considered a minority report signed by seven Council members that recommended emergency implementation of only the season delay. However, NMFS found the report did not provide sufficient information to warrant implementation of the delay by an emergency rule. In light of a potential loss in the number of trips harvesting red snapper, NMFS considers the value of providing the public the opportunity to comment on a season delay outweighs the value of implementing this measure through an emergency rule.

NMFS also considered two minority reports addressing the Council's request to implement by emergency rule the 14–inch minimum size limit to reduce bycatch mortality and a zero-fish bag limit for captain and crew of for-hire vessels. The minority report signed by seven Council members objected to the 14–inch minimum size limit based on their concerns about its biological impact, and to the zero-fish bag limit based on their concerns about a differential impact on captain and crew of for-hire vessels as opposed to other vessels. One Council member submitted a separate minority report objecting to the zero bag limit for captain and crew of for-hire reef fish vessels in both the regulatory amendment and emergency rule request because of concerns about the equity of such a measure. In light of the controversy over these measures, NMFS determined that the value of additional public comment on a zero bag limit and 14–inch (35.6 cm) minimum size limit outweighs any benefits of their implementation through an emergency rule. NMFS will further consider the minority reports prior to taking agency action on these measures under the Council's regulatory amendment.

Criteria for Issuing an Emergency Rule

This emergency interim rule meets NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), because the emergency situation: Results from recent, unforeseen events, or recently discovered circumstances; presents a serious management problem; and realizes immediate benefits from the emergency rule that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process. Compliance with the NMFS policy guidelines is discussed here.

Recent, Unforeseen Events or Recently Discovered Circumstances

The Council was unable to propose red snapper management measures before its November 9–12, 1998, meeting due to the lack of a complete red snapper stock assessment. The red snapper stock assessment utilizes data obtained from state fishery management agencies and NMFS. This year those data and analyses were made available later than usual. The FMP's framework procedure for making changes to fishery management measures requires review of the stock assessment prior to the Council's recommendation of such changes. The late availability of the stock assessment information was an

unforeseen circumstance that precluded earlier action by the Council and NMFS.

Moreover, insufficient time exists to process the Council's regulatory amendment and to implement the decreased bag limit through proposed and final rules in time for the January 1 fishery opening. These unavoidable circumstances indicate the need for an emergency interim rule to implement a 4–fish bag limit in time for the January 1 opening.

Serious Management Problems in the Fishery

Without emergency action in time for the 1999 season, the recreational fishery would automatically open with a 5–fish bag limit per person that differs from the Council's bag limit recommendations. Allowing the fishery to open with a 5-fish bag limit starting January 1, 1999, and subsequently changing to 4–fish per person bag limit, assuming NMFS' approval of the Council's regulatory amendment, could seriously erode public confidence in red snapper management and create confusion in the fishery. Such confusion could lead to increased fishing mortality through harvest in excess of the 4–fish bag limit following implementation of that measure under the Council's regulatory amendment. While these factors cannot be quantified, they are of significant concern to NMFS.

In addition, under a January 1 opening and a 5–fish bag limit and a 15–inch (38.1–cm) minimum size limit through the entire season, the 1999 recreational red snapper fishery will close on August 17 and allow approximately 391,000 red snapper angler trips, of which approximately 244,000 are for-hire angler trips to harvest red snapper. The resulting economic impacts, when combined with angler confusion and associated disruption, would constitute serious management problems in the fishery if this emergency interim rule is not implemented.

NMFS has projected that a 4–fish bag limit, as provided by this rule, will allow approximately 23 additional fishing days, with a projected closure on September 10, and allow a total of 441,000 angler trips. Of those trips, 275,000 (62 percent) are for-hire angler trips to harvest red snapper. This information indicates that management problems associated with the shorter season would be avoided under the emergency interim rule.

Immediate Benefits

Public comment to the Council indicated that slowing the rate of harvest through a 4–fish bag limit emergency interim rule would avoid angler confusion and optimize overall benefits to the fishery starting January 1, 1999. Without a 4–fish bag limit emergency interim rule, the recreational fishery would open with a bag limit that differs from the Council's recommendations. Agency experience demonstrates that substantial user group confusion results from adjusting management measures during the fishing year. This confusion, combined with the negative impacts of the shortened season, would disrupt the fishery. Timely implementation of the 4–fish bag limit under this emergency interim rule will prevent confusion and the associated disruptive effects.

In addition, a January 1 opening with a 15–inch (38.1–cm) minimum size limit and 5–fish bag limit would result in a projected seasonal closure of August 17. This scenario would not provide economic and social benefits to the fishery associated with a September 10 closure projected with a 4–fish bag limit. Implementation of this emergency interim rule would provide those benefits to the fishery and, as previously discussed, avoid angler confusion regarding bag limits. Moreover, this rule provides the opportunity for additional public comment.

NMFS concludes that the timely regulatory action provided by this emergency interim rule is critical to avoiding unnecessary adverse economic and social impacts on participants and fishing communities dependent on the red snapper recreational fishery in the Gulf of Mexico. NMFS issues this emergency interim rule, effective for an initial 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency interim rule is necessary to minimize significant adverse social and economic impacts that would occur with an earlier closure of the red snapper recreational fishery and to increase the socio-economic benefits associated with the recreational quota. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency interim rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an economic evaluation of the regulatory impacts associated with this emergency interim rule that is summarized as follows. The major effects of the emergency interim rule are the generation of non-quantifiable positive economic benefits, compared to the status quo, that should accrue because of consistency of bag limit measures throughout the year and a lengthening of the recreational fishery's open season by approximately 23 days. The seasonal extension will allow 50,000 additional red snapper angler trips to harvest red snapper, including 31,000 for-hire trips. This translates into a 13–percent increase in total red snapper angler trips for the year. The economic consequences of the emergency interim rule can be summarized as ranging from a small to a significant increase in economic benefits for the recreational red snapper fishery.

The emergency interim rule does not create additional reporting, recordkeeping or other compliance requirements. Accordingly, there are no cost increases that can be ascribed to compliance requirements.

Copies of the economic evaluation are available (see **ADDRESSES**).

If action were not taken to reduce the red snapper daily bag limit from five to four fish, the recreational fishery would be expected to close earlier in the fishing season and at a time that would forfeit some of the prime red snapper recreational fishing opportunities. This would result in unnecessary adverse impacts on those entities dependent on the red snapper recreational fishery, including the associated fishing communities. Reduction of the bag limit at the beginning of 1999 is expected to avoid angler confusion, slow the rate of harvest, extend the fishing season, and allow recreational fishers to harvest the available quota during the period, which should increase optimal social and economic benefits for the year. Accordingly, under authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for prior public comment, as such procedures would be contrary to the public interest. For these same reasons, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a delay in the effective date of this rule, beyond January 1, 1999, would be contrary to the public interest.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 24, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.34, paragraph (l) is suspended and paragraph (m) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(m) *Closures of the commercial fishery for red snapper.* The commercial fishery for red snapper in or from the Gulf EEZ is closed from January 1 to noon on February 1 and thereafter from noon on the 15th of each month to noon on the first of each succeeding month. All times are local times. During these closed periods, the possession of red snapper in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), regardless of where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(vi) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1). However, when the recreational quota for red snapper has been reached and the bag and possession limit has been reduced to zero, such possession during a closed period is zero.

3. In § 622.39, paragraph (b)(1)(iii) is suspended and paragraph (b)(1)(vi) is added to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(vi) Red snapper—4.

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[FR Doc. 98–34727 Filed 12–28–98; 4:34 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 101498B]

RIN 0648–AL74

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries

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

ACTION: Final rule and final specifications for the 1999 summer flounder, scup, and black sea bass fisheries.

SUMMARY: NMFS issues the final specifications for the 1999 summer flounder, scup, and black sea bass fisheries. The intent of this document is to comply with implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) that require NMFS to publish measures for the upcoming year that will prevent overfishing of these fisheries. The annual specifications for the scup fishery include a provision to reduce the minimum mesh threshold that would be more restrictive than the current mesh provision.

DATES: The revision of § 648.123(a)(1) is effective February 1, 1999. The 1999 final specifications are effective January 1, 1999, through December 31, 1999.

ADDRESSES: Copies of the Environmental Assessment (EA)/ Regulatory Impact Review (RIR)/Final Regulatory Flexibility Analysis (FRFA) are available from: Jon C. Rittgers, Acting Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Mary M. Grim, Fisheries Management Specialist, (978) 281–9326.

SUPPLEMENTARY INFORMATION:

Background

The FMP was developed jointly by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./ Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. water of the Atlantic Ocean from 35°13.3′ N. latitude (the latitude of Cape Hatteras Light, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

Pursuant to §§ 648.100 (summer flounder), 648.120 (scup), and 648.140 (black sea bass), the Regional Administrator, Northeast Region, NMFS, implements measures for the fishing year to ensure achievement of the target fishing mortality (F) or exploitation rate for each fishery, as specified in the FMP. The FMP for summer flounder established a target F equal to that which results in the maximum yield per recruit (F_{max}). That target F for summer flounder in 1999 is 0.24; the target exploitation rate for scup in 1999 is 47 percent, the rate associated with an F of 0.72. For black sea bass, the FMP specifies a target exploitation rate for 1999 of 48 percent, the rate associated with an F of 0.73. The management measures are summarized below by species. Detailed background information regarding the development of this rule was provided in the proposed specifications for the 1999 summer flounder, scup, and black sea bass fisheries (63 FR 56135, October 21, 1998) and is not repeated here. NMFS will publish in the **Federal Register** at a later date the 1999 recreational management measures for the summer flounder, scup, and black sea bass fisheries.

Summer Flounder

The FMP for summer flounder established a target fishing mortality (F) equal to that which results in the maximum yield per recruit (F_{max}). For 1999, this target level of F is equal to 0.24. This target will be attained through the specification of a quota equivalent to a total allowable landings level (TAL), allocated to the commercial (60 percent) and the recreational (40 percent) sectors.

A stock assessment was not conducted for summer flounder in 1998. However, projection results based on the 25th Stock Assessment Workshop and 1997 survey indices and catch data indicated that a TAL of 14.97 million lb (6.79 million kg) has a 50-percent probability of attaining the target F for 1999. This projection was the basis of the Monitoring Committee recommendation for a TAL of 14.97 million lb (6.79 million kg). Despite this

recommendation, the Council and Commission recommended to NMFS a TAL of 20.20 million lb (9.16 million kg). After review of the Council's and Commission's recommendation, NMFS found it to be unnecessarily risk prone because the recommended TAL had only a 3-percent probability of achieving the target F. Because of these concerns, NMFS proposed a TAL of 18.52 million lb (8.40 million kg), which has an 18-percent probability of achieving the target F (it should be noted that this probability may decrease given recent increased projections of recreational landings). To improve the probability of achieving the target, additional measures were recommended to reduce the level of incidental catch.

This rule will implement the following summer flounder measures for 1999: (1) A TAL of 18.52 million lb (8.40 million kg); (2) a coastwide commercial quota of 11.11 million lb (5.039 million kg); and (3) a coastwide recreational harvest limit of 7.41 million lb (3.361 million kg).

While this TAL is the same level specified in 1998, NMFS recommends that the states implement two additional measures that will address discards in this fishery and further reduce the overall mortality. First, states should set the directed commercial fishery TAL to be equal to the commercial share (60 percent) of the Monitoring Committee's TAL recommendation of a 14.97 million lb (6.79 million kg) TAL, or 8.98 million lb (4.07 million kg). Fifteen percent of this allocation (1.51 million lb) should be set aside as an incidental catch allocation. This would result in a coastwide directed fishery of 7.47 million lb (3.39 million kg). Second, the states should allocate the poundage associated with the difference between the commercial share (8.98 million lb, 4.07 million kg) of the 14.97 million lb (6.79 million kg) TAL and the commercial share (11.11 million lb, 5.04 million kg) of the 18.52 million lb (8.40 million kg) TAL that is 2.13 million lb (0.97 million kg) to the incidental catch allocation. This would result in a coastwide incidental catch allocation of 3.6 million lb (1.63 million kg), or 32.7 percent of the total commercial TAL being set aside for incidental catch. As was proposed by the Council and Commission at the joint meeting held in August 1998, state incidental catch measures would specify (1) that the states must allocate a portion of the commercial quota to incidental catch resources and (2) that summer flounder caught incidentally may not exceed 10 percent by weight of all other species at the end of the trip. At the time the Council and Commission made their recommendation, it appeared the measures were Commission-compliance criteria. Since that time, the Commission has made these measures voluntary.

The commercial quotas by state for 1999 are presented in Table 1; the total quotas are divided into the recommended allocation between directed fishing and incidental catch for purposes of illustration:

TABLE 1.—1999 STATE COMMERCIAL QUOTAS

State	Percent share	Directed		Incidental catch		Total	
		Lb	KG [1]	Lb	KG [1]	Lb	KG [1]
ME	0.04756	3,552	1,611	1,733	786	5,285	2,397
NH	0.00046	34	15	17	8	51	23
MA	6.82046	509,427	231,072	248,414	112,678	757,842	343,751
RI	15.68298	1,171,379	53,133	571,204	259,094	1,741,583	789,968
CT	2.25708	168,584	76,468	82,207	37,288	250,791	113,757
NY	7.64699	571,162	259,075	278,518	126,334	849,680	385,408
NJ	16.72499	1,249,207	566,630	608,156	275,855	1,858,363	842,939
DE	0.01779	133	603	648	294	1,977	897
MD	2.03910	152,303	69,083	74,268	33,687	226,570	102,770
VA	21.31676	1,592,172	722,197	775,397	351,714	2,368,569	1,074,365
NC	27.44584	2,049,959	929,846	998,630	425,970	3,049,589	1,383,270
Total	100.00000	7,468,107	3,387,476	3,642,191	1,652,070	11,111,191	5,039,951

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Scup

The most recent assessment for scup, completed as part of the 27th Stock Assessment Workshop (SAW–27), indicated that scup are over-exploited and at a low biomass level. SAW–27 did not recommend a total allowable catch (TAC) for 1999, but it did recommend that the ''1999 TAC be less than the 1998 TAC to at least remain on the current fishing mortality reduction schedule.'' A relative exploitation index based on landings and the Northeast Fisheries Science Center (NEFSC) Spring Survey (spawning stock biomass 3 year average) was developed by Council staff to assess current levels of mortality and to determine the level of landings that would follow the SAW–27 advice. Based on this index, F in 1997 was estimated at 1.8 (an exploitation rate of 78 percent). Therefore, a 40-percent reduction from 1997 exploitation rates is needed to remain on the current mortality reduction schedule.

To achieve this goal, this rule will implement the following measures recommended by the Council and Commission for scup in 1999: (1) A total allowable catch (TAC) of 5.92 million lb (2.69 million kg); (2) a commercial TAC of 4.61 million lb (2.09 million kg); (3) a commercial discard estimate of 2.09 million lb (0.95 million kg); (4) a commercial quota of 2.53 million lb (1.15 million kg); (5) a recreational TAC of 1.30 million lb (0.59 million kg); (6) a recreational discard estimate of 0.065 million lb (0.003 million kg); and (7) a recreational harvest limit of 1.24 million lb (0.562 million kg). To achieve the commercial quotas, the trip limits will be 12,000 lb (5,443 kg). They will drop to 1,000 lb (453.6 kg) for Winter I (January–March), after 85 percent of the quota for that period is harvested and to 4,000 lb (1814.4 kg) for Winter II (November–December).

Further, this rule also implements a 200-lb (90.7-kg) and 100-lb (45.4-kg) seasonal (winter/summer) threshold for minimum mesh size. Specifically, fishers must use 4.5-inch mesh in the codend when 200 lb (90.7 kg) and 100 lb (45.5 kg) of scup are on board during the winter (November-March) or summer (April-October), respectively. This minimum mesh threshold will allow the landing of the incidental catch

of legal-sized scup harvested in small mesh fisheries, up to the seasonal threshold amount. At the same time, the reduction in the threshold level from 1998 will address concerns that the threshold was sufficiently high to encourage the use of small mesh to target scup, causing discard of undersized scup retained in the small mesh. Some incidental catch allowance is necessary in order that fish that might otherwise be discarded dead would instead be landed and applied to the commercial quota, increasing the probability that the target exploitation rate will be met.

The quota and period allocations are shown in Table 2:

TABLE 2.—PERCENT ALLOCATIONS OF COMMERCIAL SCUP QUOTA

Period	Percent	TAC[1]	Discards[2]	Quota allocation	
				Lb	KG[3]
Winter I	45.11	2,083,630	940,543	1,143,087	518,496
Summer	38.95	1,799,100	812,108	986,993	447,692
Winter II	15.94	736,569	332.7,349	403,920	183,215
Total	100.00	4,619,000	2,085,000	2,534,000	1,149,403

[1] Total allowable catch, in pounds.
[2] Discard estimates, in pounds.
[3] Kilograms are as converted from pounds.

Black Sea Bass

The FMP specifies a target exploitation rate of 48 percent for 1999, equivalent to an F of 0.73. This target is to be attained through specification of a TAL level that is allocated 49 percent to the commercial fishery and 51 percent to the recreational fishery. The commercial quota is specified on a coastwide basis by quarter. The most recent assessment on black sea bass, completed in June 1998 (SAW–27), indicates that black sea bass are over-exploited and at a low biomass level. The SAW concluded that the input data for black sea bass were inadequate to develop an analytical assessment. Fishing mortality for 1997, based on length-based methods, was 0.73. Because this estimate of F was the same as the target F for 1999, the Stock Assessment Review Committee recommended that the FMP exploitation schedule be maintained and that no changes from the 1998 TAL be required.

To achieve that goal, this rule implements the following specifications that were recommended by the Council and Commission for black sea bass in 1999: (1) A TAL for 1999 of 6.17 million lb (2.79 million kg); (2) a commercial quota of 3.02 million lb (1.37 million kg); and (3) a recreational harvest limit of 3.14 million lb (1.42 million kg). The specifications are the same as those implemented for the 1998 fishing year.

The black sea bass coastwide commercial quotas by quarter for 1999 are presented in Table 3:

TABLE 3.—1999 BLACK SEA BASS QUARTERLY COASTWIDE COMMERCIAL QUOTAS AND QUARTERLY TRIP LIMITS

Trip limits	Quarter	Percent	Lb	(Kg) [1]	
				Lb	(Kg) [1]
1 (Jan-Mar)	38.64	1,168,860	530,186	11,000	4,990
2 (Apr-Jun)	29.26	885,115	401,481	7,000	3,175
3 (Jul-Sep)	12.33	372,983	169,182	3,000	1,361
4 (Oct-Dec)	19.77	598,043	271,268	4,000	1,814
Total	100.00	3,025,000	1,372,117		

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Changes From the Proposed Rule

In the proposed rule, NMFS recommended that states implement an incidental catch trip limit for summer flounder so that summer flounder does not exceed 10 percent by weight of all other species on board for any trip under the incidental catch allocation. Based on comments received from the State of New Jersey and an industry member (see comment 23), NMFS has revised this recommendation. NMFS recommends that states implement an incidental catch trip limit so that summer flounder does not exceed 10 percent by weight of all other species landed at the end of a trip for any trip under the incidental catch allocation. NMFS feels that this modification, slightly different from the one recommended by the State of New Jersey, would be more enforceable than the original recommendation or the New Jersey recommendation, and thus more effective.

Comments and Responses

Seventeen sets of comments were received expressing concern about the measures proposed by NMFS. Critical comments were received from Congressman Saxton (NJ), two industry members, the Atlantic State Marine Fisheries Commission, the North Carolina Department of Environment and Natural Resources, the Massachusetts Department of Marine Resources, the Virginia Marine Resources Commission, the New Jersey Department of Environmental Resources, the New York Department of Environmental Conservation, the Connecticut Department of Environmental Protection, the Maryland Department of Natural Resources, three fisheries associations (the New Jersey Marine Fisheries Council, the North Carolina Fisheries Association, Inc., and the United National Fishermen Association), and from the Natural Resources Defense Council, the Center for Marine Conservation, and the Environmental Defense Fund, jointly. Specific comments on the proposed

annual specifications for the 1999 summer flounder, scup, and black sea bass fisheries are discussed and responded to below.

Comment 1: Congressman Saxton expressed concern that the quota level recommended by NMFS would require the recreational fishery to be closed during the summer months, with devastating economic impacts. He urged NMFS to reconsider the Council/Commission recommendation for a TAL of 20.2 million lb (9.16 million kg) and resultant recreational harvest limit of 8.1 million lb 3.67 million kg).

Response: NMFS carefully reviewed the Council's and Commission's recommendation and found it unacceptable due to the low probability it would achieve the FMP target fishing mortality rate. NMFS notes that the recreational sector of the fishery exceeded its harvest limit for the past two years (1996, 1997) and appears likely to do so again in 1998. As a result, NMFS agrees with the Congressman that maintaining the recreational harvest limit at the status quo level is likely to require additional restrictions on the recreational fishing sector. The Council and Commission recommended measures for the recreational fishery at a meeting December 15–17, 1998. NMFS encouraged adoption of measures that would allow the recreational sector to attain, but not exceed, its harvest limit, while minimizing adverse economic impacts to the industry. NMFS has informed the Council and Commission that the impacts of the recreational management measures must be evaluated in an Initial Regulatory Flexibility Analysis, which will then be available early in 1999 for public comment along with the proposed measures.

Comment 2: The three conservation groups stated that they think the proposed TAL is unacceptably risky for several reasons and note that some of these reasons were the same as those NMFS relied upon to reject the Council's recommendation, that is: the quota has a low (15 percent) probability of achieving the target F and has a 50 percent probability of achieving F=0.32, which is significantly higher than the target; caution is merited due to a retrospective pattern in the assessment that has in the past resulted in revisions to the estimates of stock size and fishing mortality rates in the last year of the assessment; and in past years, the management agencies, including NMFS, have failed to specify a harvest level that attains the annual target F.

Response: NMFS believes that the specification addresses many of these concerns. Even without additional measures, the TAL of 18.52 million lb (8.40 million kg) has a higher probability of meeting the target F than the Council's and Commission's recommendation. To increase further the probability of achieving the target F, NMFS recommends that the directed commercial fishery allocation should be set equal to 7.47 million lb (3.39 million kg). This level is 15 percent lower than the level recommended by the Monitoring Committee, increasing the probability of meeting the target F. NMFS recognized that by setting the directed commercial fishery at this level, the level of regulatory discard of summer flounder is likely to increase, thus reducing the probability of achieving the target. To mitigate this effect, 32.7 percent of the directed commercial quota would be set aside for incidental catch. This recommendation, if followed, would increase the probability of meeting the target F, and address concerns often noted by industry that quota management is causing regulatory discard. NMFS believes that this recommendation course would improve the likelihood that the target fishing mortality rate would be attained.

Comment 3: The three conservation groups commented that there are still significant causes for concern about the summer flounder stock. These include an NEFSC analysis that indicates that the overall discard rate in 1997 was almost 30 percent; trawl surveys indicating that the 1996 and 1997 year classes were extremely poor; and the fact that TAL in recent years has been exceeded and likely will be exceeded in 1998 as well.

Response: NMFS agrees that there are reasons to be concerned about the summer flounder stock. The NMFS recommendation for the commercial fishery would reduce the amount available for the directed fishery. This reduction would speed stock rebuilding, which would improve stock resilience when there are poor year classes. NMFS shares the concern about discard levels in the commercial fishery. Industry commenters have expressed frequent concerns about regulatory discards that occur as a side effect of state quota management measures such as trip limits. The recommendation to set aside 32.7 percent of the commercial quota for incidental catch allowances is intended to address these concerns and reduce discards, and, thus, reduce the overall fishing mortality rate.

Comment 4: The State of Maryland and one fisheries association commented that there is no known basis to support the NMFS position that incidental catch constitutes 32.7 percent of the annual catch and no scientific basis for the 32.7 percent allocation.

Response: An analysis of incidental landings has been done to determine the level of incidental catch for most states (Section 6.1.1.3 of the FRFA). This analysis was done by defining an incidental trip for summer flounder as any trip where summer flounder made up 10 percent or less, by weight, of the total weight of fish landed. The analysis found that such trips comprise a large percentage of total trips in many states. In every year since 1995, the States of Rhode Island (15.68298 percent allocation of TAL), North Carolina (27.44584 percent allocation of TAL), Massachusetts (6.82046 percent allocation of TAL), New Jersey (16.72499 percent allocation of TAL), and New York (7.64699 percent allocation of TAL) had landings of incidentally harvested summer flounder in excess of 32.7 percent of the total summer flounder landings. The level in the State of Virginia has varied, though on average, an incidental catch of summer flounder has represented 36.4 percent of the total summer flounder landings in that state.

Comment 5: The State of Maryland commented that NMFS'' proposal requires states to reserve 32.7 percent of the quota as incidental catch until the directed quota is reached in November or December, and that it would be impossible then to catch the 32.7 percent under incidental catch rules. The State of Maryland notes that most states carefully monitor landings within specified quota limits.

Response: NMFS recommends that the states continue to monitor carefully their summer flounder landings to stay within their allocation of commercial quota. The NMFS recommendation is not that a state must fully utilize the directed fishery allocation before allocating the incidental catch provision to the fishery. States retain the flexibility to enact the recommendation in a manner that suits the characteristics of their specific fisheries.

Comment 6: The State of Maryland commented that the proposed summer flounder specifications reduce the total allowable catch, and that is not consistent with the provisions of the FMP.

Response: The specifications do not reduce total allowable summer flounder catch. That level remains at 18.52 million lb (8.40 million kg). NMFS recommends reducing the amount allocated to the directed fishery, for the reasons noted in previous responses to comments. The commenter is incorrect in assuming that a reduction in TAL would be inconsistent with the FMP.

The FMP requires that specifications are to be set to achieve a target F (currently 0.24). If F can be achieved only with a reduction in the TAL, then overall landings (i.e., the quota) must be reduced. The current commercial quota recommendation is a mechanism for use by the states to increase the probability that 18.52 million lb (8.40 million kg) will achieve the target F.

Comment 7: The State of North Carolina and one fisheries association commented that the proposed summer flounder specifications violate National Standard 1 because they do not allow the fishery to be harvested at optimum yield (OY).

Response: OY is defined in Amendment 2 as all summer flounder harvested pursuant to the FMP, so any specifications consistent with the FMP framework will result in the achievement of OY. The commenters' true concern seems to be that the state commercial quota cannot be reached if the state must set aside 32.7 percent of the quota for incidental catch. See responses to comments 5 and 6. It should be noted that the level of incidentally caught summer flounder in North Carolina has exceeded 32.7 percent.

Comment 8: The State of North Carolina and one fisheries association stated that the proposed summer flounder measures violate National Standard 2 because there was not a stock assessment in 1998, so they are not based upon the best scientific information available. In addition, the recommendation does not rely on industry knowledge about the true status of the summer flounder stock. The 32.7 percent incidental catch allocation is not based on scientific information. Further, there is no information indicating that the 11.11 million lb (5.04 million kg) commercial quota specified in 1998 was excessive. It is a violation of National Standard 2 to set the quota artificially high with the intent that some undeterminable amount of the quota will not be fished.

Response: The last peer-reviewed stock assessment for summer flounder was conducted in 1997, and NMFS recognized that the Council and the Commission required updated information to set catch quotas for 1999. Thus, NMFS updated the results of the 1997 assessment in order to provide the necessary catch and stock size projections for 1999. The virtual population analysis (VPA) performed in June 1997 (SAW–25) was re-run using updated catch statistics and 1997 survey indices. The fishing mortality rate in 1997 and the stock size at age at the beginning of 1998 were estimated using the stock size at age at the beginning of 1997 from the re-run VPA and reported landings and estimated discards in 1997. The fishing mortality in 1998 and stock size at age at the beginning of 1999 were estimated, assuming that the 1998 commercial quota and recreational harvest limit would be taken. Finally, the calculated options for catch in 1999 and stock size in 2000 under various fishing mortality levels in 1999 were also estimated. This analysis was provided to the Council and Commission.

NMFS anticipates performing such annual updated assessments for all stocks under management. New analytical ''benchmark'' assessments need not be conducted annually to comply with National Standard 2. The updated assessments will be done by individual scientists, with peer reviews performed by the Council's Scientific and Statistical Committee, and management advice prepared by the Council Monitoring Committees. Consequently, the NEFSC Stock Assessment Workshop (SAW) process will handle only ''benchmark'' assessments. Benchmark assessments will be done for each stock every 3–4 years, utilizing multiple years of new input and considering new analytical methods. All SAW committee meetings, as well as the Council and Commission meetings, are open to the public to incorporate comments from commercial and recreational fishermen.

National Standard 2 requires the use of the best available scientific information. It does not impose a burden on the agency to develop new scientific information through any particular method (i.e., annual stock assessment workshop) before undertaking action. Industry knowledge about the fishery, while useful, is not necessarily the best scientific information available.

NMFS did not set the quota artificially high, presuming that the entire quota would not be harvested. Industry members have frequently expressed concern about high levels of regulatory discards of summer flounder, and further, have commented publicly that they are not reporting all discards in the vessel trip reports because they fear that the information will be used to further restrict the fishery. The recommended allocation for incidental catch is intended to address this concern. The 32.7 percent incidental catch recommendation is a risk-averse measure based on known discard rates that are probably underestimated, given the fact that some industry members are not reporting the total amount of discards.

Comment 9: Three fisheries associations commented that the proposed summer flounder measures violate National Standard 3 because they do not manage the stock as a unit throughout its range, in that the commercial and recreational sectors are managed differently.

Response: The FMP does manage the stock throughout its range through the specification of an annual harvest level to meet specific mortality reduction targets. This harvest level applies to both the commercial and recreational sectors of the fishery. Differing management measures are applied to each sector because they do not operate in the same fashion. This does not undermine the FMP's consistency with National Standard 3.

The FMP specified different management approaches for the commercial and recreational sectors when the comprehensive management measures were initially enacted by Amendment 2 to the FMP in 1993. These differences were due to differences in the data available for monitoring the two sectors of the fishery. The commercial fishery mandatory reporting system provides data that can be used to monitor quotas and close the fishery. The recreational fishery landings are compiled through a survey; data are not available in a timely fashion to close the fishery when the harvest limit is attained. NMFS believes that the recreational sector can be constrained to its harvest limit through the specification of appropriately restrictive annual measures (possession limits, minimum fish size, and seasonal restrictions).

Comment 10: The State of North Carolina and one fisheries association stated that the proposed summer flounder measures violate National Standard 4 because they discriminate between residents of different states. The incidental catch measure will have different impacts upon states that typically have minimal incidental catch levels.

Response: National Standard 4 does not require that the impacts of management measures be the same in all states. In fact, this would not be possible, given the wide variations in state fisheries. The FRFA demonstrates that the measures may have different impacts on participants, depending on the level of participation in the summer flounder fishery. The states are free to implement the incidental catch recommendation in the manner that best meets the characteristics of their fisheries.

Comment 11: The State of North Carolina and one fisheries association

stated that the recommended summer flounder measures violate National Standard 5, which requires measures to consider efficiency in utilization but not to have economic allocation as their sole purpose, because excessive recreational landings have not been addressed.

Response: The measures specified here promote efficiency through the recommended harvest level that will promote the rebuilding of the stock. The recommendation regarding the incidental catch allocation is intended to reduce waste caused by discards. The recreational fishing harvest limit is specified in this action. The recreational measures to constrain anglers to this harvest limit are not part of this action. NMFS shares the commenters' concern that the recreational fishery has exceeded its target harvest limit for the past several years. The Council and Commission recently took action to address this for 1999 and the measures they adopted at the Council's December 1998 meeting are now under consideration by NMFS.

Comment 12: The State of North Carolina and one fisheries association commented that the summer flounder measures violate National Standard 6, which requires measures to take into account variations in fisheries. The commenters say the measures do not account for the fact that the summer flounder fishery is the most important fishery in North Carolina from November through February. They also note that the discard allocation does not account for the fact that discard levels vary by gear type, with sea scallop dredge gear accounting for most discards. They believe the application of the incidental catch measure to all gears fails to account for variation in the fishery.

Response: The only measures specified by this action are the annual quota and its components. The specification of the annual quota takes into account the variations and contingencies of the summer flounder stock through the various considerations prescribed in 50 CFR 648.100. These regulations also contain a measure that allows for the imposition of restrictions on gear other than otter trawls through the annual specification process. Discard estimation has been frustrated in part by under-reporting of discards by some industry members who are fearful of responsive management actions. The total discards in the otter trawl fleet may well exceed that of the smaller scallop fleet, particularly since our reports evidence increasing regulatory discards due to the increased abundance of summer flounder. The recommendation regarding the incidental catch allocation, while not mandatory as originally proposed, is intended to address this very contingency regarding the summer flounder fishery.

Despite the commenters' claim that summer flounder is the most important species landed for the months of November through February, NMFS landings data suggest that substantial amounts of dogfish, croaker, bluefish, and kingfish are also landed in North Carolina fisheries during this time period.

Comment 13: The State of North Carolina and a fisheries association commented that the summer flounder specifications are in violation of National Standard 7, which requires that measures minimize costs and avoid unnecessary duplication.

Response: National Standard 7 requires that the benefits of the fishery management program should outweigh the costs of compliance, and that unnecessary duplication should be avoided. The analysis contained in the FRFA shows that the benefits of the rebuilding program outweigh the immediate costs associated with the annual specifications.

Comment 14: The State of North Carolina and a fisheries association stated that the recommended summer flounder measures violate National Standard 8, which requires management measures to take into account the importance of fisheries resources to fishing communities. They believe the proposed measures do not consider the importance of the fishery to fishing communities, and focused their comments on communities in North Carolina.

Response: NMFS prepared an FRFA, as required by the Regulatory Flexibility Act, to analyze the economic impacts of the 1999 specifications, including the measures for summer flounder. This FRFA included an analysis of the impacts upon communities. A review of impacts upon North Carolina across the range of alternatives reveals that, not only is North Carolina not projected to experience significant economic impacts as a result of this rule, but even the most restrictive allocation did not have any significant impacts upon a large number of North Carolina vessels.

Comment 15: A fisheries association commented that, though the proposed summer flounder specifications may not violate National Standard 9 on its face, it is inconsistent with Congressional intent because the incidental catch allocation has the effect of reducing North Carolina's commercial quota by almost 1 million lb (0.45 million kg). The State of North Carolina believes that the measures violate National Standard 9 and that the reduction in the directed fishing component of the commercial allocation will increase bycatch. The State of North Carolina stated that the primary reason for discards given in the sea sampling data is undersized fish, and that the incidental catch allocation will not address that source of discard.

Response: The overall quota allocated to North Carolina is the same as the initial quota allocated in 1998. However, NMFS is recommending that the amount allocated to the directed fishery should be reduced as a result of the allocation of 32.7 percent to an incidental catch allocation. NMFS believes that it is likely that the reduction in the directed fishing allocation will result in an increase in retained incidental catch for North Carolina vessels as well as those from other states. NMFS notes that in its comment, the State of North Carolina agrees that the reduction in the directed fishing allocation will increase retained incidental catches.

NMFS agrees with the commenter that the incidental catch allocation will not reduce the amount of discards due to undersized fish. The minimum mesh provision is intended to address this type of discarding. The 5.5 inch (13.97 cm) minimum mesh throughout the net has not been in operation long enough to determine if an adjustment to the mesh size is warranted. An analysis of discards on trips carrying observers showed that the major reason for discards was undersized fish (59.7 percent), but the second most frequent reason was quotas or trip limits (27.6 percent). The incidental catch allocation is intended to address the latter cause of discards.

Comment 16: One association commented that the proposed summer flounder measures violate National Standard 10, which requires safety of human life at sea to be promoted to the extent practicable.

Response: NMFS recommends that the states allocate 32.7 percent of their commercial to incidental catch and use the incidental catch allocation to allow vessels to land incidentally caught summer flounder up to 10 percent by weight of other species on board at the end of a trip. The states have the authority to implement a system that will best allow them to utilize this allocation. NMFS hopes that the states will enact systems that will not encourage carrying loads that threaten vessel stability. It is not NMFS' intent for these measures to result in this type of risky behavior. However, because the authority to implement such measures lies with the states, NMFS can only recommend that the states consider

safety at sea when they establish their incidental catch measures.

Comment 17: The State of North Carolina commented that the proposed summer flounder measures violate the requirements of the Regulatory Flexibility Act (RFA) because of the impacts it believes the measures will have on North Carolina vessels, and because NMFS did not agree with the State's suggestion that states should be allowed to redirect any unused portion of the incidental catch allowance to the directed fishery. An association notes that the port and community descriptions in the NMFS analysis are insufficient to satisfy the intent of Congress for analysis of impacts under RFA, and notes that they disagree with the seasonal characterization of the North Carolina fishing activity in one study cited (Griffith, 1996). The association commented that they do not intend to criticize the conclusions of the researcher, but they do criticize NMFS' use of the study.

Response: NMFS fully analyzed the impacts of the proposed measures on the participants in the fishery, all of whom are classed as small business entities for the purposes of the RFA. NMFS did not find the significant impacts in North Carolina that are anticipated by the State of North Carolina and the association. The findings differ due to different assumptions concerning whether the North Carolina participants will land the entire quota allocated to the state. North Carolina claims that there are no other directed fisheries during the winter months, so the allocation for incidental catch will not be fully utilized by their vessels. However, NMFS notes that the State's fishery operated on a bycatch basis for roughly eight months during 1998. The trip limit during this time period was 100 lb (45.4 kg). The incidental catch allocation allows for landing in excess of this trip limit. An analysis of impacts of the summer flounder quota, including the recommended 32.7 percent incidental catch allocation, shows that no actively participating vessels from the State of North Carolina would suffer greater than a 5 percent loss of revenue, and that 59 of the 125 actively participating vessels would have an increase in revenue.

The association points out that the Griffith report erroneously characterizes the summer flounder fishery in North Carolina. Despite the claim that summer flounder is the only species landed during the winter months in North Carolina, NMFS notes that substantial amounts of dogfish, croaker, bluefish, and kingfish are also landed in North Carolina fisheries during this time period.

Comment 18: One association commented that the NMFS analysis of social impacts did not assess the fact that increasing fishing restrictions are making it difficult for industry participants to obtain bank loans.

Response: Business entities, such as banks, set their own criteria for making loans and conducting other financial transactions. The commenter is implying that restrictions should be set to allow all entities to prosper, which is beyond the scope of the FMP.

Comment 19: The State of North Carolina commented that the summer flounder measures recommended by NMFS violate the Administrative Procedure Act because they are arbitrary; capricious; an abuse of discretion; not in accordance with law; in excess of NMFS statutory jurisdiction, authority and limitation, and short of its statutory right; unsupported by substantial evidence; and unwarranted by the facts.

Response: NMFS based its summer flounder recommendation upon the stock assessment information and the discussions by the Council and Commission at their August 1998 meeting. The intent of the measures is to end overfishing and to address the concerns expressed by industry, the Council, and the Commission about the level of incidental catch and regulatory discards. NMFS made every effort to incorporate the comments from industry, Council, and Commission, as well as the scientific data on the status of the stock, when making this recommendation. The annual measures have been set as specified in the FMP; the process is in compliance with the Administrative Procedure Act. The incidental catch recommendation is the same as that specified by the Council and Commission, differing only in the amount of incidental catch.

Comment 20: The States of Connecticut and Virginia and the Commission stated the proposed set-aside of the summer flounder quota for the incidental catch fishery will prevent fishers from landing the quota share allocated to the states under the Summer Flounder FMP.

Response: See responses to comments 5 and 6.

Incidental catch in the State of Virginia has been 36.4 percent, on average, of the total state summer flounder landings. Since, on average, 36.4 percent of the summer flounder currently landed in this State is incidentally caught with other species, the recommended incidental catch allocation should not prevent the State from landing its entire quota. Data are not available from the State of Connecticut.

Comment 21: The States of Virginia, New York, and Connecticut and the Commission questioned how the summer flounder incidental catch proposal will be monitored and believe that it will add significant quota monitoring burden to the states.

Response: Most states already have a mechanism to monitor the landings relative to the overall quota. Monitoring the incidental-catch landings would not be a substantial additional burden.

Comment 22: The States of New York and Connecticut and the Commission stated that it is beyond the authority of NMFS to allocate the TAL for each state between a directed and an incidental catch allocation.

Response: NMFS does not claim to have the authority to make an allocation to an incidental catch fishery. Rather, it makes this recommendation to the states to establish such allocation. This recommendation to divide the TAL between a directed and an incidental catch allocation is based upon the Council and Commission recommendation adopted by those bodies at the August 1998 meeting. That recommendation advocated the same allocation system with different levels of landings from those recommended by NMFS.

NMFS supports the Council's and Commission's recommendation to allocate a portion of the TAL to an incidental catch fishery, in part because of the concerns from industry that a high level of mortality is occurring due to regulatory discards of incidental catch. The 32.7 percent incidental catch allocation would address this concern over discards and would allow fishers to continue to land and to sell summer flounder caught as incidental catch in other fisheries. This would help address the concerns often expressed by industry about regulatory discards, as well as prevent any further increases in incidental catch that may occur as a result of the decrease in the directed fishery allocation and increased stock biomass. While this allocation system would result in a reduction in the directed fishery, it would allow summer flounder to be landed and sold up to a landings level equal to last year's directed fishery, therefore avoiding negative economic impacts.

Comment 23: The State of New Jersey and an industry member recommended the summer flounder incidental catch wording be modified as follows: that summer flounder may be caught and possessed only if the summer flounder on board a vessel does not exceed 10

percent by weight of the total weight of all other species landed and sold.

Response: The manner in which states choose to word their incidental catch allocation is within their discretion. NMFS notes that requiring law enforcement personnel to prove that summer flounder are landed and sold before subjecting a vessel operator to the 10 percent restriction may be problematic.

Comment 24: The State of New Jersey recommended the proposed set-aside of 32.7 percent of the summer flounder quota for the incidental catch fishery be modified as follows: a 15 percent set-aside, with 10 percent specified as incidental catch for the directed fishery and 5 percent for incidental catch in the non-directed fishery.

Response: NMFS notes the State of New Jersey's comments, but disagrees with its recommendation. NMFS recommended the voluntary incidental catch allocation because it addresses the concerns about discard mortality and increases the probability of achieving the target F. Setting the incidental catch fishery at 15 percent would reduce the probability of achieving the target F. In addition, dividing the incidental catch allocation between the directed and non-directed fisheries would add monitoring and enforcement requirements beyond those currently required by the 1998 specifications.

Comment 25: One association commented that, while it would prefer the Council's and Commission's recommendation to specify a 1999 summer flounder TAL of 20.20 million lb (9.16 million kg), it would support the 18.52 million lb (8.40 million kg) TAL.

Response: The comments have been noted and the proposed TAL of 18.518 million lb (8.40 million kg) for the 1999 summer flounder fishery is implemented by this rule.

Comment 26: The Commonwealth of Massachusetts and three conservation groups stated the proposed TAL of 18.52 million lb (8.40 million kg) for the 1999 summer flounder fishery is no less risk-prone than the 20.20 million lb (9.16 million kg) proposed by the Council and Commission.

Response: The TAL of 18.52 million lb (8.40 million kg) has a higher probability of meeting the target F than the Council's and Commission's recommendation. This probability is increased by the recommendation to address the incidental catch mortality in the commercial fishery, which was also identified as a major concern by the Council and industry. Further, the recommended 32.7-percent incidental catch allocation would result in a directed commercial quota 15 percent less than the Monitoring Committee's recommendation, and would increase the probability of meeting the target F, while reducing the regulatory discards that would otherwise occur as a result of the reduction in the directed fishery.

Comment 27: The Commonwealth of Massachusetts urges NMFS to set the summer flounder TAL for 1999 at 20.20 million lb (9.16 million kg) and to continue the 15 percent allocation for incidental catch.

Response: NMFS revised the Council's and Commission's recommendation of 20.20 million lb (9.16 million kg), because it had only a 3-percent probability of achieving the target F of 0.24. Given this low probability of achieving the target and the fact that the target F has never been achieved in this fishery, NMFS felt that the 20.20-million lb (9.16-million kg) TAL was unnecessarily risk-prone. NMFS specified the 18.52-million lb (8.04-million kg) TAL because it has a higher probability of achieving the target F. In addition, NMFS recommends that the states implement additional measures to address incidental catch of summer flounder. Implementation of these measures would increase the probability of achieving the target in 1999 to greater than 18 percent. Additionally, these measures would allocate 6.47 million lb (2.93 million kg) to the directed commercial quota, which is less than the commercial quota recommended by the Monitoring Committee. It should be noted that the Monitoring Committee's recommended TAL had a 50-percent probability of achieving the target F for 1999.

Comment 28: The Commission and the States of Connecticut and New York stated that the Commission compliance criteria do not require states to implement a set-aside of their summer flounder allocations specifically for incidental catch fisheries. The Commission's summer flounder FMP requires the voluntary cooperation of the states in order to be effective.

Response: The Council and Commission voted on a motion at the August 1998 meeting to ''provide for additional incidental catch reserves.'' Discussion at the meeting indicated that the 1998 compliance criteria, requiring an incidental catch allocation of 15 percent, would be maintained for 1999. In addition, the Council and Commission recommended that additional poundage be allocated to incidental catch, bringing the incidental catch allocation to 22 percent. The recommended incidental catch allocation is based on this very system, only using the 18.52 million lb (8.4 million kg) TAL. At the time NMFS made its recommendation and at the time of the proposed rule, a document dated October 1997 stated that these criteria were mandatory. Since then, these criteria have been revised by the Commission and are now voluntary. NMFS will encourage the Commission to re-evaluate the revision, since the incidental catch allocation relies upon the states for effective implementation.

Comment 29: The Commission stated that the analysis concerning the likelihood of achieving the target fishing mortality for proposed annual specifications for the 1999 summer flounder fishery is weak.

Response: It is not clear from the comment what analysis the Commission feels should be done. The updated stock assessment was used to make projections and indicated that the TAL of 18.52 million lb (8.40 million kg) has a higher probability of meeting the target F than the Council's and Commission's recommendation. To increase further the probability of achieving the target F, the directed commercial fishery is recommended to be set lower than the directed commercial fishery allocation associated with the 14.965 million lb (6.79 million kg) TAL recommended by the Monitoring Committee, with the remaining commercial quota set aside for incidental catch. The Monitoring Committee's recommendation had a 50-percent probability of meeting the target F. NMFS expects that by setting the directed commercial fishery at this level, the level of incidental catch of summer flounder will increase, thus reducing the probability of achieving the target. To mitigate this effect, 32.7 percent of the commercial quota is set aside for incidental catch. This increases the probability of meeting the target F, while reducing the regulatory discards that would otherwise occur.

Comment 30: The Commission and the State of Connecticut commented that the proposed summer flounder measures may result in an increase in discard mortality.

Response: NMFS acknowledges that a decrease in the directed commercial quota may result in an increase in the incidental catch of summer flounder when directed quota is not available. To mitigate this effect, 32.7 percent of the commercial quota is recommended to be allocated to incidental catch. This will allow those summer flounder harvested in other fisheries to be landed and sold, with the intent of reducing regulatory discards and their associated mortality.

Comment 31: The Commission stated the proposed annual specifications for the 1999 summer flounder fishery do not ensure that Federal and state regulations are compatible. The comment notes that Board action is final and that the NMFS revision of the Council recommendation poses an implementation problem to the states.

Response: The method of setting the annual specifications for summer flounder were reviewed and approved by the Council, Commission, and NMFS during the review and approval of Amendment 2 to the Summer Flounder FMP. This process requires the Council and Commission to make a recommendation to NMFS during the fall of the year. NMFS is then required to review the measures to ensure they meet the FMP objectives. If NMFS finds that they do not, the Regional Administrator must propose measures that will ensure the FMP objectives are attained. Clearly the Board's final action is a recommendation to the Regional Administrator. The FMP does not contemplate a separate action on the part of the Board that the states must implement.

Comment 32: The State of New Jersey and one fisheries association commented that the measures should allow the states to reallocate summer flounder incidental catch to directed fishing if necessary to attain the total allocation.

Response: NMFS' recommendation to allocate the commercial quota to an incidental fishery is identical to the measure adopted by the Council and Commission at their August 1998 meeting. The Council and Commission system would have allocated 22 percent of the commercial quota to incidental catch, and, as written, would not have allowed that allocation to be reallocated to the directed fishery. NMFS has adopted the recommendation with a lower TAL. The recommendation is not intended to prevent any state from harvesting its assigned allocation. While it would result in a lower directed fishery, a state has the authority to implement an incidental catch fishery that would result in the entire incidental catch allocation being landed up to that state's annual quota.

Comment 33: One fisheries association recommended that the 32.7 percent incidental catch allocation of the summer flounder quota for the incidental catch fishery should be replaced by an allocation of 10 percent of the coastwide commercial quota.

Response: NMFS has recommended the 32.7-percent incidental catch allocation because it would result in a higher probability of achieving while not exceeding the target F than a 10-percent allocation would. A 10-percent allocation would be lower than the level of incidental catch allocated in 1998 or recommended by the Council and Commission for 1999. A 10-percent incidental catch allocation in combination with the 18.52-million lb (8.40-million kg) TAL would result in a less than 18-percent probability of achieving the target F and, therefore, is a less desirable option than the NMFS recommendation.

Comment 34: One fisheries association supported the proposed 1999 summer flounder recreational harvest of 7.41 million lb (3.36 million kg).

Response: The association's comments are noted and the measure is implemented by this rule.

Comment 35: One individual stated the proposed 1999 specifications for the summer flounder fishery should be replaced with a 7,500-lb (3,402-kg) trip limit per week.

Response: The FMP does not currently authorize NMFS to specify a coastwide trip limit. The Council and Commission have submitted for Secretarial review Amendment 12 to the FMP, which would allow the Council and Commission to develop such a measure through a proposed framework process if Amendment 12 were approved.

Comment 36: One individual stated the proposed 1999 specifications for the summer flounder, scup, and black sea bass fishery will not ensure the greatest benefit to the nation.

Response: NMFS conducted a Regulatory Impact Review (RIR) as part of the review of the 1999 summer flounder, scup, and black sea bass specifications. This RIR is part of the process of preparing and reviewing regulatory actions and provides a comprehensive review of the changes in net economic benefits to society associated with those actions. This analysis also provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problems. The purpose of this analysis is to ensure that the regulatory agency systematically and comprehensively consider all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way. This RIR addresses many items in the regulatory philosophy and principles of Executive Order (E.O.) 12866.

The recommended actions are necessary to advance the recovery of these stocks, and to establish the harvest of these species at sustainable levels. The recommended action benefits in a material way the economy, productivity, competition, and jobs. The recommended action will not adversely affect, in the long-term, competition, jobs, the environment, public health or safety, or state, local, or tribal governments, or communities. Based on this review, NMFS has concluded that the measures will result in a net benefit to the nation.

Comment 37: One individual proposed a 32.7-percent allocation as the summer flounder incidental catch quota for the recreational fishery.

Response: The Council and Commission made recommendations for the recreational sector of the 1999 fishery at their December meeting. Such measures must ensure that the recreational fishery comply with the harvest level specified, though the tools available in the FMP are limited to specification of individual possession limits, minimum fish size, and fishing seasons.

Comment 38: The State of Connecticut agreed with NMFS that the summer flounder TAL for 1999 should remain at 18.52 million lb (8.40 million kg).

Response: The comment has been noted and the 18.52 million lb (8.40 million kg) TAL is implemented by this rule.

Comment 39: The State of Connecticut stated the incidental catch limit for summer flounder will create a system that is impossible to enforce at sea and would be difficult to enforce at dockside prior to offloading.

Response: Under the current specifications, many states implement a trip limit to manage their commercial quota. Since those states have implemented such provisions, they must have established enforcement mechanisms that can be used for the 1999 fishery.

Comment 40: The State of Connecticut stated that it was never the intent of the Council and the Commission to have 22 percent of the summer flounder TAL allocated to the incidental catch fishery.

Response: The Council and the Commission clearly recommended that 22 percent of the commercial quota would be allocated to incidental catch fisheries. The motion made at the August 1999 Council and Commission meeting reads as follows: ''I move we specify a TAL of 20.20 million lb (9.16 million kg) and indicate that the commercial quota increase should be used by states to provide for additional bycatch reserves * * *.'' When the percentage incidental catch allocation is calculated, based on this motion, it is 22 percent of the commercial quota. Given this motion, NMFS believes it is clear that the Council's intent was to allocate 22 percent to an incidental catch fishery. The Council staff clearly agreed, as indicated in their submission to NMFS.

Comment 41: The States of New York and North Carolina commented that the term bycatch was used inappropriately in the proposed rule, given the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Response: NMFS acknowledges that the term ''bycatch'' was not properly used in the proposed rule, because under the Magnuson-Stevens Act, it means fish caught but not sold. To correct for this error, the word ''bycatch'' is replaced by the phrase ''incidental catch.''

Comment 42: The State of New York and the Commission commented that they support the proposed specifications for the 1999 scup and black sea bass fisheries.

Response: The comments have been noted and the specifications for the 1999 scup and black sea bass fisheries are unchanged from the proposed rule.

Comment 43: The Commonwealth of Massachusetts stated that it continues to feel unfairly and inequitably treated by the scup management plan because the measures do not address the high level of scup discard mortality attributed to other small-mesh fisheries.

Response: The Council and Commission, as well as NMFS, share the State of Massachusetts' concern about the level of scup discard occurring in small mesh fisheries. To address this issue, the 1999 scup specifications include two measures to account for incidental catch of scup. First, a discard estimate is subtracted from the commercial quota to account for the mortality that occurs due to discards. Second, the minimum mesh threshold is reduced to allow for the landing of incidentally caught scup while at the same time discouraging the use of small-mesh by directed scup fishermen. Some incidental catch allowance is necessary in order that fish that might otherwise be discarded dead would instead be landed and apply to the commercial quota, increasing the probability that the target exploitation rate will be met.

Comment 44: The Commonwealth of Massachusetts stated that there are no analyses to support NMFS' contention that by dropping the threshold trigger from 4,000 lb (1,814 kg) to 200 lb (90.7 kg) (winter) and from 1,000 lb (454 kg) to 100 lb (45.4 kg) (summer), discards of only 2.085 million lb (0.946 kg) of scup will occur.

Response: The 1997 level of discards, 3.95 million lb (1.79 million kg), occurred with seasonal mesh thresholds of 4,000 lb (1,814 kg) and 1,000 lb (454 kg). The reduction of the minimum mesh threshold will allow for some incidental catch of legal-sized scup harvested in small-mesh fisheries to be landed. At the same time, the low amount allowed will discourage the use of small mesh by vessels to target scup by eliminating the incentive the large threshold amount may have provided. As such, this threshold would reduce the amount of discards of fish harvested in the small-mesh fisheries for other species. The reduced incidental catch allowance is necessary so that fish that might otherwise be discarded dead would now be landed and apply to the commercial quota, increasing the probability that the target exploitation rate will be met.

Classification

This action is authorized by 50 CFR part 648 and complies with the National Environmental Policy Act.

These specifications have been determined to be not significant for purposes of E.O. 12866.

This final rule implements the 1999 measures for the summer flounder, scup, and black sea bass fisheries. NMFS prepared an FRFA for this final rule, pursuant to 5 U.S.C. 603. A copy of the FRFA can be obtained from the Acting Regional Administrator (see **ADDRESSES**). A summary of the FRFA follows.

Summary of FRFA

This rule would apply to the following small entities: Actively participating summer flounder, scup, and black sea bass commercial vessels (990 vessels). While they are not actively participating, this rule would also apply to all vessels currently permitted for summer flounder, scup, and black sea bass. This rule would apply more indirectly to other, related segments of the industry, including—but not limited to—dealers and processors.

This rule does not implement new reporting or recordkeeping measures. There are no changes to existing reporting requirements. Currently, all summer flounder, scup and/or black sea bass federally-permitted dealers must submit weekly interactive voice response reports of fish purchases. The owner or operator of any vessel issued a moratorium vessel permit for summer flounder, scup, black sea bass, must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken. The owner of any party or charter boat issued a summer flounder or scup permit other than a moratorium permit and carrying passengers for hire shall maintain on board the vessel, and submit, an accurate daily fishing log report for each charter or party fishing trip that lands summer flounder or scup, unless such a vessel is also issued another permit that requires regular reporting, in which case a fishing log report is required for each trip regardless of species retained. These reporting requirements are critical for monitoring the harvest level of these fisheries.

The FRFA examines five scenarios. Each was examined for impacts on all vessels permitted to fish for these species since that represents the universe of potentially impacted small entities. Each was also examined for impacts on vessels that landed any of those species in 1997, the last full year for which there is landings data. The subset was examined to determine the impacts on currently active participants in the fishery. Table 4 summarizes the scenarios analyzed in the FRFA.

TABLE 4.—COMPARISON (IN POUNDS) OF THE SCENARIOS OF QUOTA COMBINATIONS REVIEWED

	Commercial quota	Percent of 1997 landings [1]	Percent change
Quota Scenario 1:			
Fluke NMFS Preferred Alternative	11,111,298	123.82	23.82
Scup Preferred Alternative	2,534,160	52.42	−47.58
Black Sea Bass Preferred Alternative	3,024,742	114.66	14.66
Quota Scenario 2:			
Fluke Council Preferred Alternative	12,120,000	135.06	35.06
Scup Preferred Alternative	2,534,160	52.42	−47.58
Black Sea Bass Preferred Alternative	3,024,742	114.66	14.66
Quota Scenario 3:			
Fluke Technical Recommendation	8,787,000	97.92	−2.08
Scup Preferred Alternative	2,534,160	52.42	−47.58
Black Sea Bass Preferred Alternative	3,024,742	114.66	14.66
Quota Scenario 4 (Least restrictive):			
Fluke Council Preferred Alternative	12,120,000	135.06	35.06
Scup Non-Selected Alternative 2	3,510,000	72.61	−27.39
Black Sea Bass Non-Selected Alternative 2	4,710,000	171.33	71.33
Quota Scenario 5 (Most restrictive):			
Fluke Technical Recommendation	8,787,000	97.92	−2.08
Scup Non-Selected Alternative 1	670,000	13.86	−86.14
Black Sea Bass Non-Selected Alternative 1	1,400,000	53.07	−46.93

[1] It is important to note that, while the total allowable catch in 1999 is proposed to be the same as in 1997, the 1997 commercial quota was reduced substantially due to significant overages in the 1996 fishing year.

The number of vessels impacted was assessed for 7 classes of vessels, based on either the combinations of species permits or by species landings. An analysis of Scenario I (the harvest limits implemented by this rule) indicates that these levels will result in greater than a 5 percent revenue loss to 191 actively participating commercial vessels. However, this analysis did not consider the 32.7-percent allocation for incidental catch, which is the likely result of states implementing recommended incidental catch measures. When that allocation was factored into the analysis, 62 vessels were found to have a greater than 5-percent revenue loss. Impacts on these 62 vessels varied. No vessels landing combinations of summer flounder or black sea bass were in this group, while 31 vessels landing all three species were. When all currently permitted vessels were examined, 194 vessels were found to have greater than a 5-percent revenue loss under these measures. The vessel class with the largest number of affected vessels were vessels permitted for scup, black sea bass, and summer flounder (114 vessels were impacted by a greater than 5 percent revenue loss).

Scenario I was selected as the preferred alternative to be implemented by this rule because it has the greatest probability of achieving the FMP's targets. It also has measures to address concerns about incidental catch in the summer flounder and scup fisheries. While some impacts would be realized by vessels landing scup as a result of the reduction in the scup TAC, those impacts should be reduced for vessels that would benefit from increases in the summer flounder and black sea bass allocations for 1999, when compared to 1997.

An analysis of the harvest limits in Scenario II indicates that these levels would result in a negative economic impact to 65 of the actively participating vessels. Impacts on these 65 vessels varied. No vessels landing combinations of summer flounder or black sea bass were in this group, while 34 vessels landing all three species were. When additional analyses were conducted to account for a 22-percent incidental catch allocation, 59 actively participating vessels would have greater than a 5-percent revenue loss. When all currently permitted vessels were examined, 56 vessels were found to have greater than a 5 percent revenue loss under these measures. The vessel class with the largest number of affected vessels were vessels permitted for all three fisheries: Scup, black sea bass, and summer flounder (27 vessels were impacted by a greater than 5-percent revenue loss). NMFS did not select this alternative because it had only a 3-percent probability of achieving the target F for summer flounder in 1999.

An analysis of the harvest limits in Scenario III indicates that these harvest levels would result in a negative economic impact to 122 of the actively participating vessels. Impacts on these 122 vessels varied. No vessels landing black sea bass only were in this group while 71 vessels landing all three species were. When all currently permitted vessels were examined, 122 vessels were found to have greater than a 5-percent revenue loss under these measures. The vessel class with the largest number of affected vessels were vessels permitted for all three fisheries: Scup, black sea bass, and summer flounder (74 vessels were impacted by a greater than 5 percent revenue loss). NMFS did not select this scenario because despite the increased probability that the summer flounder target F would be achieved, no measures exist to address the concerns about incidental catch in this fishery. Under this scenario, the commercial quota would be reduced, likely resulting in an increase in the discards of summer flounder.

An analysis of the harvest limits in Scenario IV indicates that these levels would result in a negative economic impact to 23 of the actively participating vessels. Impacts on these 23 vessels varied. No vessels landing combinations of summer flounder or black sea bass or landing scup and summer flounder were in this group while 10 vessels landing all scup and black sea bass were. When all currently permitted vessels were examined, 18 vessels were found to have greater than a 5-percent revenue loss under these measures. The vessel class with the largest number of affected vessels were vessels permitted for scup and black sea bass (9 vessels were impacted by a greater than 5 percent revenue loss). NMFS rejected this scenario because it had a low probability of achieving the target F's for the summer flounder and scup fisheries.

An analysis of the harvest limits in Scenario V indicates that these levels would result in a negative economic impact to 290 actively participating commercial vessels with impacts on vessels landing all species combinations. Impacts on these 290 vessels ranged from 4 vessels landing scup only to 147 vessels landing all three. When all currently permitted vessels were examined, 272 vessels were found to have greater than a 5 percent revenue loss under these measures. The vessel class with the largest number of affected vessels were vessels permitted for all three fisheries: Scup, black sea bass, and summer flounder (138 vessels were impacted by a greater than 5 percent revenue loss). NMFS did not select this scenario because, despite the increased probability that the summer flounder target F would be achieved, no measures exist to address the concerns about incidental catch in this fishery. Under this scenario, the commercial quota would be reduced, likely resulting in an increase in the incidental catch of summer flounder. In addition, the reduction of the black sea bass TAL under this scenario would result in an F rate that would accelerate stock rebuilding; however, it would also result in significant impacts on the commercial fishery while not being necessary to meet the FMP requirements.

Comments on the IRFA were received from the State of North Carolina. Those comments expressed concerns about the adequacy of the analysis done for operating out of the State of North Carolina. The basic analytical method was unchanged from the IRFA as the result of comments, though NMFS did additional analysis to clarify some points, including an expanded analysis of the incidental catch provision. NMFS completed these analyses to ensure that all aspects of the measures and of the summer flounder, scup, and black sea bass fisheries have been examined. (End of summary of FRFA.)

This action implements 1999 specifications for the summer flounder, scup, and black sea bass fisheries. This action does not significantly revise management measures in a manner that would require time to plan or prepare for those revisions. This action establishes annual quotas which are used to control the harvest of these fisheries. Closures must be implemented immediately to conserve fishery resources when a quota is attained. This action recommends allocation of a summer flounder incidental catch to be utilized in accordance with incidental catch measures approved by the Council and Commission at their August 1998 meeting. Since these measures were approved by the Council and Commission, the states should be taking action to implement them by January 1, 1999. Because of the need to implement these measures in a timely manner to address overfishing of summer flounder, scup, and black sea bass, the Assistant Administrator for Fisheries, NOAA, has determined, under 5 U.S.C. 553(d)(3), that to delay for 30 days the effectiveness of these measures would be contrary to the public interest. Accordingly, they are being made effective January 1, 1999. The annual specifications for the scup fishery include a provision to reduce the minimum mesh threshold (§ 648.123(a)(1)) that would be more restrictive than the current mesh provision. In order to allow the fishery time to come into compliance with this provision, it will not become effective until February 1, 1999.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 23, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.123, paragraph (a)(1) is revised to read as follows:

§ 648.123 Gear restrictions.

(a) *Trawl vessel gear restrictions*—(1) *Minimum mesh size.* The owners or operators of otter trawlers who are issued a scup moratorium permit and who possess 200 lb or more (90.7 kg or more) of scup from November 1 through April 30 or 100 lb or more (45.4 kg or more) of scup from May 1 through October 31, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension. Scup on board these vessels shall be stored separately and kept readily available for inspection.

* * * * *

[FR Doc. 98–34511 Filed 12–30–98; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 63, No. 251
Thursday, December 31, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 31, 32, 170, and 171

Notice of Availability of Staff Draft Proposed Rule Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The NRC is making available a staff draft rulemaking to amend its regulations governing the use of byproduct material in certain measuring, gauging, or controlling devices. The proposed revision includes the addition of explicit requirements for a registration process that the NRC plans to initiate through an earlier proposed rule. This action would propose to add to the regulations the specific criteria for inclusion in the registration program and details about the information required; it would also add a registration fee. The amendments would also modify the quarterly transfer reporting, recordkeeping, and labeling requirements for specific licensees who distribute certain generally licensed devices and clarify which provisions of the regulations apply to all general licenses for byproduct material. The draft proposed rule is intended to allow the NRC to better track certain general licensees, so that they can be contacted or inspected; to track generally licensed devices so that the devices can be identified even if lost or damaged; and to further ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. Greater awareness helps to ensure that general licensees will properly handle and dispose of generally licensed devices and reduce the potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

DATES: Comments received on the staff draft by February 5, 1999, will be considered by the staff prior to Commission review. Comments received after this date will be considered if it is practical to do so. When the Commission has approved a proposed rule, it will be published in the **Federal Register** for formal public comment.

ADDRESSES: A copy of the staff draft proposed rule can be obtained electronically at the NRC Technical Conference Forum Website under the topic ''Staff Draft Proposed Rule for Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material'' at http://techconf.llnl.gov/cgi-bin/topics or from the NRC's Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC 20555; telephone 202–634–3273; fax 202–634–3343. To view the working paper at the Website, select ''Staff Draft Proposed Rule for Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material.''

Comments may be posted electronically on the NRC Technical Conference Forum Website mentioned above. Comments submitted electronically can also be viewed at that Website. Comments may also be mailed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Catherine R. Mattsen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6264; e-mail crm@nrc.gov.

Dated at Rockville, Maryland this 21st day of December, 1998.

For the Nuclear Regulatory Commission.

Frederick C. Combs,

Acting Director, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 98–34577 Filed 12–30–98; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1027]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is extending the comment period on its proposal to amend Regulation CC to allow banks that consummate a merger on or after July 1, 1998, and before June 1, 1999, greater time to implement software changes related to the merger. The Secretary of the Board, acting pursuant to delegated authority, has extended the comment period from January 4, 1999 to February 1, 1999, to provide additional time for public comment.

DATES: Comments must be received by February 1, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1027, may be mailed to Ms. Jennifer Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room at all other times. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500, pursuant to § 261.12 of the Board's Rules Regarding Availability of Information, between 9:00 a.m. and 5:00 p.m., except as provided in § 261.14 of those same Rules. (12 CFR 261.12 and 261.14)

FOR FURTHER INFORMATION CONTACT: Jean Anderson, Staff Attorney, Legal Division (202/452–3707). For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION: On December 2, 1998, the Board requested comment in response to a notice of proposed rulemaking on amendments to Regulation CC (63 FR 66499). Under the proposal, comments were due by January 4, 1999. In order to allow affected parties additional time to respond to the proposal the Board is extending the comment period to February 1, 1999. This extension will not delay the Board in providing its report to the Congress.

By order of the Secretary of the Board, acting pursuant to delegated authority for the

Board of Governors of the Federal Reserve System, December 23, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–34495 Filed 12–30–98; 8:45 am]

BILLING CODE 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33–7618, 34–40828, 35–26958, 39–2371, IC–23621, IA–1777; File No. S7–32–98]

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is today publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on them.

DATES: Public comments are due by February 15, 1999.

ADDRESSES: Persons wishing to submit written comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Room 6184, Stop 6–9, Washington, D.C. 20549. All submissions should refer to File No. S7–32–98, and will be available for public inspection and copying at the Commission's Public Reference Room, Room 1026, at the same address.

FOR FURTHER INFORMATION CONTACT: Anne H. Sullivan, Office of the General Counsel, Securities and Exchange Commission 202–942–0954.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (''RFA'') *codified at* 5 U.S.C. 600–611 requires agencies to review rules which have a significant economic impact upon a substantial number of small entities every ten years. The purpose of the review is ''to determine whether such rules should be continued without change, or should be amended or rescinded * * * to minimize any significant economic impact of the rules upon a substantial number of such small entities'' (5 U.S.C. 610(a)).

The RFA sets forth specific considerations that must be addressed in the review of each rule:

- The continued need for the rule;
- The nature of complaints or comments received concerning the rule from the public;
- The complexity of the rule;
- The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule (5 U.S.C. 610(c)).

The Securities and Exchange Commission, as a matter of policy, reviews all rules which it publishes for notice and comment to assess their continued compliance with the RFA. Pursuant to the RFA, the rules and forms listed below are scheduled for review by staff of the Commission during the next twelve months. The rules are grouped according to which Division or Office of the Commission will review each rule:

Rules To Be Reviewed by the Office of the Chief Accountant

Title: Article 6 of Regulation S–X (Financial Statements of Registered Investment Companies)
Citation: 17 CFR 210.6
Authority: 15 U.S.C. 77f, 77g, 77s(a), 77aa(25) to (26), 78*l*, 78m, 78*o*(d), 78w(a), 79e(b), 79n, 79t(a), 80a–8, and 80a–29

Title: Article 6A of Regulation S–X (Financial Statements of Employee Stock Purchase, Savings, and Similar Plans)
Citation: 17 CFR 210.6A
Authority: 15 U.S.C. 77f, 77g, 77s(a), 77aa(25) to (26), 78*l*, 78m, 78*o*(d), 78w(a), 79e(b), 79n, 79t(a), 80a–8, and 80a–29

Rules To Be Reviewed by the Division of Market Regulation

Title: Rule 15c2–6 (Sales Practice Requirement for Certain Low-priced Securities)
[The rule was amended and redesignated as Rule 15g–9 in 1993]
Citation: 17 CFR 240.15g–9
Authority: 15 U.S.C. 78w, 78c, 78j, and 78o

Title: Rule 3a12–10 (Exemption of Certain Securities Issued by the Resolution Funding Corporation)
Citation: 17 CFR 240.3a12–10
Authority: 15 U.S.C. 78w, 78b, and 78c

Title: Rule 15a–6 (Exemption of Certain Foreign Brokers or Dealers)
Citation: 17 CFR 240.15a–6
Authority: 15 U.S.C. 78a, 78c, 78j, 78o, and 78g

Title: Rule 15c2–12 (Municipal Securities Disclosure)
Citation: 17 CFR 240.15c2–12
Authority: 15 U.S.C. 78w, 78b, 78c, 78j, 78o, 78o–4, and 78g

Title: Rule 19c–5 (Governing the Multiple Listing of Options on National Securities Exchanges)
Citation: 17 CFR 240.19c–5
Authority: 15 U.S.C. 78w, 78f, 78k–1, and 78s

Rules and Forms To Be Reviewed by the Division of Investment Management

Title: Public Utility Holding Company Act (''PUHCA'') Rule 80 (Definitions of terms used in rules under Section 13)
Citation: 17 CFR 250.80
Authority: 15 U.S.C. 79m

Title: PUHCA Rule 81 (Exempted transactions)
Citation: 17 CFR 250.81
Authority: 15 U.S.C. 79m

Title: PUHCA Rule 82 (Temporary exemption from Section 13)
Citation: 17 CFR 250.82
Authority: 15 U.S.C. 79m

Title: PUHCA Rule 84 (Prohibition of unauthorized transactions by registered holding companies)
Citation: 17 CFR 250.84
Authority: 15 U.S.C. 79m

Title: PUHCA Rule 85 (Service, sales, and construction by registered holding companies)
Citation: 17 CFR 250.85
Authority: 15 U.S.C. 79m

Title: PUHCA Rule 86 (Prohibition of unauthorized transactions by subsidiaries)
Citation: 17 CFR 250.86
Authority: 15 U.S.C. 79m

Title: PUHCA Rule 88 (Approval of mutual service companies; organization and conduct of business or subsidiary service companies)
Citation: 17 CFR 250.88
Authority: 15 U.S.C. 79m

Title: PUHCA Rule 89 (Termination of contracts)
Citation: 17 CFR 250.89
Authority: 15 U.S.C. 79m

Title: PUHCA Rule 90 (Transactions limited to cost)
Citation: 17 CFR 250.90
Authority: 15 U.S.C. 79m

Title: PUHCA Rule 91 (Determination of cost)
Citation: 17 CFR 250.91
Authority: 15 U.S.C. 79m

Title: PUHCA Rule 92 (Sales of goods produced by seller)
Citation: 17 CFR 250.92
Authority: 15 U.S.C. 79m

Title: PUHCA Rule 93 (Accounts and records of mutual and subsidiary service companies)
Citation: 17 CFR 250.93

Authority: 15 U.S.C. 79m

Title: PUHCA Rule 94 (Annual reports by mutual and subsidiary service companies)

Citation: 17 CFR 250.94

Authority: 15 U.S.C. 79m

Title: PUHCA Rule 95 (Reports required from affiliate service companies and companies principally engaged in performing services)

Citation: 17 CFR 250.95

Authority: 15 U.S.C. 79m

Title: PUHCA Rule 100 (Orders granting or withdrawing exemptions)

Citation: 17 CFR 250.100

Authority: 15 U.S.C. 79t

Title: PUHCA Rule 101 (Standards and interpretations of rules)

Citation: 17 CFR 250.101

Authority: 15 U.S.C. 79t

Title: PUHCA Rule 102 (Effective date of rules)

Citation: 17 CFR 250.102

Authority: 15 U.S.C. 79t

Title: PUHCA Rule 103 (References and definitions)

Citation: 17 CFR 250.103

Authority: 15 U.S.C. 79t

Title: PUHCA Rule 103A (Liability for certain statements by issuers)

Citation: 17 CFR 250.103A

Authority: 15 U.S.C. 79t

Title: PUHCA Rule 104 (Public disclosure of information and objections thereto)

Citation: 17 CFR 250.104

Authority: 15 U.S.C. 79t

Title: PUHCA Rule 105 (Disclosure detrimental to the national defense or foreign policy)

Citation: 17 CFR 250.105

Authority: 15 U.S.C. 79t

Title: PUHCA Form U–6B–2 (Certificate of notification)

Citation: 17 CFR 259.206

Authority: 15 U.S.C. 79f

Title: PUHCA Form U–7D (Certificate pursuant to Rule 7(d) of Public Utility Holding Company Act of 1935)

Citation: 17 CFR 259.404

Authority: 15 U.S.C. 79b(a)(3)

The Commission invites public comment on both the list and the rules to be reviewed.

By the Commission.

Dated: December 23, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–34694 Filed 12–30–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106386–98]

RIN 1545–AW52

Retention of Income Tax Return Preparers' Signatures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the retention of income tax return preparers' signatures. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written and electronic comments and requests for a public hearing must be received by March 31, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–106386–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–106386–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Marc C. Porter, (202) 622–4940; concerning submissions, LaNita Van Dyke, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend Income Tax Regulations (26 CFR part 1) under section 6695(b) of the Internal Revenue Code. These regulations require an income tax return preparer to keep a manually signed (by the preparer) copy of a return or claim for refund if the preparer presented to the taxpayer for signature a return or claim with a copy of the preparer's manual signature.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Proposed Effective Date

The proposed regulations are proposed to be effective for returns or claims for refund presented to a taxpayer for signature after December 31, 1998 and for returns or claims retained on or before that date.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and 8 copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulation and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal author of these regulations is Marc C. Porter, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6695–1 is amended by:

1. Revising paragraph (b)(4)(i).
2. Adding paragraph (g).

The revision and addition read as follows:

§ 1.6695–1 Other assessable penalties with respect to the preparation of income tax returns for other persons.

* * * * *

(b) * * *

(4)(i) [The text of proposed paragraph (b)(4)(i) is the same as the text of § 1.6695–1T(b)(4)(i) published elsewhere in this issue of the **Federal Register**].

* * * * *

(g) [The text proposed paragraph (g) is the same as the text of § 1.6695–1T(g) published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–34361 Filed 12–30–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–165]

RIN 2121–AA97

Regulated Navigation Area: Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel, and New Jersey Pierhead Channel, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the Regulated Navigation Area (RNA) to include the Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel, and New Jersey Pierhead Channel, New York and New Jersey. This action is necessary because of the extensive channel deepening project being undertaken jointly by the Army Corps of Engineers and the Port Authority of New York and New Jersey. The RNA is needed to ensure the safety of vessels transiting the restricted channel during blasting and dredging operations.

DATES: Comments must reach the Coast Guard on or before March 1, 1999.

ADDRESSES: You may mail comments to the Waterways Oversight Branch (CGD01–98–165), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 202 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 202, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander B. Krenzien, Waterways Management Division, Coast Guard Activities New York (718) 354–4191.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–98–165) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

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

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel, and New Jersey Pierhead Channel are the proposed areas to be designated as a RNA. These channels are located in the waters between Bayonne, New Jersey, Staten Island, New York, and Elizabeth/Newark, New Jersey. The proposed RNA is to enhance vessel safety during the extensive channel deepening project being undertaken by the U.S. Army Corps of Engineers, which involves dredging and blasting in these areas. These channels connect the deepwater ports of New York Harbor. Current channel depths restrict the full economy of existing and future generations of deep draft vessels. Tankships arriving in the port with drafts approaching the forty five (45) foot controlling depths of Ambrose and Anchorage Channels must lighten some of their cargo to barges in the deep New York Harbor anchorages in order to safely transit the forty (40) foot channel depths. This results in substantial lightering and delay costs. Container vessels cannot lighter in the anchorages and therefore must load to less than full drafts. This project, which is expected to last approximately six (6) years, will deepen the existing forty (40) foot channel to forty five (45) feet to accommodate the deeper draft vessels. The dredging areas will continue to be available for use by the general public. Proposed restrictions on vessel transits during this project are unchanged from the current regulations in § 165.165(d) except for (d) (1, 5, 7, and 9). Paragraph (d)(1) is proposed to allow vessels to enter or transit a work area where drill barges and/or dredges are located once granted permission from Vessel Traffic Service New York (VTSNY). Blasting operations being conducted in the work area will normally preclude vessels from receiving permission. One-way traffic will be maintained during this project in work areas where drill barges and/or dredges are located. Paragraph (d)(5) is proposed to specify that the prevailing current will be measured from the Battery tide station. This is expected to reduce confusion among mariners because use of the Battery tide station is the port norm. Paragraph (d)(7) is proposed to refer to the hawser and wire throughout the paragraph. Paragraph (d)(9) is proposed to define the phrase ''tugs with tows'' to include tugs with vessels or barges alongside or being pushed. This proposed rulemaking is needed to reduce the risks of collisions, groundings, and other navigational mishaps associated with this project. These are the same restrictions taken during 1991–92 when dredging was last conducted in this vicinity. They were instituted then due

to three groundings that resulted in one oil spill and one channel blockage. Public notifications for specific dredging dates will be made prior to the commencement of dredging via the Local Notice to Mariners, marine information broadcasts, facsimile, and at New York Harbor Operations Committee meetings.

Discussion of Proposed Rule

The proposed RNA encompasses: all waters of the Kill Van Kull (KVK) Channel east of KVK Light 16A (LLNR 37340) in North of Shooters Island Reach, east of Shooters Island Light 2 (LLNR 37375) in South of Shooters Island Reach, and west of KVK Channel Junction Lighted Bell Buoy 'KV' (LLNR 37265) in Constable Hook Reach; all waters of Newark Bay Channel south of Newark Bay Light 19 (LLNR 37505); all waters of South Elizabeth Channel, Elizabeth Channel and Port Newark Channel; and all waters of New Jersey Pierhead Channel south of the New Jersey Pierhead South Channel Lighted Buoy 5 (LLNR 37020). This proposed rule is necessary to safeguard marine traffic from the dangers of the dredging and blasting work proposed in the project area.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The effect of this regulation will not be significant for several reasons: vessels will be allowed to transit work areas where degrees and/or drill barges are located unless blasting is to be conducted, delays resulting form blasting are expected to last no longer than 15 minutes and occur less than 4 times daily in any one area, there are no restrictions on vessel traffic in the RNA in areas where there are no dredges or drill barges, the Port Authorities of New York and New Jersey are working with the U.S. Army Corps of Engineers on this project to ensure future generations of deep draft vessels are able to use the Port of New York/New Jersey, it will reduce substantial costs associated with lightering operations currently required by vessels unable to transit the harbor fully loaded, and advance notifications will be made to the local maritime community by the Local Notice to Mariners, facsimile, marine information broadcasts, and New York Harbor Operations Committee meetings. Additionally, these are the same restrictions taken during 1991–92 when dredging was last conducted in this vicinity, and other than minor delays in vessel transit time, no impact was noted.

Small Entities

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

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1994 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

Proposed Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise § 165.165 to read as follows:

§ 165.165 Regulated Navigation Area; Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey.

(a) *Regulated Navigation Area (RNA).* All waters of the Kill Van Kull (KVK) Channel east of KVK Light 16A (LLNR 37340) in North of Shooters Island Reach, east of Shooters Island Light 2 (LLNR 37375) in South of Shooters Island Reach, and west of KVK Channel Junction Lighted Bell Buoy ''KV'' (LLNR 37265) in Constable Hook Reach; all waters of Newark Bay Channel south of Newark Bay Light 19 (LLNR 37505); all waters of South Elizabeth Channel, Elizabeth Channel, Port Newark Channel, and New Jersey Pierhead Channel south of New Jersey Pierhead South Channel Lighted Buoy 5 (LLNR 37020).

(b) Description of Work Areas in the RNA:

(1) Work Area (1): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38′40.0″ N	074°03′45.0″ W
40°38′50.4″ N	074°04′16.0″ W
40°38′57.9″ N	074°04′11.8″ W
40°39′03.8″ N	074°04′43.8″ W
40°39′04.5″ N	074°05′07.6″ W
40°39′01.8″ N	074°05′14.8″ W
40°39′05.0″ N	074°05′17.1″ W
40°39′10.3″ N	074°05′05.0″ W
40°39′09.3″ N	074°04′27.8″ W
40°39′00.2″ N	074°03′45.1″ W
40°38′58.0″ N	074°03′34.9″ W
40°38′40.0″ N	074°03′45.0″ W

(2) Work Area (2): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38′50.4″ N	074°04′16.0″ W
40°38′57.5″ N	074°04′37.8″ W
40°38′59.2″ N	074°04′55,4″ W
40°38′57,4″ N	074°05′12.9″ W
40°38′47.5″ N	074°05′33.8″ W
40°38′45.8″ N	074°05′43.6″ W
40°38′49.4″ N	074°05′44.7″ W
40°38′51.0″ N	074°05′35.7″ W
40°39′04.7″ N	074°05′06.6″ W
40°39′03.7″ N	074°04′29.5″ N
40°38′57.9″ N	074°04′11.8″ W
40°38′50.4″ N	074°04′16.0″ W

(3) Work Area (3): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38′45.8″ N	074°05′43.6″ W
40°38′49.4″ N	074°05′44.7″ W
40°38′51.2″ N	074°05′35.8″ W
40°39′01.8″ N	074°05′14.8″ W
40°39′05.0″ N	074°05′17.1″ W
40°38′57.5″ N	074°05′32.3″ W
40°38′53.8″ N	074°05′44.1″ W
40°38′53.1″ N	074°05′56.8″ W
40°38′55.3″ N	074°06′38.1″ W
40°38′41.5″ N	074°07′18.3″ W
40°38′38.2″ N	074°07′41.4″ W
40°38′38.5″ N	074°07′46.0″ W
40°38′35.2″ N	074°07′49.0″ W
40°38′31.2″ N	074°07′50.0″ W
40°38′30.1″ N	074°07′41.3″ W
40°38′33.9″ N	074°07′15.1″ W
40°38′44.0″ N	074°06′45.7″ W
40°38′46.7″ N	074°06′25.9″ W
40°38′44.8″ N	074°05′49.6″ W
40°38′45.8″ N	074°05′43.6″ W

(4) Work Area (4): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38′31.2″ N	074°07′50.0″ W
40°38′35.2″ N	074°07′49.0″ W
40°38′36.6″ N	074°08′01.2″ W
40°38′28.2″ N	074°08′51.0″ W
40°38′35.2″ N	074°09′06.2″ W
40°38′30.0″ N	074°09′12.0″ W
40°38′24.8″ N	074°09′02.6″ W
40°38′24.0″ N	074°08′52.0″ W
40°38′31.5″ N	074°08′07.4″ W
40°38′31.8″ N	074°07′54.6″ W
40°38′31.2″ N	074°07′50.0″ W

(5) Work Area (5): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38′35.2″ N	074°07′49.0″ W
40°38′38.5″ N	074°07′46.0″ W
40°38′40.7″ N	074°08′01.3″ W
50°38′34.0″ N	074°08′41.0″ W
40°38′40.0″ N	074°08′52.0″ W
40°38′50.0″ N	074°08′55.0″ W
40°38′35.2″ N	074°09′06.2″ W
40°38′28.2″ N	074°08′51.0″ W
40°38′36.6″ N	074°08′01.2″ W
40°38′35.2″ N	074°07′49.0″ W

(6) Work Area (6): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°39′17.0″ N	074°08′38.0″ W
40°40′21.0″ N	074°08′00.0″ W
40°40′34.3″ N	074°07′54.0″ W
40°40′35.9″ N	074°08′03.9″ W
40°40′33.2″ N	074°08′12.0″ W
40°40′26.6″ N	074°08′17.9″ W
40°39′34.3″ N	074°08′55.8″ W
40°39′30.8″ N	074°08′58.2″ W
40°39′21.6″ N	074°08′50.2″ W
40°39′17.0″ N	074°08′38.0″ W

(7) Work Area (7): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°40′26.7″ N	074°08′17.9″ W
40°41′14.4″ N	074°09′35.0″ W
40°41′18.9″ N	074°09′31.9″ W
40°40′46.1″ N	074°08′38.9″ W
40°40′44.5″ N	074°08′30.2″ W
40°40′33.2″ N	074°08′12.0″ W
40°40′26.7″ N	074°08′17.9″ W

(8) Work Area (8): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°39′30.8″ N	074°08′58.2″ W
40°39′40.6″ N	074°09′22.5″ W
40°39′43.5″ N	074°09′25.8″ W
40°39′44.8″ N	074°09′24.9″ W
40°39′32.8″ N	074°08′55.2″ W
40°39′30.8″ N	074°08′58.2″ W

AND

Latitude	Longitude
40°39′21.6″ N	074°08′50.2″ W
40°39′17.0″ N	074°03′38.0″ W
40°38′50.0″ N	074°08′55.0″ W
40°38′30.0″ N	074°09′12.0″ W
40°38′33.3″ N	074°09′19.5″ W
40°38′46.8″ N	074°09′22.8″ W
40°39′07.7″ N	074°08′58.8″ W
40°39′21.6″ N	074°08′50.2″ W

(9) Work Area (9): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°40′34.3″N	074°07′54.0″W
40°41′08.5″N	074°07′38.5″W
40°41′11.6″N	074°07′50.8″W
40°41′17.6″N	074°07′56.4″W
40°41′20.0″N	074°08′00.3″W
40°41′42.3″N	074°08′21.2″W
40°41′59.4″N	074°09′11.0″W
40°41′55.8″N	074°09′13.1″W
40°41′39.1″N	074°08′24.6″W
40°41′21.0″N	074°08′07.6″W
40°40′46.1″N	074°08′38.9″W
40°40′44.5″N	074°08′30.2″W
40°40′50.4″N	074°08′30.3″W
40°41′13.4″N	074°08′09.7″W
40°41′13.7″N	074°08′05.6″W
40°41′03.2″N	074°07′55.7″W
40°40′54.4″N	074°07′55.7″W
40°40′35.9″N	074°08′03.9″W
40°40′34.3″N	074°07′54.0″W

(c) *Projected dates for each work area.* Dredging is tentatively scheduled to commence in Work Area 2 in March 1999. As contracts are let for dredging of each of the remaining work areas, commencement dates will be made available via the Local Notice to Mariners, marine information broadcasts, facsimile, and at New York Harbor Operations Committee meetings.

(d) Regulations:

(1) No vessel shall enter or transit any work area where drill barges and/or dredges are located without permission of Vessel Traffic Service New York (VTSNY).

(2) Each vessel transiting in the vicinity of the work areas, where drill barges and/or dredges are located, is required to do so at no wake speed.

(3) No vessel shall enter the RNA when they are advised by the drilling barge or VTSNY that a misfire or hangfire has occurred. Vessels already underway in the RNA shall proceed to clear the impacted area immediately.

(4) Vessels, 300 gross tons or greater and tugs with tows, are prohibited from meeting or overtaking other vessels when transiting alongside an active work area.

(5) Vessels, 300 gross tons or greater and tugs with tows, transiting with the

prevailing current (as measured from the Battery tide station) are regarded as the stand-on vessel.

(6) Prior to entering the RNA, the master, pilot or operator of each vessel, 300 gross tons or greater and tugs with tows, shall ensure that they have sufficient propulsion and directional control to safely navigate the area under the prevailing conditions, and shall notify VTSNY as to their decision regarding the employment of assist tugs while transiting the RNA.

(7) Hawser or wire length must not exceed 100 feet, measured from the towing bit on the tug to the point where the hawser or wire connects with the towed vessel or barge, for any vessel with another vessel/barge in tow.

(8) Waiver. The Captain of the port, New York may, upon request, authorize a deviation from any regulation in this section if it is found that the proposed operations can be done safely. An application for deviation must be received not less than 24 hours before the intended operation and must state the need and described the proposal.

(9) Tugs with tows includes a tug with a vessel or barge in tow, alongside, or being pushed.

Dated: December 12, 1998.

R.M. Larrabee,

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

[FR Doc. 98–34633 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–86–01–9830b; FRL–6207–2]

Approval and Promulgation of Implementation Plans, State of North Carolina: Approval of Miscellaneous Revisions to the Forsyth County Air Quality Control Ordinance and Technical Code

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 10, 1997, The North Carolina Department of Environment and Natural Resources submitted revisions to the Forsyth County Air Quality Technical Code. These revisions include the updating of several regulations, deletion of previously referenced material, rewriting of several regulations, and the correction of several regulations. In the final rules section of this **Federal Register**, the EPA is approving the revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting should do so at this time.

DATES: To be considered, comments must be received by February 1, 1999.

ADDRESSES: Written comments on this action should be addressed to Randy Terry at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day and reference file NC 86–01–9830. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

North Carolina Department of Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

Forsyth County Environmental Affairs Department, 537 North Spruce Street, Winston-Salem, NC 27101–1362.

FOR FURTHER INFORMATION CONTACT: Randy Terry, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303. The telephone number is (404) 562–9032.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: October 28, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–34312 Filed 12–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–191–9827b; FRL–6208–6]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Nashville/Davidson County Portion of the Tennessee SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revisions to the Nashville/Davidson County portion of the Tennessee State Implementation Plan (SIP) concerning air pollution control regulations by the Metropolitan Nashville/Davidson County government. The State of Tennessee through the Tennessee Department of Air Pollution Control submitted the revisions to EPA on April 7, 1997. To be consistent with federal requirements, the State of Tennessee amended the definition of volatile organic compounds (VOCs) and deleted various words in Chapter 10.56, ''Air Pollution Control,'' of the Metropolitan Code of Laws.

In the final rules section of this **Federal Register**, the EPA is approving the State of Tennessee SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by February 1, 1999.

ADDRESSES: Written comments on this action should be addressed to Mr. Gregory O. Crawford at the EPA Regional Office listed below. Copies of

documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531, (615) 532–0554.

Metropolitan Government of Nashville and Davidson County, Metropolitan Health Department, 311–23rd Avenue, North, Nashville, Tennessee 37203, (615) 340–5653.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory O. Crawford, Regulatory Planning Section, Air Planning Branch, Air, Pesticides, and Toxics Management Division, Region 4, Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, GA 30303. The telephone number is 404/562–9046. (E-mail: crawford.gregory@epamail.epa.gov).

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: November 30, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–34310 Filed 12–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207–0108b; FRL–6203–8]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) which concerns the control of oxides of nitrogen NO_X and carbon monoide (CO) emissions from boilers of the electric power generation facility at Moss Landing in the Monterey Bay Unified Air Pollution Control District (MBUAPCD) area.

The intended effect of proposing approval of this rule is to regulate emissions of NO_X and CO in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Written comments must be received in writing by February 1, 1999.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Monterey Bay Unified Air Pollution Control District, Rule Development, 24850 Silver Cloud Ct., Monterey, CA 93940–6536.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION: This document concerns MBUAPCD's Rule 431, Emissions from Electric Power Boilers, submitted to EPA on March 10, 1998 by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the Rules Section of this **Federal Register**.

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

Dated: December 4, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 98–34553 Filed 12–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–207–0088b; FRL–6211–3]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) that concern three administrative rules.

The intended effect of proposing approval of these rules is to incorporate changes for clarity and consistency with revised federal and state regulations. EPA is proposing approval of these revisions to be incorporated into the California SIP for the attainment of the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this administrative change as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 1, 1999.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office [AIR–4], Air

Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule is available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revision is also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1189

SUPPLEMENTARY INFORMATION: This document concerns Antelope Valley Air Pollution Control District Rule 101, Title; Rule 102, Definition of Terms; and Rule 103, Definition of Geographical Areas. These rules were submitted to EPA on March 10, 1998 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

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

Dated: December 4, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 98–34699 Filed 12–30–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 177, 178 and 180

[Docket No. RSPA–98–3684(HM–220)]

RIN 2137–AA92

Hazardous Materials: Requirements for DOT Specification Cylinders; Extension of Comment Period and Announcement of Second Public Meeting

AGENCY: Research and Special Programs Administration (RSPA) DOT.

ACTION: Proposed rule; extension of time to file comments and public meeting announcement.

SUMMARY: RSPA is extending for 120 days, until May 28, 1999, the period for filing comments to a notice of proposed rulemaking (NPRM) published under Docket HM–220. RSPA is taking this action in response to petitions filed by the Compressed Gas Association, Inc. (CGA) and the National Welding Supply Association, Inc. (NWSA). The petitioners requested that RSPA provide additional time to allow shippers, the gas and cylinder industries, and other interested parties sufficient time to review and address the changes proposed in the NPRM.

RSPA also is holding a second public meeting on January 28, 1999, in Washington, DC to discuss the proposals.

DATES: *Comment Date.* Comments must be received on or before May 28, 1999.

Public Meeting Date. A public meeting will be held on January 28, 1999; from 9:30 a.m. to 4:00 p.m.; however, the meeting may end sooner.

ADDRESSES: Written Comments: Address comments to the Dockets Management System, U.S. Department of Transportation, PL 401, 400 Seventh St., SW, Washington, DC 20590–0001. Comments should identify the docket number, RSPA 98–3684(HM–220), and should be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Management System is located on the Plaza Level of the Nassif Building, at the above address.

Public dockets may be reviewed between the hours of 10:00 a.m. to 5:00 p.m., Monday thru Friday, excluding Federal holidays. In addition, comments can be reviewed by accessing the DOT Homepage (http://www.dot.gov). Comments may also be submitted by E-mail to ''rules@rspa.dot.gov''. In every case, the comment should refer to the Docket number set forth above.

Public Meeting: The public meeting will be held in Room 3200–3204 at the U.S. Department of Transportation's Nassif Building, 400 7th Street SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Cheryl Freeman, telephone number (202) 366–4545, Office of Hazardous Materials Technology, or Hattie Mitchell, telephone number (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On October 30, 1998, RSPA published an NPRM in the **Federal Register** under Docket HM–220 (63 FR 58460). RSPA proposes in the NPRM to amend certain requirements in the Hazardous Materials Regulations to establish four new DOT cylinder specifications and to revise the requirements for maintenance, requalification, repair and use of DOT specification cylinders. The NPRM also announced a public meeting held on December 8, in Washington, DC, to discuss the proposed changes.

RSPA received two petitions for extension of the comment period to the NPRM. The CGA requested that the January 28, 1999 deadline be extended for an additional 120 days and the NWSA requested a 90-day extension. The CGA petition was supported by the National Propane Gas Association. The petitioners stated that additional time is needed to allow shippers, the gas and cylinder industries, and other interested parties sufficient time to review and provide substantive comments to the proposed changes. RSPA is pleased that industry is giving serious attention to this important rulemaking. Therefore, the comment period is being extended from January 28 to May 28, 1999.

RSPA also is holding a second public meeting to discuss the proposals on January 28, in Washington, DC., at the above address.

Issued in Washington DC on December 22, 1998.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 98–34404 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 244

[FRA Docket No. SIP–1, Notice No. 1]

Surface Transportation Board

49 CFR Part 1106

[STB Ex Parte No. 574]

RIN 2130–AB24

Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, Acquisitions of Control, and Start Up Operations; and Procedures for Surface Transportation Board Consideration of Safety Integration Plans in Cases Involving Railroad Consolidations, Mergers, and Acquisitions of Control

AGENCIES: Federal Railroad Administration, Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Railroad Administration (FRA) and the Surface Transportation Board (STB or Board), working in conjunction with each other, have developed complementary proposed regulations establishing procedures for the development and implementation of safety integration plans (SIPs) by railroads proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another railroad. The scope of the transactions covered under the two rules would be identical except that FRA would also require carriers engaged in ''start up'' transactions to prepare SIPs.

Under FRA's proposed rule, railroads seeking to consummate a covered transaction would be required to file a proposed SIP with FRA. (A SIP is a written document explaining how each step in implementing a contemplated transaction would be performed safely.) FRA would then review the SIP and advise the Board as to whether it provides a reasonable assurance of safety for the transaction. The rule would further require a railroad to have an approved SIP by FRA before it could execute operations over property subject to the transaction. Where the Board has been involved in authorizing the transaction, FRA would consult with the Board at all appropriate stages of implementation.

Likewise, rail carriers seeking to carry out a transaction within the Board's jurisdiction for which the Board has concluded such consideration is necessary, would be required to file a SIP with FRA and the Board when they file their application or exemption. FRA would review the SIP and file written comments with the Board's Section of Environmental Analysis (SEA). After reviewing the SIP, SEA's analysis, and comments provided by interested persons during the STB's environmental review process, the Board would then independently evaluate the transaction and decide whether to approve it. Should the Board approve the transaction, FRA would monitor the implementation of the SIP, consult with the Board at all appropriate stages of implementation, and advise the Board when the proposed integration has been safely completed. FRA would be authorized to exercise its full enforcement remedies should either FRA or the STB reject the proposed SIP or a railroad fails to implement the terms of an approved SIP.

The proposed rules are designed to enable the Board and FRA to ensure adequate and coordinated consideration of safety integration issues in covered rail transactions while minimizing the burdens on the participants. FRA and the STB believe that the joint rule will serve the public interest in promoting safety in the railroad industry, consistency in decisions, and efficiency in compliance, enabling the agencies to employ their areas of expertise to fulfill their statutory objectives.

DATES: Submit written comments on or before March 1, 1999. Neither FRA nor the STB intends to hold a public hearing at this time on its respective proposed rules. Nevertheless, anyone who desires that either of the two agencies hold a public hearing must notify both the FRA Docket Clerk (either by telephone (202–493–6030) or by mail) and the STB Secretary ((202) 565–1650 or by mail), on or before February 1, 1999, specifying which of the two agencies it wants to hold a public hearing, and explaining why a hearing should be required.

ADDRESSES: Because of the close interrelationship between FRA and the STB on these proposed rules, copies of any comments on the proposed rules should be served on both FRA and the STB. However, commenters should clearly identify the rule on which they are commenting by using the FRA Docket No. SIP–1 for comments on FRA's proposed rule, and STB Ex Parte No. 574 for comments on STB's proposed rule.

Procedures for written comments to FRA: Submit one copy to the Department of Transportation Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C., 20590. All docket material on the FRA rule will be available for inspection at this address and on the Internet at *http://doms.dot.gov.* (Docket hours at the Nassif Building are Monday-Friday, 10 a.m. to 5 p.m., excluding Federal holidays.) Persons desiring to be notified that their comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The FRA Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee.

Procedures for written comments to the STB: Send an original and 10 paper copies referring to STB Ex Parte No. 574 to Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington D.C., 20423. In addition to paper copies, the parties must also submit their pleadings to the Board on a 3.5-inch diskette formatted for WordPerfect 7.0 (or in a format readily convertible into WordPerfect 7.0). All pleadings submitted on diskettes will be posted on the Board's website (www.stb.dot.gov).

FOR FURTHER INFORMATION CONTACT: Jon Kaplan, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mailstop 10, Washington, D.C., 20590 (telephone: (202) 493–6053); and Evelyn G. Kitay, Office of the General Counsel, STB, 1925 K Street, N.W., Washington, D.C., 20423 (telephone: (202) 565-1563) [TDD for the hearing impaired: (202) 565–1695.].

SUPPLEMENTARY INFORMATION:

Joint FRA/STB Introduction

FRA and STB are jointly responsible for promoting a safe rail transportation system.

Under Federal law, primary jurisdiction, expertise and oversight responsibility in rail safety matters are vested in the Secretary of the Department of Transportation, and delegated to the Federal Railroad Administrator. 49 U.S.C. 20101 *et seq.*; 49 CFR 1.49. FRA has authority to issue regulations to promote safety in every area of railroad operations and reduce railroad-related accidents and injuries. 49 U.S.C. 20101 and 20102. FRA has exercised its jurisdiction to protect the safety of railroad operations through the issuance and enforcement of regulations, partnering with railroad labor organizations and management of particular railroads to identify and develop solutions to safety problems, actively participating in STB rail proceedings, and monitoring railroad

operations during the implementation of STB-approved transactions.

The Board is also responsible for promoting a safe rail transportation system. The rail transportation policy (RTP), 49 U.S.C. 10101, which was adopted in the Staggers Rail Act of 1980, Pub. L. 96–448, 94 Stat. 1895, and amended in the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995), establishes the basic policy directive against which all of the statutory provisions the Board administers must be evaluated. The RTP provides, in relevant part, that, ''[i]n regulating the railroad industry, it is the policy of the United States Government * * * to promote a safe and efficient rail transportation system'' * * * [by allowing rail carriers to] ''operate transportation facilities and equipment without detriment to the public health and safety * * *.'' 49 U.S.C. 10101(8). The rail transportation policy applies to all transactions subject to the Board's jurisdiction.

Thus, both FRA and STB are vested with authority to ensure safety in the railroad industry. Each agency, however, recognizes the other agency's expertise in regulating the industry. FRA has expertise in the safety of all facets of railroad operations. Concurrently, the Board has expertise in economic regulation and assessment of environmental impacts in the railroad industry. Together, the agencies appreciate that their unique experience and oversight of railroads complement each other's interest in promoting a safe and viable industry.

In the *Conrail Acquisition* proceeding,[1] the two agencies recognized the need to work together to ensure that the proposed transaction would be safely implemented. Both agencies took a proactive role in analyzing the complex transaction involving two large railroads—Norfolk Southern Railway Company (NS) and CSX Transportation, Inc. (CSXT)—in their acquisition of a third large railroad, Consolidated Rail Corporation (Conrail). FRA conducted a formal safety assessment and recommended to the STB that the railroads be required to file SIPs explaining how they intended to safely integrate their operations if the transaction were approved. The Board agreed with FRA's suggestion, and directed NS and CSXT to file SIPs. NS and CSXT subsequently filed SIPs detailing each step of the integration process in their operating plans. Since then, both railroads have continued to coordinate with FRA in implementing the SIPs consistent with the agency's guidelines, and FRA has advised the Board on each carrier's progress in executing the plans. The lessons learned from this process are that safety plays a significant role in a regulated transaction and must be addressed before integration commences.

Based on this experience, FRA and STB have decided to formalize this partnership in regulating future rail consolidation transactions among Class I, Class II, commuter, and intercity passenger railroads by issuing a joint notice of proposed rulemaking. The proposed rules are intended to accomplish the safety objectives of both agencies, avoid gaps and inconsistencies in the two agencies' regulatory requirements, and impose as little burden as possible on the participating parties.

Joint Discussion of Framework of the Proposed Rules

FRA's proposed rule. FRA proposes to require certain railroads seeking to merge, consolidate, or acquire control of another railroad, or ''start up'' operations as a railroad to file proposed SIPs with FRA before consummating the regulated transaction. The transactions covered would be as follows: (1) A Class I railroad, a railroad providing intercity passenger service such as the National Railroad Passenger Corporation (Amtrak), or a commuter railroad seeking to acquire, merge, or consolidate with a Class I or Class II railroad, a railroad providing intercity passenger service, or a commuter railroad; (2) a Class II railroad proposing to consolidate, merge, or acquire another Class II railroad with which it connects so as to involve the integration of operations; (3) any merger, consolidation, or acquisition resulting in operations that would generate revenue in excess of the Class I railroad threshold, except those transactions involving Class III freight only railroads; and (4) all start up operations involving the establishment of a new line for passenger or freight service generating revenue that would exceed the Class II railroad threshold.

Such SIPs must systematically describe how each applicant railroad would integrate its operations in all areas of rail safety. FRA would then review the proposed SIPs to ensure that they provide a reasonable assurance of safety. Should the plans be approved, FRA would monitor the applicants' implementation of the SIPs until integration of operations is complete. Each railroad must carry out the specific measures addressed in an approved SIP at all times during the integration phase. The rule proposes authorizing FRA to exercise its enforcement remedies should a railroad conduct operations either without an approved SIP or in violation of the same. Enforcement may involve legal or equitable remedies, authorizing the agency to assess civil penalties or issue emergency or compliance orders against a recalcitrant railroad.

STB's proposed rule. The STB's proposed rule encompasses all of the transactions covered by FRA's proposed rule, other than ''start up'' operations. The STB's proposed rule builds on FRA's proposed rule by requiring a SIP containing information required under the FRA rule to be filed by an applicant railroad involved in a covered transaction with the STB as well as with FRA. The SIP would be required to be submitted to the STB, and FRA, no later than the date the application or exemption for authority to execute such a transaction is filed with the STB. The Board would conduct an environmental review of the application, and FRA would provide written comments on the adequacy of the SIP to the Board's SEA, which is responsible for preparing the Board's environmental documents. SEA would then include the SIP and any additions or revisions based on continued discussions with FRA in the draft environmental documentation. Should the Board approve the transaction and require compliance with a SIP, FRA, as contemplated by these rules, would work with the applicants to ensure safe integration of the applicants' operations in accordance with the SIP, and any revisions or modifications agreed to by FRA. The rule proposes that FRA advise the Board on the status of implementation in accordance with an agreement reached between STB and FRA for each proceeding. FRA also has undertaken to advise the Board in writing when the proposed integration of applicants' operations has been safely completed.

Below are FRA's and STB's separate and independent statements of basis and purpose for the rules that each agency is proposing, including a section-by-section analysis and the text of each agency's proposed rules themselves.

FRA's Statement of Basis

Mergers and other rail transactions can result in safety problems if not carefully planned and implemented, as evidenced by recent mergers. The scope of rail mergers among, and acquisitions by, Class I railroads has changed

[1] *CSX Corporation and CSXT Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388 (*Conrail Acquisition*).

dramatically in ways that present serious safety issues. As these carriers, and the consolidations in which they are involved, become larger and more complex, integrating operations, facilities, personnel, safety practices, and corporate culture while maintaining safe operations becomes more of a challenge. Two specific examples of shortcomings experienced by railroads carrying out ''mega-mergers'' are discussed below.

The mergers of the Union Pacific Railroad Company (UP) and the Southern Pacific Transportation Company (SP) (collectively referred to as UP/SP) and Burlington Northern Railroad Company (BN) and the Atchison, Topeka and Santa Fe Railway Company (ATSF) (collectively referred to as the BNSF) have demonstrated that integrating railroads into an even larger carrier present significant challenges in a great many areas, including: harmonizing information systems; coordinating marketing; training dispatchers; modifying operational practices and procedures; implementing personnel policies and bargaining agreements; integrating corporate cultures; determining appropriate staffing needs; and providing adequate rail facilities, infrastructure and equipment. The following is a summary of the safety problems FRA identified with respect to these two mergers. FRA refers interested persons to the agency's regulatory evaluation for a more detailed discussion of these problems, a copy of which has been placed in the docket for FRA's proposed rule.

UP/SP, for instance, experienced severe congestion and related rail service difficulties in integrating the two railroads with their different histories, cultures, and operating practices. The post-merger force reductions of 1,500 or more employees, coupled with inadequate rail facilities, infrastructure and equipment, and increased traffic led to service delays and disruptions, and congestion of lines in Texas, as well as increased exposure to incidents and injuries as overworked supervisors and train crew employees tried to cope with the dilemma. As a result, the company suffered substantial financial losses and safety problems surfaced.

FRA believes that this spike in UP/SP accidents and incidents is attributed to management decisions that focused on reducing or consolidating existing labor resources and reaching operating efficiencies and productivity goals. For example, UP/SP offered voluntary separation awards to seasoned SP employees and authorized former UP employees to conduct operations on territory in which they lacked the training on operating rules or practices governing such operations. During its post-merger safety survey, FRA identified other deficiencies, including incompatible computer database systems, inadequate training of train dispatchers, and a failure to conduct alcohol and drug testing consistent with UP's program. These deficiencies culminated in a fundamental breakdown in sound railroad safety practices, exposing unforeseen problems.

Likewise, BNSF encountered operational and safety problems when it implemented its merger. FRA attributes the Cajon Pass freight train derailment in February 1996, which was shortly after the merger, to a lack of communication between railroad officials in the field and top management officials in the corporate headquarters about the fact that two-way end-of-train telemetry devices (EOT) on BNSF trains operating over the pass did not function properly. Had the EOT device on the derailed train functioned properly, the accident may have been averted. *See* National Transportation Safety Board Accident Report PB96–916305 (Feb.1, 1996); FRA's final rule on Two-Way End-of-Train Telemetry Devices, 62 FR 278, 279, Jan. 2, 1997. The derailment of 4 locomotives and 45 freight cars (including 4 cars containing hazardous materials) resulted in the death of the conductor and brakeman, serious injury to the engineer, the burning of hazardous materials carried on the train, the evacuation of the surrounding community, and the closing of Interstate 15 for two days. Although BNSF was one of the first of the major railroads to equip its trains with EOT devices in response to a similar accident in 1994, pre-merger operating practices at BN did not ensure for correct use of the equipment. In many cases the rear-end device could not communicate with the head-end device. This fact was never reported to top management for correction. In other instances, train crews failed to use or activate the EOT equipment because of a lack of instruction or training. A properly prepared and implemented safety plan would have promoted communication that may have remedied these conditions.

FRA has identified other safety problems attributed to the BNSF merger. These include incompatible electronic database systems used by BN and ATSF, resulting in terminal offices generating inaccurate and incomplete train consist lists, which compromised the safety of train crews hauling the shipments; a lack of coordination between the train dispatching systems used by BN and ATSF when the merger was implemented, resulting in a breakdown in many functional areas endangering employees; following the merger, instructions were issued to identify trains by using the initials ''BNSF'' before the locomotive number, causing a potentially dangerous situation whereby two locomotives (one BN and the other ATSF) could be identified as the same locomotive; and BNSF's failure to communicate operational and safety policies and procedures on the entire system when the merger went into effect. Rather, the railroad continued to use the individual standards established by the separate rail entities, thereby confusing dispatchers, train crews, and roadway workers when working on or operating equipment in unfamiliar territory. FRA believes that BNSF's inadequate safety planning before implementing this complex transaction contributed to these operational difficulties.

''Mega-mergers,'' consolidations, or acquisitions of control clearly present implementation challenges that necessitate careful planning to ensure safety. FRA believes that other rail transactions covered by its rule, each of which involves significant changes to existing rail operations, also pose serious challenges to rail safety. These challenges include establishing a uniform corporate safety culture, harmonizing information systems, training employees responsible for moving trains and maintaining equipment and infrastructure, and implementing standard operating practices and procedures governing railroad operations.

FRA has found that even small railroads experience difficulties when they attempt to integrate operations of an acquired property. To illustrate, the Wisconsin Central, Limited, the parent company of the Wisconsin Central Railroad (WC), a large regional railroad, purchased the Fox Valley and Western Railroad Company (FVW) in 1995. Before the merger, FVW lost many of its covered service employees due to buyouts, retirement, or other employment opportunities. Recognizing that the FVW had a shortage of available employees, WC migrated its managers to repair track, inspect rolling stock, and operate trains and engines on the FVW property. As a result, WC's accident rate remained static in 1995 and 1996, declining only from 13.79 to 10.54 per 1,000,000 train miles.

FRA attributes WC's lack of progress in reducing its accident rate to the migration directive. Managers were preoccupied with carrying out railroad

operations instead of overseeing the workforce. WC's failure to conduct effective efficiency testing of employees or monitor closely field personnel on operating rules governing railroad operations jeopardized the integrity of the railroad system, and may have contributed to the elevated accident rate. Although WC, in partnership with FRA, has made tremendous advances regarding this issue, the agency believes that advance planning would have identified this shortcoming, necessitating the parent company to hire employees to meet this labor shortage and enable the managers to execute their traditional tasks.

Based on lessons learned from the UP/SP and BNSF mergers, the Board, with FRA assistance, has taken steps to ensure the safe implementation of rail transactions subject to its jurisdiction. As a result of safety and operational problems associated with the UP/SP and BNSF mergers that could have been avoided with sufficient advance planning, FRA carefully examined the filings of the applicants Norfolk Southern Railway Company's (NS) and CSX Transportation, Incorporated's (CSXT) submissions in the *Conrail Acquisition* proceeding before the Board. FRA's initial findings were not encouraging. After reviewing the applicants' safety plans, the agency determined that the railroads had not submitted comprehensive assessments of the safety effects of the proposed acquisition. Neither railroad presented a systematic plan explaining the manner in which it intended to implement the transaction. As a result, FRA requested the Board to require the carriers to provide detailed information on how they proposed to provide for the safe integration of their corporate cultures and operating systems, if the Board were to approve the proposed transaction.

The Board followed FRA's recommendation and required the applicants to file detailed SIPs pursuant to guidelines developed by FRA.[2] The railroads' submissions were made part of the environmental record in that proceeding and addressed in the ongoing environmental review process in that case. The SIPs were included in the Draft Environmental Impact Statement, to enable review and comment by interested persons. The Board's SEA also independently reviewed the plans.

FRA and SEA (in its Final Environmental Impact Statement (Final EIS)) concluded that applicants had satisfactorily addressed the safety implementation concerns presented by the transaction to date. Moreover, shortly before the Final EIS was issued, the Board entered into a Memorandum of Understanding (MOU) with FRA, to establish an ongoing monitoring process while the proposed *Conrail Acquisition* was being implemented.[3] The MOU clarifies the actions FRA and the Board will take to ensure that the SIPs are successfully implemented. Under the terms of the MOU, FRA will monitor, evaluate, and review NS's and CSXT's progress. The MOU provides that FRA may request action by the Board in exercising its oversight over the applicants to correct identified safety deficiencies resulting from the transaction. When requesting Board action, FRA will provide recommendations to remedy the deficiencies. FRA will also report periodically to the Board on the safety integration of the *Conrail Acquisition*, but not less than biennially. FRA will also report significant integration issues to the Board if and when they are identified. FRA's reporting will continue until FRA advises the Board in writing that the proposed integration has been safely completed.

Having developed a vehicle by which to evaluate safety integration issues in *Conrail Acquisition*, the Board issued an advanced notice of proposed rulemaking (ANPRM) requesting comments on the advisability of promulgating rules to extend this process to other rail transactions subject to the Board's jurisdiction.[4] 62 FR 64193, Dec. 4, 1997.

Based on the comments received in response to the ANPRM and the Board's experience with the SIP process in *Conrail Acquisition*, the Board issued a decision on July 27, 1998, finding sufficient merit to warrant further exploration of establishing regulations addressing the safe implementation of Board-approved transactions. The Board directed the Board staff to develop a joint notice of proposed rulemaking, addressing the issues that have arisen in this proceeding and that are of concern to FRA, and to submit the proposed rule for the Board's evaluation and approval before publishing the proposal.[5]

Following the issuance of the July 27, 1998, decision, the STB staff met informally with FRA staff and developed this joint rulemaking document. The proposed rules are designed to establish procedures to enable the Board and FRA to ensure adequate and coordinated consideration of safety integration issues in rail transactions, while minimizing the burdens on the participants.

FRA's Section-by-Section Analysis For Its Proposed Rule

FRA proposes to add part 244 to title 49, Code of Federal Regulations, prescribing regulations on safety integration plans governing railroad consolidations, mergers, acquisitions of control, and start up operations. Below is an analysis of the regulatory propositions proposed in the rule.

Section 244.1 Scope, Application, and Purpose.

Section 244.1(a) states the types of transactions and the parties involved in such transactions that would require the filing of a SIP. Section 244.1(a)(1) provides that a Class I railroad, a railroad providing intercity passenger service, or a commuter railroad seeking to acquire, merge, or consolidate with a Class I or Class II railroad, a railroad providing intercity passenger service, or a commuter railroad would be subject to this part. A Class II railroad proposing to consolidate, merge, or acquire another Class II railroad with which it would connect so as to involve the integration of operations would require the filing of a plan. Also, any merger, consolidation, or acquisition, excluding a transaction involving a Class III freight only railroad, resulting in operations that would generate revenue in excess of the Class I railroad threshold would be governed by part 244. Finally, all start up operations as defined by this rule would trigger part 244.

FRA intends to regulate significant transactions that left unregulated, may compromise railroad safety. The agency believes that railroads generating operating revenue, measured in 1991 dollars, in excess of $250 million per year, *i.e.*, the Class I railroad threshold,

[2] *Conrail Acquisition*, STB Decision No. 52, served Nov. 3, 1997.

[3] In the Board's decision approving the *Conrail Acquisition*, the Board imposed environmental mitigation conditions requiring the applicants to (1) comply with their SIPs (and any modifications or updates needed to respond to evolving conditions) and (2) participate and fully cooperate with the ongoing regulatory activities associated with the ongoing safety integration process described in the MOU.

[4] The Board has required the same type of showing in the proposed merger between Canadian National Railway Company and Illinois Central Railroad Company, which is now pending before the Board. *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company*, STB Finance Docket No. 33556 (STB Decision Nos. 5 and 6, served June 23, 1998, and Aug. 14, 1998).

[5] This joint approach was predicated upon assurances by DOT that a joint process would not subject the exercise by the Board of its rulemaking authority in this proceeding to review by the Office of Management and Budget, in contravention of the STB's Congressionally mandated independence.

are entities transporting a large volume of freight that need to be scrutinized when they want to join with another large-scale carrier. Given the problems identified with recent Class I mergers, FRA proposes regulating Class I transactions.

Correspondingly, FRA believes that passenger railroads, whether they are intercity or commuter operations, that participate in a regulated transaction are sophisticated operations requiring Federal Government oversight. Class II railroads seeking to execute a transaction in which they would directly interchange traffic and all transactions, excluding Class III freight only railroads, in which the consummation of operations would produce revenue in excess of the Class I revenue threshold, irrespective of geographic limitations, would also be regulated. Class II railroads have operating revenues, measured in 1991 dollars, between $20 million and $250 million per year and include such carriers as WC, Florida East Coast Railway, and Montana Rail Link, Inc. FRA posits that these entities seeking to directly interchange freight with each other present a complex transaction involving the transfer or sharing of employees or equipment. Similarly, large-scale transactions generating revenue in excess of $250 million per year would create a railroad of complex magnitude. Again, the rule proposes requiring plans from these applicants, setting out the manner and methods in integrating such transactions.

The proposed rule would also govern start up railroads. ''Start ups'' involve the establishment of a new rail line for intercity or commuter passenger service or freight service generating revenue that would exceed the Class II railroad threshold. See proposed Section 244.9 for the definition of ''start up operation.'' Commencing railroad operations present the development and deployment of an infrastructure system never before tried or tested. The use of rail equipment, track, and signals, and the employment of operating rules governing the movement of trains and designation of roadway work demands familiarity with the new system and advance planning of operations scheduled to be conducted. A SIP captures the need to forecast the step-by-step implementation of a new line from construction to completion.

At this time, FRA does not intend to regulate the merger of Class II railroads that do not directly interchange traffic or transactions involving terminal railroads; rail line sales; or trackage rights requests. The proposed rule further does not cover Class III freight only railroads, i.e., those railroads that generate revenue, measured in 1991 dollars, of less than $20 million per year. The agency believes that these railroads engage in transactions that are not so complex or hazardous as to warrant regulation. Nevertheless, FRA solicits comments from interested parties as to whether the final rule should cover these transactions, including transactions involving Class III railroads over which passenger service would be provided, and whether the railroads involved should prepare ''full blown'' SIPs or meet lesser safety informational requirements. The comments should articulate a detailed rationale for regulating these transactions and the types of information that should be required together with evidence of any consequences in leaving these transactions unregulated.

Paragraph (b) of this section explains the basis for the rule. SIPs are designed to achieve a reasonable level of safety while regulated transactions are being implemented. The source of the rule is premised on the complexity of large transactions and the need to plan ahead before carrying out such activities. FRA is confident that plans setting out how railroads will merge, consolidate, acquire another railroad, or start up business will promote efficiency, economy, and safety in the railroad industry.

Section 244.1(c) advises applicants that part 244 applies only to FRA's disposition of a regulated transaction. It does not apply to the Board's process in reviewing transactions subject to its jurisdiction. *See* 49 CFR part 1106 for regulations governing transactions regulated by STB. The rule proposes that transactions within the Board's purview would require a SIP process involving both FRA and STB before a railroad may consummate a proposed transaction and conduct operations over the affected property.

Section 244.3 Preemptive Effect.

Section 244.3 informs the public as to FRA's views regarding the preemptive effect of the proposed rule. Section 20106 of title 49, United States Code, provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order, and that does not unreasonably burden interstate commerce. With the exception of a provision directed at an essentially local safety hazard, 49 U.S.C. 20106 preempts any State regulatory agency rule covering the same subject matter as these regulations proposed.

Section 244.5 Penalties.

Section 244.5 identifies the penalties that FRA may assess upon any person, including a railroad, or employees of a carrier, that violates any requirements of this part. The penalty provision, which parallels penalty provisions contained in other FRA-issued regulations, is authorized by 49 U.S.C. 21301, 21304, and 21311. In essence, any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation. FRA may assess civil penalties against individuals only for willful violations, and it may assess a penalty of up to $22,000 per violation where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury. Each day a violation continues constitutes a separate offense. A person may be also subject to criminal penalties for knowingly and willfully falsifying entries or reports required by these regulations.

Paragraph (b) of § 244.5 provides that FRA may invoke any of its other enforcement remedies available under the safety laws if a railroad fails to comply with this part. In particular, the agency advises the regulated community that it is authorized to issue an emergency or compliance order or seek the issuance of an injunction prohibiting certain conduct should a railroad violate § 244.21 of this part. *See, e.g.,* 49 CFR part 209, Appendix A. For example, should FRA reject a proposed SIP and an applicant commence railroad operations on property subject to the plan anyway, the agency may order the railroad to cease operations until it receives approval of the plan.

FRA believes that the inclusion of penalty provisions for failure to comply with the regulations is important to ensure that applicants obtain agency approval of a proposed SIP before implementing a regulated transaction and execute all measures provided in an approved plan. The final rule will include a schedule of civil penalties in Appendix A to 49 CFR part 244, to be used in connection with this part. Because such penalty schedules are statements of policy, notice and comment are not required before their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to recommend the appropriate penalties

corresponding to the relative seriousness of each type of violation.

Section 244.7 Waivers.

Proposed § 244.7 sets forth the procedures for seeking a waiver of compliance with the requirements of FRA's rule. A request for such a waiver may be filed by any party subject to part 244. FRA will conduct its own independent investigations to determine if an exception to the general criteria can be made without compromising or diminishing rail safety.

In filing a petition for a waiver, FRA respectfully refers an interested party to the requirements enunciated at 49 CFR part 211 for the procedures that must be followed. FRA recognizes that certain transactions may arise that the agency did not intend to regulate. FRA would thus entertain such a petition, provided that the petitioner can show that the transaction at issue involves an incidental impact on rail operations that would not pose a risk to rail safety. The burden rests with the entity requesting the waiver to meet this criterion.

FRA may grant the petition should it determine that it is in the public interest and is consistent with rail safety. FRA also reserves the right to institute any conditions on the petition as it believes are necessary to promote rail safety. The agency advises the regulated community that it enjoys plenary authority to approve or reject any petition for a waiver of this rule and its decision is ''agency discretion by law.'' 5 U.S.C. 701(a)(2); *see also Heckler* v. *Chaney*, 470 U.S. 821 (1985).

Section 244.9 Definitions.

This section contains an extensive set of definitions introducing the regulations. FRA promulgates these definitions to clarify the meaning of important terms as they are used in the text of the proposed rule. The proposed definitions are carefully worded to minimize any possible misinterpretation of the rule. Several terms introduce new concepts not published in any other FRA regulations. These definitions require further discussion as set forth below.

The term ''amalgamation of operations'' is intended to cover the migration, combination, or unification of one set of railroad operations with another set of railroad operations. For example, if a purchasing railroad intends to change personnel responsible for conducting field operations, or replace, rehabilitate, refurbish, or renovate existing track, bridges, radio, or signal and train control systems, then it is amalgamating operations as defined. Similarly, an applicant deploying, relocating, or transferring roadway equipment or rolling stock from one railroad property to another is conducting activities within the purview of this definition. In other words, amalgamation is triggered when a railroad allocates human or capital resources that impact operations from one entity to another.

The definitions of ''applicant'' and ''Class I or Class II railroad'' are self-explanatory. ''Applicant'' covers a Class I or Class II railroad, a railroad providing intercity passenger service, or a commuter railroad that seeks to consummate a regulated transaction. ''Class I or Class II railroad'' is defined by regulations issued by the Board, which are found at 49 CFR 1201; General Instructions 1–1. Generally, STB classifies a Class I railroad as having an annual carrier operating revenue of $250 million or more, and a Class II railroad as having an annual carrier operating revenue between $20 million and $250 million. (A Class III railroad has an annual carrier operating revenue of less than $20 million.) In accordance with the Board's regulations, the annual carrier operating revenue is measured in 1991 dollars.

The term ''best practices'' means the safest and most efficient rules or instructions governing rail operations that are issued by a railroad. FRA does not intend to substitute its judgment for that of a railroad in determining safety and efficiency. Rather, the agency will defer to an applicant's understanding and application of its operating rules and practices that promote these interests.

The definition of ''corporate culture'' is new. As proposed, the term means the attitudes, commitments, directives, and practices of railroad management with respect to safe railroad operations. FRA intends corporate culture to encompass a railroad management's attitudes, directives, planning and resource allocations on the subject of safety. Corporate culture thus represents a company's attitude toward safety as identified in its operating rules and practices, and its policies in eliminating individual deficiencies and planning for a harmonious integration of railroad operations. FRA solicits comments whether persons agree with this definition.

''Control,'' ''consolidation,'' ''merger,'' and ''start up'' are terms describing the types of transactions governed by this part. The definition of ''control'' is borrowed from the statutory definition at 49 U.S.C. 10102. FRA intends to regulate a proposed transaction in which one or more railroads seek to acquire or exercise control of property. One example is NS's and CSXT's acquisition of Consolidated Rail Corporation (Conrail) in 1998, which involved the dividing up of an existing Class I railroad by two separate Class I railroads. NS and CSXT will now own and operate over property that was once possessed by an independent carrier. Such a transaction fits within the meaning of ''control.''

As defined in this part, ''merger'' means an equity purchase of a Class I or Class II railroad, a railroad providing intercity passenger service, or a commuter railroad by another Class I or Class II railroad, a railroad providing intercity passenger service, or a commuter railroad. The transaction must involve the purchase of assets and shareholder equity, and assumption of liabilities held by the railroad acquired. Similarly, ''consolidation'' exists when a railroad takes over another railroad's assets and/or liabilities with the resulting entity having the combined capital, powers, and subsidiaries and affiliates, if applicable, of all of its individual constituents.

Put another way, a merger occurs when a corporation, known as the surviving corporation, buys another corporation, with the result that the former company's existence continues whereas the latter company's existence ceases. This principle is best expressed in the following equation: A Corporation + B Corporation = A Corporation. In contrast, a consolidation occurs when two or more constituent corporations cease to exist and a new consolidated corporation emerges. This principle is best expressed in the following equation: A Corporation + B Corporation = C Corporation. In either transaction, the surviving or consolidated corporation takes over the assets of the former constituent corporation and assumes its liabilities.

A ''start up operation'' exists when an entity initiates railroad operations on a rail line or lines involving intercity or commuter passenger service or freight service in excess of the Class II railroad threshold, *i.e.*, revenue in excess of $20 million per year.

The definition of ''railroad'' is based on 49 U.S.C. 20102 (1) and (2), and encompasses any person providing railroad transportation directly or indirectly, including a commuter rail authority that provides railroad transportation by contracting out the operation of the railroad to another person, as well as any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, but excludes urban rapid transit not connected to the general system.

The term ''Safety Integration Plan'' means a comprehensive written plan submitted to and approved by FRA in compliance with this part that details the measures for ensuring safe railroad operations during implementation of a proposed transaction and assures compliance with the safety laws. FRA intends a SIP to be a formal written document that systematically describes how each element set out in § 244.13 will be integrated safely into the operations of the applicant railroad. The SIP must comprehensively consider and analyze all significant sources of increased safety risk, and discuss the sound procedures to be adopted for implementing the transaction.

Finally, FRA borrows the definitions of ''environmental documentation'' and ''Section of Environmental Analysis'' from the definitions enumerated in the Surface Transportation Board's portion of the joint rule. The meaning and application of these definitions may be found at 49 CFR part 1106, which is the Board's counterpart of this rule.

Section 244.11 Contents of a Safety Integration Plan

Proposed § 244.11 sets out the structure of the SIP an applicant must file. The litany identifies elements that must be addressed in each subject matter area provided in § 244.13. In general, the regulatory proposition requires a railroad to prepare a roadmap or play book explaining the practices and procedures, financial commitment, and time frame for integrating or commencing field operations subject to the transaction.

Paragraph (a) of § 244.11 is bifurcated based on the type of transaction proposed. A railroad proposing to start up operations must address the physical and operational characteristics of the new line or lines and the best practices to be adopted. For instance, an applicant intending to construct a new line must provide information about the terrain over which operations will commence and the establishment of divisions and districts governing rail operations. In contrast, an applicant seeking to merge, consolidate, or acquire control of another railroad will be required to explain the different characteristics between itself and the other railroads subject to the transaction. In either case, the applicant must address the best practices of the resulting transaction, meaning the safest and most efficient rules employed in the railroad industry.

Next, the regulation requires a specific description of the manner and method of operations proposed in a step-by-step chronology. Again, an applicant must anticipate how it will safely implement the proposed transaction for each subject matter area defined. The plan must also describe the human and capital resources appropriated to carry out the proposed transaction, the measures to comply with the safety laws, and a proposed timetable, from start to finish, to implement the transaction. FRA believes that the contents serve as a foundation for implementing the plan. The contents must be descriptive, coherent, and logical to lend credibility to the plan. FRA posits that a well organized proposal setting out a plan of execution of detailed action items will serve the agency's and railroad's interest in safely integrating operations.

Section 244.13 Subjects To Be Addressed in a Safety Integration Plan Involving an Amalgamation of Operations or Start Up Operations

This section contains the substantive information that must be discussed in a SIP when a railroad seeks to amalgamate operations in a regulated transaction. As explained above, a transaction in which a railroad intends to transfer employees or rolling equipment from one entity to another, or make changes in existing infrastructure, precipitates an amalgamation under this part. FRA believes that these operational changes are complex in nature and require thoughtful analysis before they are carried out. A comprehensive assessment of certain subject matter areas serves to direct applicants to focus on instituting a safe transition of railroad operations. Again, the premises are that advance planning, systematic thinking, and a written plan promote safe implementations.

The subject matter areas are divided into two categories—physical safety and cultural environment. The physical safety rubric contains seven functional areas, which are track, bridges, and structures; dispatching centers; operating practices; car and equipment maintenance and inspection; signals and train control; hazardous materials; and highway-rail grade crossings. FRA has identified these areas as critical disciplines that are impacted by a regulated transaction when operations are amalgamated. To protect the integrity of rail operations, FRA proposes that these elements be addressed in a plan.

Paragraph 244.13(a) requires each applicant to explain the basis for its safety culture. Specifically, the rule proposes requiring a railroad to identify and describe differences in corporate cultures for each safety-related area; describe how these cultures lead to different practices governing rail operations; and explain how the proposed integration of corporate cultures will result in a system of ''best practices'' when the proposed transaction is implemented.

Historically, each railroad has possessed distinctive ways of conducting its business that its employees identify as its way of managing affairs, and that they are usually inclined to consider the correct or best way of executing tasks. Mergers, consolidations, acquisitions, and start up operations are complicated transactions, requiring management and labor to embrace a culture that powerfully emphasizes safety and good communications among management, employees, and the employees' union representatives. It is imperative that the applicant describe how it intends to produce the desired corporate culture that underscores safe railroad operations.

FRA believes safety culture is an instrumental element in achieving rail safety. For purposes of the proposed rule, the term ''corporate culture'' means management's attitudes, directives, planning, and resource allocations on the subject of safety. These elements ultimately provide the vision and direction for all levels of railroad employees and influence their training, health, morale, and safety practices and habits. The safety culture of U.S. railroad companies, especially the major Class I railroads, is established by the railroad's chief executive officer and permeates throughout the entire rank-and-file of employees. Management's attitudes, directives, planning, and resource allocations all reflect the mission and vision of a company, and influence the training, morale, and safety practices of carrier employees. Successful integration requires a railroad to evaluate its underlying priorities, practices, and philosophies during the transition phase. For example, FRA views UP's and BNSF's immediate post-merger reduction in employment to reach financial efficiencies created a loss of talent and institutional knowledge for the two railroads. This shortcoming led to a lack of familiarity with railroad operations, employee misunderstandings, and communication gaps, increasing the railroads' exposure to accidents, incidents, and fatalities. FRA anticipates that a SIP addressing an applicant's attitudes and practices toward safety will enhance the harmonious integration of a unified system of operations.

Against this background, a railroad is required to discuss the different cultures

within the various disciplines and explain how it will adopt the ''best practices'' when the proposed transaction is implemented. Besides reviewing the safest practices to be instituted, FRA is interested in learning the methodology employed in developing the final work product. An applicant is thus encouraged to trace the steps taken to reach the ultimate measures to be adopted.

Most important, an applicant must designate safety as its highest priority. Although productivity and efficiency drive the transaction, there must be commitment to rail safety at all levels of a corporate organization. Evidence has shown that when productivity eclipses safety, congestion and service difficulties arise, leading to operational hazards and increases in derailments and collisions. FRA believes that a systematic analysis of a railroad's safety culture will center the applicant's attention on safety, eliminating the ''root cause'' of accidents and incidents. Communications patterns about safety matters are especially important. When safety information is not communicated clearly and promptly both up and down the corporate hierarchy, safety problems ensue. That said, FRA invites the regulated community to comment on whether the agency should regulate ''corporate culture'' at all, and an applicant's ability to apply this element to its business practices and the manner necessary to comply with this requirement.

Section 244.13(b) requires each applicant to discuss its training and educational programs to ensure that its employees and supervisors responsible for field operations are proficient and qualified. The specific employees include train and engine service employees, dispatchers and operators, roadway workers, signal employees, mechanical officials, and hazardous materials personnel. These employees are on the ''front lines'' of the industry and need to be familiar with all aspects of their occupations. A plan should include details identifying the scope and depth of the type of training operating personnel will receive. Training should also discuss the resources allocated to conduct and complete training, and a proposed schedule for accomplishing this task.

Proposed paragraph 244.13(c) provides the operating practices information that must be contained in a SIP. There are five elements that are within the discipline—operating rules, accidents/incidents, hours of service laws, and the alcohol and drug and locomotive engineer qualification and certification programs. Each requirement is self-explanatory as enumerated in the regulatory text and must be addressed in a plan.

FRA is convinced that railroad safety is best ensured by the strict adherence to operating rules established by a railroad. Given that many railroads either issued their own independent operating rules or adopted operating rules published by the Northeast Operating Rules Advisory Committee or General Code of Operating Rules, operations are being governed by different sets of rules. To ensure that operations are properly executed, an applicant must specify the operating rules, timetables, and timetable special instructions that will govern these activities.

A railroad must also identify the reporting procedures for any reportable accident under 49 CFR part 225, and its policy on harassment and intimidation, including a copy of its internal control plan as required by 49 CFR 225.33. The applicant must address measures it will take to comply with the Railroad Accidents/Incidents regulations found at 49 CFR part 225, administer the monthly reporting requirements as mandated by law, and inform employees about procedures available for those who perceive intimidation and harassment under part 225.

The rule would further require a railroad to identify its post-accident toxicological testing, reasonable cause testing, and random alcohol and drug testing programs as required under 49 CFR part 219 and how it intends to integrate operations subject to the transaction with the existing programs. An applicant would also be required to set out the qualification and certification program of locomotive engineers to be employed and the manner in which it will integrate the new divisions with the program. Finally, the plan must discuss an applicant's proposed measures to comply with the hours of service laws and hours of service recordkeeping regulations and FRA's interpretations of the same. The plan must also address efforts taken to minimize fatigue of covered service employees, *i.e.*, employees who perform train and engine, dispatching, or signal system service. FRA believes that employee fatigue has caused or contributed to accidents and incidents precipitated by human error. Employees who are well rested and refreshed are less likely to commit errors affecting rail operations. Thus, initiatives taken to minimize fatigue enhance safety in the field, necessitating its inclusion in a SIP.

Section 244.13(d) would require a railroad to identify the qualification standards for employees who inspect, maintain, or repair rolling stock and designate the facilities that will repair the rolling equipment. A plan must provide adequate assurances that mechanical officials who are responsible for performing required inspections and tests of the equipment are proficient in mechanical practices to safeguard the use of freight or passenger cars and locomotives on a railroad. The plan must further disclose the inspection facilities to be employed for repairing rolling stock. This provision will ensure that an applicant plans which roundhouses will be retained to maintain equipment in compliance with the safety laws while efficiently using an existing engine or car fleet. Paragraph (e) of § 244.13 states that a railroad must identify the signal and train control systems employed, and maintenance, capital improvement, and research and development projects planned for signal and train control operations. FRA is interested is reviewing a SIP proposing to migrate or integrate an acquired property or line segment system with an existing signal system. Where an incompatibility between signal and train control systems is found, safety may be jeopardized. The plan should discuss a railroad's proposal to reconcile or harmonize dissimilar signal practices and standards to avoid any possible misunderstandings or miscommunications that may impact safety. Likewise, § 244.13(f) requires a railroad to identify the maintenance and inspection programs for track and bridges. The plan should provide assurances that the structures are safe or will be repaired, rehabilitated, or replaced, if necessary, to ensure the integrity of the property.

Section 244.13(g) proposes requiring an applicant to address hazardous materials in a SIP. There are two parts to this requirement. First, an applicant must set out a hazardous materials inspection program covering field inspection practices, communication standards (*i.e.*, shipping descriptions, certification, marking, labeling, placarding, and emergency response information), and emergency response procedures. Second, the railroad must explain its development and delivery of an automated system for records of hazardous materials shipments. FRA asserts that a SIP must include this information to enable the agency to assess the safety of the railroad's hazardous materials transportation system. A plan quantifying inspections of hazardous materials shipments, shipping papers, and emergency response measures provides a baseline

to evaluate the integrity of the program. Concurrently, information about the computer software system retaining hazardous materials data is vital to determine the reliability and accuracy of the data entered and retained. FRA expects railroads embracing the latest technology to install automated systems offering ''fail-safe'' features to prevent the entry of ''freight all kinds'' for hazardous materials shipments or incorrect waybills generated from electronic data interchange or Standard Transportation Commodity Codes (STCC) information received from a shipper. The program deployed must make information on hazardous materials shipments immediately available for inspection and photocopying by FRA officials during normal business hours. Above all, an applicant must ensure that the automated system provides timely availability of hazardous materials shipping papers to train crews, clerical personnel, and agency officials.

Paragraph 244.13(h) sets out four criteria on dispatching operations that a plan must address. They are the dispatching system to be adopted, the migration of the existing system to the adopted one, if applicable, the qualifications for determining duties performed by dispatchers or operators, and the volume of work assigned to dispatchers or operators. Undoubtedly, train dispatching is an integral element in moving trains, engines, and rolling equipment in a safe and efficient manner. To accomplish this task, a railroad must discuss which dispatching system or systems will direct traffic on the property subject to the transaction. The plan should address how a dispatching system will be integrated in a deliberate manner to prevent service disruptions and the measures to be taken to combat excess service. Excess service fatigues dispatchers and operators, and railroads are encouraged to develop initiatives reducing workload capacities to further reduce the risk of dispatcher error.

Highway-rail grade crossing safety is another element that a SIP must address. The plan must provide a program discussing grade crossing signal system safety, emergency response measures, public education initiatives, and proposals to improve grade crossings and grade crossing system warning devices. Statistics show that the vast majority of fatalities and injuries during railroad operations occur at grade crossings due to collisions or trespass incidents. It has been FRA's experience that a railroad consummating a transaction will increase traffic on certain designated lines. Before increasing traffic density in a territory, the carrier needs to consider its impact on safety at grade crossings. Accordingly, an applicant should discuss its commitment to improve existing grade crossing signal systems and warning devices and educate the public about grade crossing safety in its plan. FRA believes that a prevention program will elevate rail safety by reducing accidents and injuries occurring at crossings.

Section 244.13(j) covers personnel staffing. A SIP must provide data on the number of employees, both current and proposed, for certain occupations associated with railroad operations. The eight specific tasks are enumerated in the regulation. FRA believes that immediate staff reductions in these areas may be detrimental to safety. Institutional knowledge is essential to ensure a smooth transition in operations. Unilateral dismissals will adversely impact certain crafts by placing more responsibility on less trained or experienced personnel. This feature, coupled with an increased workload, may place undue pressure on these employees to execute tasks. Consequently, there is a greater likelihood of human error, thereby compromising safety in the field. Therefore, a railroad needs to plan the number of employees necessary to carry out the assignments. The proposed rule in no way establishes a guideline or yardstick for staffing purposes. Rather, the rule requires an applicant to contemplate staffing levels and their impact on discharging operations. A plan should simply provide a nexus between staffing needs and adequate rail safety.

Paragraph 244.13(k) requires an applicant to set out its capital investment program. The program must describe the railroad's intended investments in the company's infrastructure, including its track and structures, signals and train control systems, and locomotives, freight cars, and other forms of rolling stock. The plan must also address changes to existing investment forecasts and explain those differences.

Capital investment requires advance planning, which is the root of this proposed rule. Transition in operations necessitates improvement in existing infrastructure to increase capacity, volume, and efficiency, and enhance safety. The rule would require an applicant to identify a blueprint for allocating resources serving these objectives. FRA anticipates that a SIP directing a railroad to appropriate capital for infrastructure needs would improve performance while eliminating systemic deficiencies that impair a transportation network.

Proposed section 244.13(l) provides that an applicant must describe the relationship of freight and passenger service on railroad lines subject to a regulated transaction. For instance, if an intercity passenger or a commuter railroad operates on property that is within the terms and conditions of a proposed merger, consolidation, or acquisition, the railroad must address the manner in which it will coordinate passenger and rail service to maintain a safe co-existence between the two services. A SIP should explain the level of communication between a freight railroad and a passenger railroad about the operating rules and practices that will govern these operations should the transaction be approved. FRA encourages applicants to discuss their emergency response programs, joint safety exercises, and efforts to coordinate automated systems programs in their plans. The SIP, in short, must identify the potential safety impact on the services and the measures directed to minimize any consequences.

Proposed paragraph 244.13(m) identifies the final element that must be discussed in a plan. That element—information systems compatibility—is essential for integrating an applied technology system and providing continuity in an information database network that ensures safe operations and protects customer service. An applicant must address the steps it intends to execute to provide data on train consists, freight car and locomotive movements and movement history, dispatching operations, accident/incident reporting and recordkeeping requirements, and emergency cessation of operations. The information system must provide a single interface of data with a railroad's customers, transmitting and receiving information without interruption. Such planning requires the coordination and consensus of the parties in a regulated transaction, enabling interested persons and FRA officials to track the movement of shipments and equipment and download information to determine compliance with the safety laws. Thoughtful and careful planning will ensure a smooth and safe transition of operations in the technology area.

Section 244.15 Subjects To Be Addressed in a Safety Integration Plan Not Involving an Amalgamation of Operations or Start Up Operations.

The rule proposes requiring a railroad engaging in a transaction that does not involve an amalgamation of operations or start up operations to file a more

limited SIP. Those subject matter areas are training (§ 244.13(b)), personnel staffing (§ 244.13(j)), and capital investment (§ 244.13(k)).

FRA submits that these transactions do not involve a change in rail operations because there is little, if any, migration of personnel or equipment. FRA's principal interest in reviewing and approving SIPs is to secure commitments from a railroad when infrastructure changes are expected, which impact operations and correspondingly, safety. The transactions described under this proposed section are akin to ''paper transactions'' rather than ''operational transactions,'' meaning that aside from revisions to corporate letterhead, any changes in operations are minimal. In an abundance of caution, however, FRA believes that a plan addressing training, employment, and capital investment would be instructive for an applicant to be sensitive to topics that impact rail safety in general. FRA welcomes comments from interested persons as to whether railroads engaging in these transactions should be required to file a more limited SIP, or a SIP at all.

Section 244.17 Procedures.

Proposed § 244.17 sets out the procedures applicants must follow in filing a SIP with FRA. Paragraph 244.17(a) explains that a railroad must file a SIP with FRA and, for those transactions within the Board's jurisdiction, file the same with STB no later than the date it submits its application or exemption to the Board. FRA, however, intends to make itself available to work with an applicant before it files its proposed SIP on the elements that must be addressed in the plan. To illustrate, the agency extended its assistance to the Canadian National Railway Company (CN) before it filed its application to purchase the Illinois Central Railroad Company (IC). The agency met and conferred with CN corporate officials about its SIP and delineated specific subject matter areas that the plan had to discuss to satisfy FRA's concerns. As a result, CN was better positioned to file an acceptable SIP with the agency and the Board within the STB's statutory time frame. FRA will review the proposed SIP and provide comments, if any. The rule provides that the applicant must file additional information supporting its plan should FRA require the same. FRA expects that the applicant and agency will engage in an iterative process to resolve any questions about the foundation and implementation of the plan.

Paragraph 244.17(d) proposes requiring FRA to issue its findings of fact and conclusions on the proposed SIP to the STB for those transactions requiring Board approval. (FRA's standard of review of a proposed SIP is discussed below.) FRA (and STB in its proposed rule) propose requiring FRA to submit its report to the Board's SEA at a date sufficiently in advance of the Board's issuance of the draft environmental documentation in the case to permit incorporation in the draft environmental record. The schedule will enable STB to issue its draft environmental documentation, which will incorporate FRA's comments. If the rail carriers have not produced a SIP that is fully acceptable to FRA, FRA's filing to the Board will note the progress that has been made and the areas that the carriers still need to address. FRA intends to continue working with the applicants after the SEA files its draft environmental documentation, but before the Board disposes of the applications. This process was followed in the *Conrail Acquisition* case and the proposed merger of CN and IC. FRA believes that a flexible response is necessary to enable an applicant to complete an acceptable comprehensive plan.

Section 244.17(e) requires an applicant to coordinate with FRA in carrying out the transaction in accordance with the SIP, assuming FRA and, if applicable, STB approve the proposed plan. In other words, the rule proposes FRA to continue exercising oversight of a railroad after its proposed SIP is approved to ensure that it correctly implements the plan. FRA believes that safety is a continuum that begins with the filing of a proposed SIP and continues until the transaction is implemented consistent with the plan. Therefore, FRA would monitor a railroad's performance in carrying out the plan until integration is complete. In furtherance of its role, FRA envisions consulting with the Board at all appropriate stages of the SIP implementation, and advising the Board on the status of the implementation process consistent with a MOU executed between FRA and STB. FRA's communication with the Board would continue until integration is complete. The interplay between FRA and the Board is set out in paragraph 244.17(f). These reports will enable the STB to exercise its oversight of transactions that it approves.

Section 244.19 Disposition.

Section 244.19 addresses FRA's review and approval process of a proposed SIP. Paragraph 244.19(a) enumerates the agency's standard of review. The plan must be thorough, complete, and clear, and detail a logical and workable transition from conditions existing before the proposed transaction to conditions intended to exist after the transaction is consummated. Put another way, the plan must explain in a comprehensive manner how the railroad intends to go from start to finish in carrying out the proposed transaction. FRA underscores the importance of addressing each of the subject matter elements within the framework of the SIP's contents as provided in § 244.11.

FRA then would evaluate the SIP to ensure that it provides a reasonable assurance of safety at every step of the proposed transaction. The plan must be sufficient to comply with the safety laws and otherwise provide for safe railroad operations, and rational to satisfy expectations of integration of operations. FRA emphasizes that it has no intention of operating the railroad or questioning management decisions implementing the SIP. Instead, the agency sees it role as conducting a rational basis review of the SIP, meaning that the plan must be reasonable. Should the SIP prove satisfactory, FRA would issue its notice of approval. Approval is conditioned on the applicant's successful execution of all of the subject matter elements in the plan, including all later developments subject to FRA approval that could not be completed before the agency's approval of the plan.

Finally, the rule proposes authorizing a railroad to amend its SIP with FRA's approval or for FRA to require a railroad to amend its approved plan should circumstances dictate. Plan approval is contingent upon fulfillment of the elements enunciated in the plan and execution of operations that were unforeseen when the proposed SIP was filed. For example, NS and CSXT in the *Conrail Acquisition*, and CN and IC in their intended merger continue to update their respective plans when they identify resources, commitments, or schedules that were not anticipated when they filed their proposed SIPs. FRA perceives a SIP and its implementation as an evolutionary process requiring fine-tuning when conditions warrant. Should the agency identify a shortcoming of an approved SIP during implementation, it reserves the right to require the railroad to amend its plan consistent with rail safety.

Section 244.21 Compliance and Enforcement.

Paragraph 244.21 explains FRA's role in enforcing the rule and ensuring compliance with the regulations. Each railroad seeking to carry out a regulated transaction must have an approved SIP before it may change its operations on the property subject to the transaction. FRA further notes that where the Board has been involved in authorizing the transaction, FRA would consult with the Board at all appropriate stages of SIP implementation. Additionally, each railroad must successfully execute each measure within its approved SIP. FRA reserves the right to exercise any of its enforcement remedies available under the safety laws should a railroad not comply with either one of these requirements. These legal and equitable remedies, which are more fully discussed in § 244.5 above, include civil or criminal prosecution of any violation identified. FRA expects to exercise its enforcement remedies in a judicious fashion.

Regulatory Impact of FRA's Proposed Rule

Executive Order 12866 and DOT Regulatory Policies and Procedures

FRA's proposed rule has been evaluated in accordance with existing policies and procedures and is considered to be nonsignificant under Executive Order 12866 and significant under DOT policies and procedures (44 FR 11034, Feb. 26, 1979). The agency's proposal is deemed significant under DOT's policies and procedures because this rulemaking action embodies joint rules issued by independent regulatory agencies. FRA has prepared and placed in the docket a regulatory evaluation of the proposed rule. This evaluation estimates the costs and consequences of the proposed rule as well as its anticipated economic and safety benefits. It may be inspected and photocopied during normal business hours by visiting the FRA Docket Clerk at the Office of Chief Counsel, FRA, Seventh Floor, 1120 Vermont Avenue, N.W., in Washington, D.C. Photocopies may also be obtained by submitting a written request by mail to the FRA Docket Clerk at the Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, N.W., Mail Stop 10, Washington, D.C., 20590.

FRA prepared an analysis of this proposal which may be found, in its entirety in the docket for this rulemaking. Principally, for a Class I railroad, FRA estimates that a SIP will cost between $300,000 to $800,000 to prepare, but will prevent between $1,500,000 to $12,000,000 in accident costs. For a Class II railroad, FRA estimates that a plan will cost between $50,000 to $200,000 to prepare, but will prevent between $60,000 to $1,200,000 in accident costs. The rule will not apply to small entities, *i.e.*, Class III freight railroads. In addition, a railroad may avoid substantial service difficulties by carrying through the safety planning process. This could save the railroad hundreds of millions or billions of dollars. In the first three quarters of 1998, UP reported losses of over $900,000,000 due to service difficulties. The societal costs of these delays is probably much greater as the figures only quantify costs incurred by UP.

FRA derived its estimates of accident reduction benefits from UP's merger with SP, which created several unsafe conditions and encountered several serious accidents, at least one of which was likely due to inadequate safety planning. UP's service difficulties were reported in its 10–Q filed with the Securities and Exchange Commission for the third quarter of 1998. FRA's estimates of SIP costs are based on the reported costs of NS and CSXT, which prepared respective SIPs in their acquisition of Conrail.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, requires an assessment of the impact of proposed rules on ''small entities.'' The proposed rule relates to mergers, consolidations, and acquisitions involving, in general, Class I or Class II railroads, and would not apply to Class III freight railroads as currently drafted. Given FRA's recently published interim policy establishing ''small entities'' as being railroads that meet the line haulage revenue requirements of a Class III railroad, FRA certifies that this proceeding will not have a significant economic impact on a substantial number of small businesses. *See* Interim Statement of Policy Concerning Small Entities Subject to the Railroad Safety Laws (Policy Statement), 62 Fed. Reg. 43024, Aug. 11, 1997.

FRA adds that in its Policy Statement, it interprets commuter railroads as ''small governmental jurisdictions'' as defined under the RFA. ''Small governmental jurisdictions'' apply to communities ''with a population of less than 50,000'' under RFA. 5 U.S.C. 601(5). FRA submits that to the extent the proposed rule affects Class III commuter railroads, they serve communities exceeding 50,000 persons. Accordingly, FRA certifies that the proposal will not affect ''small governmental jurisdictions,'' obviating the need to prepare an RFA analysis.

Nevertheless, in light of the potential for a change in the definition when FRA issues its final Policy Statement or in transactions covered by this proposed rule, FRA invites comments in this proceeding from any interested party on FRA's definition of ''small entity.''

Paperwork Reduction Act

FRA submits that the proposed rule does not contain information collection requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and its implementing regulations, 5 CFR part 1320, (collectively, PRA). Specifically, the agency has determined that the rule does not involve a ''collection of information'' as defined by the Office of Management and Budget under 49 CFR 1320.3(c) because the information collection requirements will not impact ten or more persons within any 12-month period. (For purposes of this rule, the definition of ''person'' under the PRA is consistent with the definition as enumerated in the regulatory text. *See* 49 CFR 1320.3(k).) Therefore, the rule does not require FRA to conduct or sponsor a collection of information within the meaning and application of the PRA, obviating the need to prepare a paperwork package in this instance. *See* 49 CFR 1320.5(a). FRA invites public comment on the agency's estimate that the information collection requirement will impact ten or less persons within a 12-month period.

Environmental Impact

FRA has evaluated this proposed rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related directives. This regulation meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

STB's Statement of Basis

As pointed out in the joint FRA/STB introduction, the Board is responsible

for promoting a safe rail transportation system. By advance notice of proposed rulemaking (ANPRM) published in the **Federal Register** on December 4, 1997, at 62 FR 64193, the Board requested comments on the extent to which railroads should be required to provide information pertaining to the manner in which they intend to provide for the safe implementation of authority granted by the Board. The Board explained that, over the years, it and its predecessor agency, the Interstate Commerce Commission (ICC), have considered the issue of safety along with other relevant issues in individual cases. As particularly pertinent here, in the *Conrail Acquisition* case,[6] the Board for the first time required applicants to provide detailed information on how they proposed to provide for the safe integration of their corporate cultures and operating systems, if the Board were to approve the proposed transaction. (The Board has required the same type of showing in the proposed merger between CN and IC, which is now pending before the Board.) The Board did so at the suggestion of FRA and rail labor interests, after FRA advised the Board, based on its experience following the STB's approval of the UP/SP merger in August 1996, that it believed that certain of the safety problems that arose in the implementation of that merger might have been avoided with sufficient advance planning.

Specifically, the Board required applicants in *Conrail Acquisition* to file detailed Safety Implementation Plans (SIPs) developed within guidelines set by FRA. The railroads' submissions were made part of the environmental record in that proceeding and dealt with in the ongoing environmental review process in that case. The SIPs were included in the Draft Environmental Impact Statement (Draft EIS) to allow review and comment by FRA, other parties, and the public. The Board's environmental staff (SEA) also independently reviewed the plans.

FRA and SEA (in its Final Environmental Impact Statement (Final EIS)) concluded that applicants had satisfactorily addressed the safety implementation concerns presented by the transaction to date. Moreover, shortly before the Final EIS was issued, the Board entered into a MOU with FRA, with DOT's concurrence, to establish an ongoing monitoring process during implementation of the proposed *Conrail Acquisition*. The MOU clarified the actions that FRA and the Board would take to ensure the successful implementation of the SIPs. Under the terms of the MOU, FRA will monitor, evaluate, and review the applicants' progress. The MOU provides that FRA may request action by the Board, in the exercise of the STB's oversight authority over the applicants, to correct identified safety deficiencies resulting from the transaction. When requesting Board action, FRA will provide recommendations for correcting the deficiency. FRA will report periodically to the Board regarding safety integration of the *Conrail Acquisition*, but not less than biannually. FRA will also report significant integration issues to the Board if and when they are identified. FRA's reporting will continue until FRA advises the Board in writing that the proposed integration has been safely completed.

The Board's ANPRM in this proceeding explained that, having developed a vehicle by which to evaluate safety integration issues in *Conrail Acquisition*, it was appropriate to consider the advisability of promulgating rules to extend this process to other rail transactions subject to the Board's jurisdiction. Accordingly, the Board sought public comment from FRA and any other interested persons on how the Board should proceed to assure the safe implementation of rail transactions subject to its jurisdiction (*i.e.*, whether the STB should proceed broadly by general rule or exclusively on a case-by-case basis, and whether procedures other than those adopted in *Conrail Acquisition* might be preferable in Board-approved transactions outside the merger area).[7]

As discussed in more detail in the Board's decision served July 27, 1998, announcing that the STB would institute a rulemaking, the commenters that responded to our ANPRM varied widely in their recommendations. DOT urged the Board to undertake a joint rulemaking proceeding and announced that FRA on its own is developing procedures that would be required for Board transactions. Other commenters including the National Industrial Transportation League (NITL) stressed the need for coordination with FRA. The railroad participants argued that special procedures were not necessary and that we should proceed only on a case-by-case basis. On the other hand, the labor participants argued that the STB should adopt special procedures and that we do so for all transactions, including ones involving small or start-up railroads.

The parties representing shipper interests took positions in between those of the railroad and labor participants. For example, NITL urged that there be formal rules for major control and construction transactions, but that for minor control transactions we require only that safety be considered, with less advance documentation required. The Chemical Manufacturers Association would require advance documentation only for future rail mergers and acquisitions. The City of Reno proposed that preparation of a SIP as in *Conrail Acquisition* be required for all railroad mergers. Additionally, it suggested that the STB require a FRA certification process for certain transactions.[8]

Based on the comments in response to the ANPRM and the Board's experience with the SIP process in *Conrail Acquisition*, the Board issued its decision served July 27, 1998, finding sufficient merit to warrant further exploration of establishing regulations addressing the safe implementation of Board approved transactions. The Board directed STB staff to develop a joint notice of proposed rulemaking addressing the issues that have arisen in this proceeding and that are of concern to FRA, and to submit the proposed notice for its evaluation and approval prior to going forward with publication.[9]

Following the issuance of the Board's July 27, 1998 decision, Board staff has met informally with FRA staff regarding the development of an appropriate proposal that would accomplish the objectives of both agencies, avoid gaps and inconsistencies in the two agencies' regulatory requirements, and impose as little burden as possible on the participating parties.

STB's Section-By-Section Analysis of Its Proposed Rule

Section 1106.1 Purpose.

The rules are designed to assure adequate and coordinated consideration of safety integration issues by the Board and FRA in the implementation of certain transactions subject to the Board's jurisdiction.

[6] *Conrail Acquisition*, STB Finance Docket No. 33388 (STB Decision No. 52, served Nov. 3, 1997).

[7] The administrative process permits the Board to proceed either on a case-by-case basis or by rule, and to address some kinds of transactions by rule and some by reliance on the development of precedent.

[8] The California Public Utilities Commission made a similar request.

[9] This joint approach was predicated upon assurances by the Department of Transportation that a joint process would not subject the exercise by the Board of its rulemaking authority in this proceeding to review by the Office of Management and Budget, in contravention of this agency's Congressionally mandated independence.

Section 1106.2 Definitions.

This section sets forth definitions used in this part; these definitions are self explanatory.

Section 1106.3 Actions for which Safety Integration Plan is Required.

This section explains which transactions require a railroad to file a Safety Integration Plan with the Board. These transactions include a Class I railroad, a railroad providing intercity passenger service, or a railroad providing commuter service in a metropolitan or suburban area proposing to consolidate with, merge with, or acquire control of another Class I or Class II railroad, a railroad providing intercity passenger service, or a railroad providing commuter service in a metropolitan or suburban area; a Class II railroad proposing to consolidate with, merge with, or acquire control of another Class II railroad, with which it connects so as to involve the integration of operations; or any railroad merging with, consolidating with, or acquiring control of another railroad or railroads, except a transaction involving a Class III freight only railroad, that would result in operations generating revenue in excess of the Class I railroad threshold. The regulation also requires a Class I or Class II railroad requesting authority to acquire railroad property under 49 U.S.C. 10901 or 10902 that involves intercity passenger or commuter operations to file a SIP. Generally, these regulated transactions coincide with the transactions covered by FRA, except for start up operations, which will promote consistency and efficiency in the interplay between FRA and STB. In cases where the filing of a SIP is required only by FRA's rules, the Board does not contemplate delaying the processing of the Board proceeding to require compliance with FRA's separate rules. Where the filing of a SIP is required by the Board's rules, the Board will enforce the requirement with appropriate sanctions, including suspending the processing of the application, or in extreme cases, dismissal.

The proposed rule does not cover Class III freight railroads, i.e., those railroads that generate revenue, measured in 1991 dollars, of less than $20 million per year. The Board had originally intended to cover transactions involving Class III carriers where a Class I or Class II carrier was involved, or the Class III carrier was acquiring a line on which commuter or intercity passenger service is being provided. However, based on FRA's representations that in its experience such transactions do not create sufficient safety problems to warrant imposing the burden of requiring preparation of a SIP, the Board has initially decided to limit the scope of its proposal to exclude those transactions as has FRA. The Board, like FRA, specifically solicits comments, however, from interested parties as to whether the final rule should cover these transactions. The comments should articulate a detailed rationale for regulating these transactions, the safety information that should be required, and evidence of any consequences in leaving these transactions unregulated.

Section 1106.4 The Safety Integration Plan Process.

Proposed § 1106.4 sets out the procedures for an applicant to file a SIP, and the procedures by which the Board will consider a SIP in connection with its approval or authorization of transactions for which the Board has concluded such consideration is required. A railroad seeking to carry out a covered transaction must file a SIP prepared in accordance with FRA's regulations with the STB's SEA and FRA no later than the date the application or exemption is filed with the Board. The SIP will become part of the environmental documentation in the Board proceeding and will be considered in the environmental review process consistent with the Board's environmental rules at 49 CFR part 1105. Generally, covered transactions will be subject to environmental review because the nature of the transaction involves operational changes that exceed the regulatory thresholds established under 49 CFR 1105.7(e)(4) or (5). *See* 49 CFR 1105.6(b)(4)(i). In the event that a SIP should be required in a transaction that would not be subject to environmental review, the Board intends to develop appropriate case-specific SIP procedures. The Board specifically requests comments on whether such transactions should be covered by these rules, and if so, what procedures would be appropriate.

After FRA reviews the SIP, FRA will issue its findings and conclusions on the adequacy of the plan to SEA at a date that is sufficiently in advance of the Board's issuance of its Draft Environmental Assessment or Draft EIS. As discussed earlier, FRA will provide its analysis of the SIP within the time frame indicated, whenever possible. Nevertheless, recognizing that the SIP is an ongoing and fluid process, as in the *Conrail Acquisition,* FRA may comment on the plan, and an applicant's status of progress in completing a SIP, without endorsing the plan in full. The Board agrees with FRA that a flexible response is necessary to enable an applicant to complete a comprehensive plan.

Additionally, this approach will enable the Board to incorporate FRA's comments in its draft environmental documentation, which, in turn, will encourage the public to review and comment on the proposed transaction. SEA will then independently review the SIP and respond to comments received pursuant to the plan in its final environmental documentation. Finally, the Board will consider the entire environmental record, including information concerning the SIP, in deciding whether to approve or reject the proposed transaction. Should the Board approve the transaction, adopt the SIP, and require that the applicant comply with the same, the railroad must coordinate with FRA in carrying out the plan, including any amendments to the same, if necessary. *See* FRA's section-by-section analysis discussing amendments at § 244.19 for a more complete discussion.

As explained in FRA's section-by-section analysis of § 244.17(f), FRA is proposing to advise the Board about FRA's findings on the ongoing implementation process during any oversight period established by the Board, in accordance with an agreement that FRA and the Board will enter into and execute. Should FRA identify shortcomings or deficiencies during integration, STB reserves jurisdiction to reopen the proceedings and impose terms and conditions on the transaction to ensure the transaction is safely implemented. FRA also has undertaken to advise the Board when, in its view, the proposed integration of applicants' operations has been safely completed.

Section 1106.5 Waiver.

The Board can waive or modify the requirements of this part where a carrier shows that relief is warranted or appropriate.

Section 1106.6 Reservation of Jurisdiction

The Board reserves the right to require the filing of a SIP in transactions other than those provided in this part, or to adopt modified SIP requirements in individual cases, if it concludes doing so is necessary to properly consider an application or other request for authority.

Regulatory Flexibility Act

The Board preliminarily certifies that its proposal to require safety integration plans under certain circumstances, if adopted, would not have a significant effect on a substantial number of small entities. The Board, however, seeks

comments on whether there would be effects on small entities that should be considered.

Environmental Impact

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

Federal Railroad Administration 49 CFR Chapter II

List of Subjects in 49 CFR PART 244

Administrative penalties, practice and procedure, Railroad safety, Railroads, Safety Integration Plans.

In consideration of the foregoing, FRA propose to amend chapter II of title 49, Code of Federal Regulations, to read as follows:

1. Part 244 is added to read as follows:

PART 244—REGULATIONS ON SAFETY INTEGRATION PLANS GOVERNING RAILROAD CONSOLIDATIONS, MERGERS, ACQUISITIONS OF CONTROL, AND START UP OPERATIONS

Subpart A—General

Sec.

244.1 Scope, application, and purpose.
244.3 Preemptive effect.
244.5 Penalties.
244.7 Waivers.
244.9 Definitions.

Subpart B—Safety Integration Plans

244.11 Contents of a Safety Integration Plan.
244.13 Subjects to be addressed in a Safety Integration Plan involving an amalgamation of operations or start up operations.
244.15 Subjects to be addressed in a Safety Integration Plan not involving an amalgamation of operations or start up operations.
244.17 Procedures.
244.19 Disposition.
244.21 Compliance and enforcement.

Appendix A to Part 244—Schedule of Civil Penalties (Reserved)

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; Sec. 31001(s)(1), Pub. L. No. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note); and 49 CFR 1.49.

Subpart A—General

§ 244.1 Scope, application, and purpose.

(a) This part prescribes requirements for filing a Safety Integration Plan with FRA whenever:

(1) A Class I railroad, a railroad providing intercity passenger service, or a railroad providing commuter service in a metropolitan or suburban area proposes to consolidate with, merge with, or acquire control of another Class I or Class II railroad, a railroad providing intercity passenger service, or a railroad providing commuter service in a metropolitan or suburban area;

(2) A railroad proposes to start up operations as a railroad as defined under § 244.9 of this part;

(3) A Class II railroad proposes to consolidate with, merge with, or acquire control of another Class II railroad with which it would connect so as to involve the integration of operations; or

(4) Any railroad merger, consolidation, or acquisition of control would result in operations that generate revenue in excess of the Class I railroad threshold, except for a transaction involving a Class III freight only railroad.

(b) The purpose of this part is to achieve a reasonable level of railroad safety during the implementation of transactions described in paragraph (a) of this section. This part does not preclude a railroad from filing more inclusive information not inconsistent with this part.

(c) The requirements prescribed under this part apply only to FRA's disposition of a regulated transaction filed by an applicant. Certain of the transactions covered by this part require separate filing with and approval by the Surface Transportation Board. *See* 49 CFR part 1106.

§ 244.3 Preemptive effect.

Under 49 U.S.C. 20106, issuance of these regulations preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not unreasonably burden interstate commerce.

§ 244.5 Penalties.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500, but not more than $11,000 per day, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A to this part contains a schedule of civil penalty amounts used in connection with this part.

(b) As specified in § 244.21 of this part, FRA may also exercise any of its other enforcement remedies if a railroad fails to comply with § 244.21.

(c) Any person who knowingly and willfully makes a false entry in a record or report required by this part shall be subject to criminal penalties under 49 U.S.C. 21311.

§ 244.7 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with any requirement of this part. The filing of such a petition does not affect that person's responsibility for compliance with that requirement pending action on such a petition.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

§ 244.9 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Amalgamation of operations means the migration, combination, or unification of one set of railroad operations with that of another set of railroad operations, including, but not limited to, the allocation of resources affecting railroad operations (*e.g.*, changes in personnel, track, bridges, or communication or signal systems; or use or deployment of maintenance-of-way equipment, locomotives, or freight or passenger cars).

Applicant means a Class I or Class II railroad, a railroad providing intercity passenger service or a railroad providing commuter service in a metropolitan or suburban area engaging in a transaction subject to this part.

Best practices means the safest and most efficient rules or instructions governing railroad operations that are reasonable and practicable in accordance with railroad industry standards.

Class I or Class II railroad has the meaning assigned by regulations of the Surface Transportation Board (49 CFR Part 1201; General Instructions 1–1), as those regulations may be revised by the Board (including modifications in class

thresholds based revenue deflator adjustments) from time to time.

Consolidation means the creation of a new Class I or Class II railroad by combining existing railroads, or a railroad providing intercity passenger service or a railroad providing commuter service in a metropolitan or suburban area by taking over the assets or assuming the liabilities, or both, of another Class I or Class II railroad, a railroad providing intercity passenger service or a railroad providing commuter service in a metropolitan or suburban area, such that the resulting unified entity has the combined capital, powers, and subsidiaries and affiliates, if applicable, of all of its constituents.

Control means actual control, legal control, or the power to exercise control through common directors, officers, stockholders, a voting trust, or a holding or investment company, or any other means. *See* 49 U.S.C. 10102.

Corporate culture means the attitudes, commitments, directives, and practices of railroad management with respect to safe railroad operations.

Environmental documentation means either an Environmental Impact Statement or Environmental Assessment prepared in accordance with the Surface Transportation Board's environmental rules at 49 CFR part 1105.

Merger means the acquisition of one Class I or Class II railroad, a railroad providing intercity passenger service, or a railroad providing commuter service in a metropolitan or suburban area by another Class I or Class II railroad, a railroad providing intercity passenger service, or a railroad providing commuter service in a metropolitan or suburban area, such that the acquiring railroad acquires the stock, assets, liabilities, powers, subsidiaries and affiliates of the railroad acquired.

Person means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including:

(1) Commuter or other short-haul rail passenger service in a metropolitan or suburban area; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads. The term does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Safety Integration Plan means a comprehensive written plan submitted to and approved by FRA in compliance with this part that demonstrates in required detail how an applicant will provide for safe railroad operations during and after any proposed transaction covered by this part, and otherwise assure compliance with the Federal railroad safety laws.

Section of Environmental Analysis or ''SEA'' means the Section that prepares the Surface Transportation Board's environmental documents and analyses.

Start up operation means to initiate railroad operations on a rail line or lines in which the commencement of operations would either involve intercity or commuter passenger service or produce revenue in excess of the Class II railroad threshold.

Transaction means a consolidation, merger, acquisition of control, or start up operation subject to the requirements of this part.

Subpart B—Safety Integration Plans

§ 244.11 Contents of a Safety Integration Plan.

Each Safety Integration Plan shall contain the following information for each subject matter identified in § 244.13 or § 244.15 of this part:

(a) A detailed description of:

(1) For transactions involving a start up operation, the physical and operational characteristics of the start up operation and the best practices to be adopted; or

(2) For all other transactions, how the applicant differs from each railroad it proposes to acquire or with which the applicant proposes to consolidate or merge, and the best practices of these railroads.

(b) A detailed description of the proposed manner and method of operations of the resulting railroad or start up operation;

(c) The proposed specific measures, expressed step-by-step, for each relevant subject matter that the applicant believes will result in safe implementation of the proposed transaction consistent with the requirements of this part;

(d) The allocation of resources, expressed as human and capital resources within designated operating budgets, directed to complete operations subject to the transaction;

(e) The measures to be taken to comply with the Federal railroad safety laws, where applicable; and

(f) The timetable, stated in specific terms from commencement to completion, for implementing paragraphs (c), (d) and (e) of this section.

§ 244.13 Subjects to be addressed in a Safety Integration Plan involving an amalgamation of operations or start up operations.

Each Safety Integration Plan involving an amalgamation of operations or start up operations shall address the following subjects for railroad operations conducted on property subject to the transaction:

(a) *Corporate culture.* Each applicant shall:

(1) Identify and describe differences in corporate cultures for each safety-related area;

(2) Describe how these cultures lead to different practices governing rail operations; and

(3) Explain how the proposed integration of corporate cultures will result in a system of ''best practices'' when the proposed transaction is implemented.

(b) *Training.* Each applicant shall identify classroom and field courses, lectures, tests, and other educational or instructional forums designed to ensure the proficiency and qualification of the following employees:

(1) Employees who perform train and engine service;

(2) Employees who inspect and maintain track and bridges;

(3) Employees who inspect, maintain and repair any type of on-track equipment, including locomotives, passenger cars, and freight cars of all types;

(4) Dispatchers or operators;

(5) Employees who inspect and maintain signal and train control devices and systems;

(6) Hazardous materials personnel;

(7) Employees who maintain or upgrade communication systems affecting rail operations; and

(8) Supervisors of employees enumerated in paragraphs (b)(1) through (7) of this section.

(c) *Operating practices*—(1) *Operating rules.* Each applicant shall identify the operating rules, timetables, and timetable special instructions to govern railroad operations, including yard or terminal operations.

(2) *Accidents/incidents.* Each applicant shall identify the reporting procedures for any accident/incident subject to 49 CFR 225 and the policy on harassment and intimidation required

by part 225, including a copy of the applicant's internal control plan under 49 CFR 225.33.

(3) *Alcohol and drug.* Each applicant shall identify the post-accident toxicological testing, reasonable cause testing, and random alcohol and drug testing programs as required under 49 CFR 219.

(4) *Qualification and certification of locomotive engineers.* Each applicant shall identify the program for qualifying and certifying locomotive engineers under 49 CFR 240.

(5) *Hours of service laws.* Each applicant shall identify the procedures for complying with the Federal hours of service laws and related measures to minimize fatigue of employees covered by 49 U.S.C. chapter 211.

(d) *Motive power and equipment.* Each applicant shall identify the qualification standards for employees who inspect, maintain, or repair railroad freight or passenger cars and locomotives, and designation of facilities that will repair such equipment.

(e) *Signal and train control.* Each applicant shall identify the signal and train control systems governing railroad operations and maintenance, capital improvement, and research and development projects for signal and train control operations.

(f) *Track Safety Standards and bridge structures.* Each applicant shall identify the maintenance and inspection programs for track and bridges.

(g) *Hazardous Materials.* Each applicant shall:

(1) Identify an inspection program covering the following areas:

(i) Field inspection practices;

(ii) Hazardous materials communication standards; and

(iii) Emergency response procedures.

(2) Develop and deploy computer software operating systems at designated locations providing immediate retrieval of shipping papers accompanying shipments of hazardous materials for inspection and photocopying by representatives of FRA during normal business hours, if applicable.

(h) *Dispatching operations.* Each applicant shall identify:

(1) The railroad dispatching system to be adopted;

(2) The migration of the existing dispatching systems to the adopted system, if applicable;

(3) The criteria used to determine duties performed by operators or dispatchers employed to execute operations; and

(4) The work load imposed on dispatchers or operators to carry out duties assigned.

(i) *Highway-rail grade crossing systems.* Each applicant shall identify a program, including its development and implementation, covering the following:

(1) Highway-rail grade crossing signal system safety, in general;

(2) Emergency response actions;

(3) Public education forums on highway-rail grade crossing safety; and

(4) Proposals to improve highway-rail grade crossing safety and highway-rail grade crossing system warning devices.

(j) *Personnel staffing.* Each applicant shall identify the number of employees by job category, currently and proposed, to perform each of the following types of function:

(1) Train and engine service;

(2) Yard and terminal service;

(3) Dispatching operations;

(4) Roadway maintenance;

(5) Freight car and locomotive maintenance;

(6) Maintenance of signal and train control systems, devices, and appliances;

(7) Hazardous materials operations; and

(8) Managers responsible for oversight of safety programs.

(k) *Capital investment.* Each applicant shall identify the capital investment program, clearly displaying at least planned investments in track and structures, signals and train control, and locomotives and equipment. The program shall describe any differences from the program currently in place on each of the railroads involved in the transaction.

(l) *Relationship between freight and passenger service.* Each applicant shall identify measures addressing passenger and freight operations on lines subject to the transaction.

(m) *Information systems compatibility.* Each applicant shall identify measures providing for a seamless interchange of information relating to the following subject matters:

(1) Train consists;

(2) Movements and movement history of locomotives and railroad freight cars;

(3) Dispatching operations;

(4) Accident/incident reporting and recordkeeping requirements; and

(5) Emergency termination of operations.

§ 244.15 Subjects to be addressed in a Safety Integration Plan not involving an amalgamation of operations or start up operations.

Each Safety Integration Plan required by this part that does not propose an amalgamation of operations or start up operations shall address paragraphs (b), (j), and (k) of § 244.13 of this part for railroad operations conducted on property subject to the transaction.

§ 244.17 Procedures.

(a) Each applicant shall file one original of a proposed Safety Integration Plan with the Associate Administrator for Safety, FRA, 1120 Vermont Avenue, N.W., Mailstop 5, Washington, DC, 20590. If applicable, the applicant shall file the plan with FRA and the Surface Transportation Board for proposed transactions within its jurisdiction no later than the date it files its application or exemption with the Surface Transportation Board.

(b) The applicant shall submit such additional information necessary to support its proposed Safety Integration Plan as FRA may require.

(c) The applicant shall coordinate with FRA to resolve FRA's comments on the proposed Safety Integration Plan until such plan is approved.

(d) For a transaction requiring Surface Transportation Board approval, FRA will file its findings and conclusions on the proposed Safety Integration Plan with the Board's Section of Environmental Analysis at a date sufficiently in advance of the Board's issuance of its draft environmental documentation in the case to permit incorporation in the draft environmental document.

(e) Assuming FRA approves the proposed Safety Integration Plan and, if applicable, the Surface Transportation Board approves the proposed transaction, each applicant involved in the transaction shall coordinate with FRA in implementing the approved Safety Integration Plan.

(f) During implementation of an approved Safety Integration Plan, FRA will inform the Surface Transportation Board about implementation of the plan at times and in a manner designed to aid the Board's exercise of its continuing jurisdiction over the approved transaction in accordance with an agreement that FRA and the Board will enter into and execute. Pursuant to such agreement, FRA will consult with the Board at all appropriate stages of implementation, and will advise the Board when the integration of operations subject to the transaction is complete.

§ 244.19 Disposition.

(a) *Standard of review.*

(1) Each applicant shall:

(i) Write a thorough, complete, and clear Safety Integration Plan; and

(ii) Describe in detail a logical and workable transition from conditions existing before the proposed transaction to conditions intended to exist after consummation of the transaction.

(2) FRA shall review an applicant's Safety Integration Plan to determine

whether it provides a reasonable assurance of safety at every step of the proposed transaction.

(b) *Approval of the Safety Integration Plan.* A Safety Integration Plan that is satisfactory to the FRA Administrator shall receive a notice of approval. The approval shall be conditioned on an applicant's execution of all of the elements contained in the plan, including all later developments subject to FRA approval that could not be completed before approval of it.

(c) *Amendment*—(1) *By the applicant.* The applicant may amend its Safety Integration Plan, as needed, from time to time. Any amendment is subject to the approval of the FRA Administrator.

(2) *By FRA.* The FRA Administrator may require an applicant to amend its approved Safety Integration Plan from time to time should circumstances warrant.

§ 244.21 Compliance and Enforcement.

(a) A railroad shall have an FRA approved Safety Integration Plan before changing its operations to implement a proposed transaction subject to this part.

(b) FRA may exercise any or all of its enforcement remedies authorized by the Federal railroad safety laws if a railroad fails to comply with paragraph (a) of this section or to execute any measure contained in an FRA approved Safety Integration Plan.

(c) Where the Surface Transportation Board has authorized a transaction, FRA will consult with the Board at all appropriate stages of implementation of the Safety Integration Plan.

Issued in Washington, D.C. on December 18, 1998.

Jolene M. Molitoris,

Federal Railroad Administrator.

Surface Transportation Board 49 CFR Chapter X

List of Subjects in 49 CFR Part 1106

Railroad Safety, Railroads, Safety Integration Plans.

For the reasons set forth in the preamble, a new title 49, subtitle IV, part 1106 of the Code of Federal Regulations is proposed to be added as follows:

PART 1106—SAFETY INTEGRATION PLAN PROCEDURES

Sec.

1106.1 Purpose.
1106.2 Definitions.
1106.3 Actions for which Safety Integration Plan is required.
1106.4 The Safety Integration Plan process.
1106.5 Waiver.
1106.6 Reservation of Jurisdiction.

Authority: 5 U.S.C. 553; 5 U.S.C. 559; 49 U.S.C. 721; 49 U.S.C. 10101; 49 U.S.C. 10901–10902; 49 U.S.C. 11323–11325; 42 U.S.C. 4332.

§ 1106.1 Purpose.

This part is designed to assure adequate and coordinated consideration of safety integration issues, by both the Board and the Federal Railroad Administration, the agency within the Department of Transportation responsible for the enforcement of railroad safety, in the implementation of rail transactions subject to the Board's jurisdiction. It establishes the procedure by which the Board will consider safety integration plans in connection with its approval or authorization of transactions for which the Board has concluded such consideration is required.

§ 1106.2 Definitions.

The following definitions apply to this part:

Act means the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (1995).

Applicant means any Class I or Class II railroad, a railroad providing intercity passenger service, or a railroad providing commuter service in a metropolitan or suburban area engaging in a transaction subject to this part.

Board means the Surface Transportation Board.

Class I or Class II railroad has the meaning assigned by regulations of the Surface Transportation Board (49 CFR Part 1201; General Instructions 1–1), as those regulations may be revised by the Board (including modifications in class thresholds based revenue deflator adjustments) from time to time.

Environmental documentation means either an Environmental Impact Statement or an Environmental Assessment prepared in accordance with the Board's environmental rules at 49 CFR part 1105.

Federal Railroad Administration (or FRA) means the agency within the Department of Transportation responsible for railroad safety.

Safety Integration Plan or ''SIP'' means a comprehensive written plan, prepared in accordance with FRA guidelines or regulations, explaining the process by which Applicants intend to integrate the operation of the properties involved in a manner that would maintain safety at every step of the integration process, in the event the Board approves the transaction that requires a SIP.

Section of Environmental Analysis or ''SEA'' means the Section that prepares the Board's environmental documents and analyses.

Transaction means an application by a Class I railroad, a railroad providing intercity passenger service, or a railroad providing commuter service in a metropolitan or suburban area that proposes to consolidate with, merge with, or acquire control under 49 U.S.C. 11323(a)(1) of another Class I or Class II railroad, a railroad providing intercity passenger service, or a railroad providing commuter service in a metropolitan or suburban area; a Class II railroad proposing to consolidate with, merge with, or acquire control under 49 U.S.C. 11323(a)(1) of another Class II railroad with which it would connect so as to involve the integration of operations; or any consolidation, merger, or acquisition of control under 49 U.S.C. 11323(a)(1) that would result in operations generating revenue in excess of the Class I railroad threshold, except for a transaction involving a Class III freight only railroad. ''Transaction'' also includes a request for authority by a Class I or Class II railroad to acquire railroad property under 49 U.S.C. 10901 or 10902 that involves intercity passenger or commuter railroad operations, and a proceeding other than those specified above if the Board concludes that a SIP requirement is necessary to its proper consideration of the application or other request for authority.

§ 1106.3 Actions for which Safety Integration Plan is required.

A Safety Integration Plan shall be filed by any applicant requesting authority to undertake a transaction as defined under § 1106.2 of this part.

§ 1106.4 The Safety Integration Plan process.

(a) Each applicant in a transaction subject to this part shall file a SIP in accordance with the informational requirements prescribed at 49 CFR part 244, or other FRA guidelines or requirements regarding the contents of a SIP, with SEA and FRA no later than the date the application or exemption is filed with the Board.

(b) The SIP shall be made part of the environmental record in the Board proceeding and dealt with in the ongoing environmental review process under 49 CFR part 1105. The procedures governing the process shall be as follows:

(1) In accordance with 49 CFR 244.17, FRA will provide its findings and conclusions on the adequacy of the SIP (*i.e.*, assess whether the SIP establishes a process that provides a reasonable assurance of safety in executing the proposed transaction) to SEA at a date sufficiently in advance of the Board's

issuance of its draft environmental documentation in the case to permit incorporation in the draft environmental document.

(2) The draft environmental documentation shall incorporate the SIP, any revisions or modifications to it based on further consultations with FRA, and FRA's written comments regarding the SIP. The public may review and comment on the draft environmental documentation within the time limits prescribed by SEA.

(3) SEA will independently review each SIP. In its final environmental documentation, SEA will address written comments on the SIP received during the time established for submitting comments on the draft environmental documentation. The Board then will consider the full environmental record, including the information concerning the SIP, in arriving at its decision in the case.

(4) If the Board approves the transaction, adopts the SIP, and requires compliance with the SIP, each applicant involved in the transaction shall coordinate with FRA in implementing the approved Safety Integration Plan, including any amendments thereto. FRA has provided in its rules at 49 CFR part 244 for providing information to the Board during implementation of an approved transaction that will assist the Board in exercising its continuing jurisdiction over the transaction. FRA also has undertaken to advise the Board when, in its view, the integration of applicants' operations has been safely completed.

(c) If a SIP is required in transactions that would not be subject to environmental review under the Board's environmental rules at 49 CFR part 1105, the Board will develop appropriate case specific SIP procedures based on the facts and circumstances of the case.

§ 1106.5 Waiver.

The SIP requirements established by this part can be waived or modified by the Board where a rail carrier shows that relief is warranted or appropriate.

§ 1106.6 Reservation of jurisdiction.

The Board reserves the right to require a SIP in cases other than those enumerated in this part, or to adopt modified SIP requirements in individual cases, if it concludes doing so is necessary in its proper consideration of the application or other request for authority.

Decided: December 18, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen

Vernon A. Williams,

Secretary.

[FR Doc. 98–34563 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 63, No. 251
Thursday, December 31, 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

Forest Service

Good Creek Environmental Impact Statement; Flathead National Forest, Tally Lake Ranger District, Flathead and Lincoln Counties, State of Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for a proposal to harvest timber; reclaim, rehabilitate, and construct roads; change road and trail access; place large logs in streams; and burn brushfields or forest understory trees within the Good Creek watershed. The area is located west of Whitefish, Montana and southwest of Olney, Montana.

The Forest Service is seeking further information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions. These comments will be used to prepare the draft EIS.

DATES: The draft EIS is expected to be filed with the Environmental Protection Agency and made available for public review in April, 1999. No date has yet been determined for filing the final EIS.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

ADDRESS: You may request to be placed on the project mailing list or direct questions, comments, and suggestions about the proposed action and EIS to Bryan Donner, EIS Team Leader, or Jane Kollmeyer, District Ranger, Tally Lake Ranger District, 1335 Highway 93 West, Whitefish, MT 59937. Phone: (406) 863–5400.

SUPPLEMENTARY INFORMATION:

Nature and scope of the proposed action: The need for this proposal stems from conditions within the 72,000-acre Good Creek and Martin Creek watersheds in which high levels of accumulated fuels pose a threat of wildfire to national forest lands within the watershed and to human developments and private lands adjacent to the area. Also, the watershed contains large areas composed almost entirely of lodgepole pine. The lack of diversity in tree species, ages, and sizes and their numbers and distribution across the landscape has reduced available habitat for native wildlife, plant, and fish species.

The purpose of the proposal is to reduce fuels to historic levels where appropriate or to levels which might prevent intense fires; to increase habitat for plants, animals, and fish; to maintain hydrologic function, protect water quality, and reduce sediment; to provide access for management activities over the next 10 years; to maintain a variety of recreation opportunities in the Good Creek area; and to meet social and economic needs of local communities.

The proposal's actions to regenerate lodgepole pine stands and wind damaged stands, construct temporary roads or recondition roads necessary to access these stands, correct chronic sediment sources, and stabilize stream channels are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

The proposed action outlines 11,914 areas of vegetation treatment, 19 miles of road reclamation, 34 miles of drainage improvements on roads, new temporary road construction of 7 miles, new specified road construction of 13 miles, and culvert replacements on 10 sites, all over a 10 year period. The vegetation treatments proposed consist of combinations of prescribed burning, pre-commercial thinning, and varying intensities of timber harvest with associated fuels treatments and preparation for reforestation. In addition, road access changes are proposed for 37 miles, and fisheries habitat improvement (large woody debris placement) is proposed for a total of 2.6 miles on three streams.

The Forest Service believes the current forest conditions resulting from large wildfires that occurred near the turn of the century and subsequent management decisions are causing adverse effects. These effects include an increased risk of property damage on both national forest and adjacent private land from large and intense wildfires; reduced individual tree health in some areas; and a low level of tree species diversity. The Forest Service also believes implementing a no action alternative will further increase these effects in the future. The proposed actions may have short term significant effects on wildfire, fisheries, and surface hydrology, but long term benefits to the function of the ecosystem are more desirable.

This EIS will tier to the Flathead National Forest Land and Resource Management Plan (LRMP) and EIS of January, 1986, and its subsequent amendments, which provide overall guidance of all land management activities on the Flathead National Forest.

Decision to be made: Should the Forest Service implement the proposed action or any action to meet the purpose and need or to defer any action at this time within the Good Creek and Martin Creek watersheds? The deciding official for this project is Catherine Barbouletos, Forest Supervisor, Flathead National Forest.

Preliminary issues and alternatives: Public and internal scoping which has already occurred for this project includes one public open house; two public field trips; two mailings to Federal, State, and local agencies and other individuals or organizations; personal conversations with interdisciplinary team members and members of the public, and news media releases. An additional public mailing is planned to present a refined proposed action and give an update on progress. Based on public and internal scoping, the following significant issues emerged:

1. Effects of vegetation treatments and road and trail access on wildlife security.

2. Effects of vegetation treatments and road access on existing and future old growth habitat.

3. Effects of vegetation treatments on the size, shape, continuity, and edge effects of some late seral patches of trees.

4. Effects of the proposed action on some forested connections that serve as

links for wildlife movement between important habitat such as riparian forests and ridgelines.

5. Effects of vegetation treatments and road building and reclamation on water quality, fish habitat, and fine sediment deposition.

6. Effects of vegetation treatments and road building and reclamation on cutthroat trout populations in upper Good Creek.

The interdisciplinary team has not yet developed any alternatives to the proposed action that respond to these significant issues.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F. 2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Following this comment period, the comments received will be analyzed, considered, and responded to by the Forest Service in the final environmental impact statement (FEIS). Catherine Barbouletos, Forest Supervisor, Flathead National Forest, 1935 Third Avenue East, Kalispell, MT 59901 is the responsible official for the preparation of the EIS and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and rational for the decision will be documented in a Record of Decision. That decision will be subject to appeal under applicable Forest Service regulations.

Dated: December 16, 1998.

Jane Kollmeyer,

District Ranger, Tally Lake Ranger District, Flathead National Forest.

[FR Doc. 98–34719 Filed 12–30–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review of fresh and chilled Atlantic salmon from Norway.

SUMMARY: In response to a request from the petitioner, Coalition for Fair Atlantic Salmon Trade, the Department of Commerce is conducting an administrative review of the antidumping duty order fresh and chilled Atlantic salmon from Norway. The period of review is April 1, 1997, through March 31, 1998. This review covers products manufactured and exported by Nornir Group A/S (''Nornir'').

We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, AD/CVD Enforcement Office 4, 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, and 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (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 (1998).

Background

On April 12, 1991, the Department published in the **Federal Register** (56 FR 14920) the antidumping duty order on fresh and chilled Atlantic salmon from Norway. On April 30, 1998, in accordance with 19 CFR 351.213(b), the petitioner requested that the Department conduct an administrative review of Nornir's exports of subject merchandise to the United States. We published the notice of initiation of this review on May 29, 1998 (63 FR 29370).

Scope of the Review

The merchandise covered by this review is fresh and chilled Atlantic salmon (salmon). It encompasses the species of Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called ''king'' or ''quinnat''); Coho (''silver''); Sockeye (''redfish'' or ''blueback''); Humpback (''pink''); and Chum (''dog''). Atlantic salmon is whole or nearly whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh water ice (chilled). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Fresh and chilled Atlantic salmon is currently provided for under Harmonized Tariff Schedule (HTS)

subheading 0302.12.00.02.09. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Use of Facts Otherwise Available

We preliminarily determine that, in accordance with section 776(a)(2)(A) of the Act, the use of facts available is appropriate for Nornir because this firm did not respond to the Department's antidumping questionnaire. In addition, there is no information on the record within the meaning of section 782(e) of the Act with regard to sales by Nornir and therefore no information to consider as an alternative to facts available in determining the margin for Nornir.

The Department finds that, in not responding to the questionnaire, this firm failed to cooperate by not acting to the best of its ability to comply with requests for information from the Department. Where the Department must base the entire dumping margin for a respondent in an administrative review on the facts available because the 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 the petition, the final determination, a previous administrative review, or other information placed on the record.

As adverse facts available, we have used the highest rate from any prior segment of the proceeding, 31.81 percent. This rate was calculated in the *Final Determination of Sales at Less Than Fair Value* (56 FR 7661), covering the period September 1, 1989, through February 28, 1990. Information from prior segments of the proceeding constitutes ''secondary information'' within the meaning of section 776(c) of the Act. Section 776(c) provides that the Department shall, to the extent practicable, corroborate secondary information by comparing it with independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that corroborate means simply that the Department will satisfy itself that the secondary information to be used has probative value.

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 total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review* (60 FR 49567, 1995) 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 the Review

As a result of this review, we preliminarily determine that the following margin exists for the period April 1, 1997, through March 31, 1998:

Manufacturer/exporter (percent)	Margin
Nornir Group A/S	31.81

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 30 days of publication. If requested, a hearing will be held as early as convenient for the parties but not later than 37 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 35 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, antidumping duties on all appropriate entries. Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of fresh and chilled Atlantic salmon from Norway entered, or withdrawn from warehouse, 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 company will be the rate established in the final results of this administrative review (except no cash deposit will be required where 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 less-than-fair-value (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 23.80 percent, the ''all others'' rate established in the first notice of final results of administrative review published by the Department (56 FR 7661, February 25, 1991).

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 sections 751(a)(1) and 777(i)(1) of the Act.

Dated December 22, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–34708 Filed 12–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 31, 1998.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Everett D. Kelly, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–4194, respectively.

THE APPLICABLE STATUTE:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351, 62 FR 27296 (May 19, 1997).

FINAL DETERMINATION:

We determine that certain preserved mushrooms (''mushrooms'') from India are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination (*Preliminary Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India,* 63 FR 41789, August 5, 1998), the following events have occurred.

On August 7, 1998, the petitioners in this investigation (L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushroom Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.), requested a public hearing. This request was withdrawn on October 29, 1998.

We conducted verifications of the data submitted by respondents, Agro Dutch Foods (India) (''Agro Dutch'') and Ponds India Ltd. (''Ponds''), during August and September. We issued our verification reports in October (*see* Memorandum to the File dated October 20, 1998 (Ponds) and Memorandum to the File dated October 21, 1998 (Agro Dutch)). The petitioners and the two respondents submitted case briefs on October 28, 1998, and rebuttal briefs on November 4, 1998.

Facts Available

As discussed in the preliminary determination, we did not receive a questionnaire response from two Indian companies, Alpine Biotech and Mandeep. In accordance with Section 776 and 782 of the Act, we determined that the use of facts available is appropriate for both of these companies. We have again made that determination for the final determination, and continue to use the corroborated petition rate of 243.87 percent as the facts available margin for the two nonresponding companies (*see* Memorandum to the File dated July 27, 1998).

Scope of Investigation

For purposes of this investigation, the products covered are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation are the species *Agaricus bisporus* and *Agaricus bitorquis*. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the investigation are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this investigation are the following: (1) all other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (''HTS''). Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1997 through December 31, 1997.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Agro Dutch and Ponds covered by the description in the ''Scope of Investigation'' section, above, and sold by Agro Dutch to the Netherlands and sold by Ponds to Denmark (*see* ''Home Market Viability'' section below) during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the third country to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product. For those U.S. sales of mushrooms for which there were no comparable third country sales in the ordinary course of trade (*i.e.*, above-cost) , we compared U.S. sales to constructed value (''CV'').

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: preservation method, container type, mushroom style, weight, grade, container solution, and label type. Although Agro Dutch has suggested that the Department consider whole mushroom size as a product characteristic, we have not included it as a product matching characteristic (*see* Comment 8 in the ''Interested Party Comments'' section below).

Fair Value Comparisons

To determine whether sales of certain preserved mushrooms from India to the United States were made at less than fair value, we compared the export price (EP) to the Normal Value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed

value (CV) as the basis for foreign market value when the Department finds home market sales of physically identical merchandise to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Investigation'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire.

Level of Trade

In the preliminary determination, we determined that all comparisons are at the same level of trade for both respondents and an adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted. We find no basis to change this determination for the final determination.

Export Price

For Agro Dutch and Ponds, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated.

Agro Dutch

We calculated EP based on the same methodology used in the preliminary determination, with revisions to movement expenses as a result of the Department's verification findings (*see* Agro Dutch Sales and Cost Verification Report dated October 21, 1998 for specific details).

Ponds

We calculated EP based on the same methodology used in the preliminary determination, with revisions to foreign movement expenses and packing as a result of the Department's verification findings (*see* Ponds' Sales and Cost Verification Report dated October 20, 1998 for specific details).

Normal Value

After testing (1) home market and third country market viability and (2) whether third country sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparisons'' sections of this notice.

1. Home and Third Country Market Viability

As discussed in the preliminary determination, we examined whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, in accordance with section 773(a)(1)(C) of the Act. We verified that the aggregate volume of POI home market sales of the foreign like product for both respondents was less than five percent of its aggregate volume for POI U.S. sales for the subject merchandise; and therefore, the home market was not viable for either respondent. We also verified that the Netherlands, Agro Dutch's largest third country market, and Denmark, Ponds' largest third country market, were viable for the respective respondents in accordance with section 773(a)(1)(B)(ii) of the Act. Therefore, in accordance with section 773(a)(1)(C) of the Act, we determined that the Netherlands is the appropriate third country market for calculating Agro Dutch's NV, and Denmark is the appropriate third country market for calculating Ponds' NV.

2. Cost of Production Analysis

As discussed in the preliminary determination, we conducted an investigation to determine whether each respondent made sales of the foreign like product in the respective third country during the POI at prices below its cost of production (''COP''). In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of the respondent's cost of materials, fabrication, and general expenses. We relied on the submitted COPs except in the following specific instances where the submitted costs were not appropriately quantified or valued.

Agro Dutch

(1) We recalculated Agro Dutch's cost worksheets using a weight based allocation method instead of relying on Agro Dutch's per-unit costs derived from hypothetical yields (*see* Comment 9 in the ''Interested Party Comments'' section below for further discussion).

(2) In order to put both the general and administrative (''G&A'') rate and the financial expense rate on the same basis as the per-unit cost of manufacturing, we excluded certain expense items from the cost of goods sold used by Agro Dutch as the denominator in its calculations. (*See* December 18, 1998 Calculation Memorandum.)

(3) Finally, we have not included the startup period adjustment amounts claimed by Agro Dutch in the COP calculations (*see* Comment 8 in the ''Interested Party Comments'' below for further discussion).

Ponds

(1) We calculated COP using the average direct materials expense reported by Ponds instead of Ponds' reported direct material costs, which were derived using a net realizable value (''NRV'') allocation (*see* Comment 1 in the ''Interested Party Comments'' section below).

(2) We increased the cost of manufacturing for certain minis to include an amount for expenses incurred on the reprocessing of minis (*see* Comment 3 ''Interested Party Comments'' section below for further discussion).

(3) We also revised per-unit variable overhead costs to exclude the Indian export duty, which we have recalculated as a movement expense.

(4) We recalculated Ponds' financial expense rate to exclude financial income (*see* Comment 4 in the ''Interested Party Comments'' section below).

B. Test of Third Country Sales Prices

As in our preliminary determination, we compared the weighted-average COPs for Agro Dutch and Ponds, adjusted where appropriate, to third country sales prices of the foreign like product, as required under section 773(b) of the Act. In determining whether to disregard third country sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices

which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP (exclusive of selling expenses) to the third country prices (net of selling expenses), less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

Results of the COP Test

As in our preliminary determination, pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product. For those U.S. sales of preserved mushrooms for which there were no comparable (above-cost) third country sales in the ordinary course of trade, we compared EP to CV, in accordance with section 773(a)(4) of the Act.

We found that, for certain mushroom products sold by Agro Dutch, more than 20 percent of third country sales were sold at below COP prices within an extended period of time in substantial quantities. We therefore excluded these sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For Ponds, we found that all third country sales were at prices less than the COP. Thus, in the absence of any above-cost third country sales, we compared EP to CV in accordance with section 773(a)(4) of the Act.

D. Calculation of CV

As in our preliminary determination, we calculated CV for Ponds based on the sum of its cost of materials, fabrication, selling, general, and administrative (''SG&A'') expenses, interest, U.S. packing costs, and profit, in accordance with section 773(e) of the Act. We made the same adjustments to the reported costs for the CV calculation as discussed above for the COP calculation.

For Agro Dutch, all comparisons were made on a price-to-price basis. Thus, it was not necessary to calculate CV.

As stated above with regard to Ponds, since there were no above-cost Danish sales and, hence, no actual company-specific profit data available for Ponds' sales of the foreign like product to Denmark, we calculated profit in accordance with section 773(e)(2)(B)(iii) of the Act and the Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. at 841 (1994) (''SAA''). Section 773(e)(2)(B)(iii) states that profit may be determined under any reasonable method with the appropriate ''profit cap.''

In the preliminary determination, we used Ponds' actual selling expenses incurred in India on Danish sales. No party to this investigation has commented on this determination. Therefore, we have continued to use these selling expense amounts in this final determination. As in the preliminary determination, we have used a profit rate calculated from Ponds' 1996 financial statements for mushrooms as facts available under section 773(e)(2)(B)(iii) of the Act.

Price-to-Price Comparisons

We calculated NV for Agro Dutch respondent based on the same methodology applied in the preliminary determination, with the following exceptions: for Agro Dutch we made revisions to specific sales transactions for foreign movement expenses based on findings at verification (*see* Agro Dutch Sales and Cost Verification report dated October 21,1998); and for Ponds we made revisions to specific sales transactions for reported gross unit prices, foreign movement expenses and packing costs. For price-to-price comparisons we applied the same methodology used in the preliminary determination. In making circumstance of sale adjustments we made revisions to credit expenses based on verification findings for both respondents.

Price-to-CV Comparisons

For price-to-CV comparisons, we applied the same methodology used in the preliminary determination, with the revisions noted above for credit expenses.

Currency Conversion

For Agro Dutch, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A of the Act. For Ponds, we made currency conversions into U.S. dollars based on the exchange rates specified in Ponds' forward sales agreements instead of the actual exchange rate on the date of the U.S. sale (*see* Comment 5 below for discussion)

Ponds' Comments

Comment 1: Alternative Cost Allocation Methods: Net Realizable Value, Treating Certain Sales as By-Products, Averaging U.S. Prices

Ponds argues that the Department should allocate mushroom growing costs based on a NRV methodology, rather than the weight-based methodology used in the preliminary determination. Ponds states that there are physical differences between mushrooms suitable for preserving as whole and sliced mushrooms, and other mushrooms preserved as ''minis'' or pieces and stems (PNS). In turn, Ponds argues, whole and sliced mushrooms command higher NRVs per kilogram. Accordingly, Ponds states that its production process is designed to maximize its production of mushrooms suitable for whole and sliced products. To reflect this business practice, Ponds argues that the Department should follow its case precedents set forth in the *Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553, June 5, 1995 (''*CPF from Thailand*''), and the *Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14064, March 29, 1996 (''*PVA from Taiwan*''), where cost allocations were made based on sales values, and apply the NRV methodology to Ponds' costs.

Alternatively, Ponds proposes a second methodology that would consider minis and PNS as a by-product of whole and sliced mushrooms. Based on this methodology, all costs of producing mushrooms would be allocated to whole and sliced mushrooms, and the revenue received from sales of minis and PNS would be deducted from those costs.

Finally, Ponds suggests that the Department should average the EPs for all products, and then compare the average prices to average costs, as it did in past cases such as *Final Results of Administrative Review: Certain Fresh Cut Flowers from Colombia*, 63 FR 31724, June 10, 1998 (''*Flowers from Colombia*''). Ponds states that this approach is appropriate, should the Department reject its NRV methodology, because a weight-based allocation

effectively calculates an average CV for preserved mushrooms and thus the fair comparison would be to average U.S. prices.

The petitioners contend that the Department should continue to allocate costs on the basis of weight, as in the preliminary determination and in the companion investigation of preserved mushrooms from Chile (*Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile,* 63 FR 56613, October 22, 1998) (''*Mushrooms from Chile*''). The petitioners state that Ponds' financial accounting system tracks costs and sales on the basis of weight, not NRV, as shown in the questionnaire responses and at verification. Citing section 773(f)(1)(A) of the Act, the petitioners assert that the Department relies on data from a respondent's normal books and records where those records are prepared in accordance with the home country's general accounting practices (''GAAP'') and reasonably reflect the cost of producing the subject merchandise. Petitioners argue that the cost of producing mushrooms are reasonably reflected using a weight-based allocation because all of the preserved mushroom products utilize the same input material, fresh mushrooms.

The petitioners continue that the references to *CPF from Thailand* and *PVA from Taiwan* are inappropriate in this case. According to the petitioners, the Department determined that the NRV methodology was appropriate in *CPF from Thailand* because the pineapple fruit and pineapple juice were completely distinguishable co-products. In instances where the juice was produced from the remains of the fruit canning process, such as shells, cores and ends, a weight-based cost methodology would assign a distortive amount of costs to the various parts of the pineapple. In *PVA from Taiwan*, the PVA production process resulted in two different co-products with different end uses. Thus, the petitioners assert that a weight-based methodology would have been distortive in that instance as well. In this proceeding, the petitioners argue, fresh mushrooms are not a co-product of preserved mushrooms, and the same material—fresh mushrooms—is used in producing all varieties of preserved mushrooms. Similarly, the petitioners reject Ponds' contention that minis and PNS should be considered a by-product or scrap, as ''scrap'' is considered by the industry to be tiny mushroom fragments which are too small to even to be processed as PNS and is typically resold as fertilizer or discarded. The petitioners assert that PNS and minis, on the other hand, are part of the same like product and sold in the same channels of trade as other preserved mushrooms.

DOC Position:

We agree with the petitioners that, in this case, a weight-based allocation methodology is appropriate. In accordance with section 773(f)(1)(A) of the Act, the Department normally relies on data from a respondent's normal books and records where those records are prepared in accordance with the home country's GAAP, and where they reasonably reflect the costs of producing the merchandise. Normal GAAP accounting practices provide both respondents and the Department with a reasonably objective and predictable basis by which to compute costs for the merchandise under investigation. However, in those instances where it is determined that a company's normal accounting practices result in a mis-allocation of production costs, the Department will adjust the respondent's costs or use alternative calculation methodologies that more accurately capture the actual costs incurred to produce the merchandise. *See, e.g., Final Determination of Sales at Less Than Fair Value: New Minivans from Japan,* 57 FR 21937, 21952, May 26, 1992, (adjusting a respondent's U.S. further manufacturing costs because the company's normal accounting methodology did not result in an accurate measure of production costs); and *CPF from Thailand* at 29559.

Furthermore, as described in section 773(f)(1)(A) of the Act, the Department must consider whether reported allocations ''have been historically used by the exporter or producer.'' In the instant case, Ponds does not have an established cost accounting system that allocates costs between products and, therefore, for purposes of this investigation, Ponds and Agro Dutch developed a reporting methodology. In Ponds' Section D questionnaire response, it chose to allocate costs between products based on their relative sales values. At the request of the Department, Ponds submitted a revised response which allocated costs using a weight-based method. For purposes of the final determination, we have relied on the costs derived from a weight-based allocation methodology as explained below, with the specific adjustments noted elsewhere in this notice.

Section 351.407(c) of the Department's regulations states that ''[i]n determining the appropriate method for allocating costs among products, the Secretary may take into account production quantities, relative sales values, and other quantitative and qualitative factors associated with the manufacture and sale of the subject merchandise and the foreign like product.'' We rejected Ponds' sales-value-based methodology because it relies on the faulty premise that minis and PNS are joint products of mushrooms.

A comparison of the Department's approach in responding to certain types of allocation questions in past cases is helpful in illustrating why minis and PNS are not joint products. In *Final Administrative Review of Canned Pineapple Fruit from Thailand,* 63 FR 7392, February 13, 1998, the Department stated that ''a joint production process produces *two distinct products* and the essential point of that process is that the raw material, labor and overhead costs prior to the initial split-off requires an allocation to the final products. *See Management Accountants' Handbook* at 11:1. CPF and juice result from a joint production process because they both rely on the use of a single raw material, pineapple fruit'' (emphasis added). In *PVA from Taiwan* at 14071 the Department stated that, ''like other joint production processes, PVA production is characterized by certain joint costs which cannot readily be identified or traced to the individual products resulting from the joint processing performed in the manufacture of PVA. In PVA production, chemical inputs are mixed together in a process that results in *two distinct products:* PVA and acetic acid.'' (*Id.* at 7399) (emphasis added). In CPF and PVA production, two or more distinct products (*i.e.*, products having significantly different physical characteristics) result from the processing of the raw materials. In contrast, the mushroom growing process results in only one product, *i.e.*, mushrooms. While the Department concedes that mushrooms will vary in size and aesthetics, these minor quality differences do not render them separate and distinct products. Such minor differences do not rise to the level where distinct products exist. The opposite situation, for example, occurs in *CPF from Thailand,* where a liquid fruit drink and a solid fruit product are derived from a whole pineapple. On the other hand, while mushrooms may be sliced or chopped, sold as fresh or canned, they remain mushrooms.

Ponds' proposal that a sales-based method be used in this case relies heavily on the fact that certain aesthetic and quality differences in mushrooms command higher prices in the market. We note that Ponds' claim that minis are

a substandard product are seriously undercut by Agro Dutch's argument that mini mushrooms are a premium product (*See* Comment 7 below for further discussion). However, as the cases cited above demonstrate, it is not the difference in market price that indicates whether the use of a value-based cost methodology is warranted, but rather the existence of two distinct products and the inherent difficulties therein of assigning common production costs between the jointly produced products. It is only when a common production process gives rise to separate and distinct products that a value-based method may be a more appropriate means to allocate costs than a method based on physical measure. Indeed, the Department has been upheld in its practice of ignoring market price differences when two grades of the same pipe had identical costs, but commanded different market prices. In *Ipsco* v. *United States,* 965 F2d 1056 (Fed. Cir. 1992) (''IPSCO''), where there were no physical differences between the two grades of pipe, only differences in quality and market value and the same materials, labor, and overhead went into the manufacturing lot that yielded both grades of pipe, the court upheld the Department's use of a methodology that allocated costs equally between two grades of the same pipe. Moreover, in *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador* 60 FR 7038 February 6, 1995 (''*Roses from Ecuador*''), the Department also chose not to distinguish between minor aesthetic and quality differences within the broad export quality category, but treated as by-products all roses in the national quality category. In that case, the Department allocated total net cultivation costs over the total quantity of non-reject product actually sold.

Perhaps the most comparable case to mushrooms is the *Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile,* 63 FR 31411, June 9, 1998 (''*Salmon from Chile*''). Salmon, like mushrooms, are grown in batches where the natural process results in products of varying size and quality. Products can both be sold either directly after harvest or be processed further and sold in several different forms and containers. Furthermore, the production processes of both products may be manipulated by the producer, within the confines of the natural growing process to obtain different yields on certain sizes and qualities. Moreover, both salmon and mushrooms are sold by weight and the aesthetic qualities of the individual units impact their market price. For both products, the Department has found that the actual cost per kilogram of the product, *i.e.,* mushroom or salmon, is the same regardless of whether it is sold fresh or processed further in a variety of forms. In *Salmon from Chile,* as in the instant case, the Department found that ''with minor exceptions, each company's recorded costs of the subject merchandise did not vary by grade or weight band [(i.e., size)] . . . and that the costs of certain of these matching groups are the same (*Id.* at 31416).'' Also in *Salmon from Chile,* the Department even rejected ''petitioners'' arguments that the respondents should have been required to report costs based on methodologies that deviate from their normal accounting practices, *e.g.,* through the use of feed conversion ratios, in order to estimate differences in costs (*Id.* at 31416). In citing to *IPSCO* in the *Salmon from Chile* case, the Department stated that ''as with premium salmon, prime-grade pipe was of higher quality and, as such, commanded a higher price in the marketplace. In the proceeding underlying the IPSCO decision, the Department compared U.S. sales of prime-and limited service grade pipe to CVs based on the actual costs of each grade, which were identical. The respondents objected to this methodology vis-a-vis comparisons involving U.S. sales of lower grades of merchandise. The Court of Appeals for the Federal Circuit (CAFC) rejected this claim, ruling that the Department had ''calculated constructed value precisely as the statute directs'' in basing CV on the actual cost of production for each grade.'' *See Salmon from Chile* at 31416—31417.

Consistent with *Mushrooms from Chile,* we have determined that an allocation methodology based on weight is reasonable for the following reasons: (1) both Ponds and Agro Dutch track the mushrooms through the production process by weight, not by number of mushrooms or by relative sales value; (2) mushrooms are sold by weight; (3) virtually the same activities and expenses are incurred in growing each kilogram; and, (4) regardless of whether the mushrooms are sold as preserved or fresh product, wholes or PNS, they are substantially the same product (*i.e.,* they are not joint products). Simply stated, the cost-generating elements of growing mushrooms for both preserved and fresh, whole or pieces, large or small mushrooms are identical, as evidenced by the fact that a considerable quantity of mushrooms initially selected for the fresh sales market were eventually canned, and canned whole mushrooms may be re-processed into pieces and stems. Additionally, the Department has accounted for specific cost differences, such as differences in picking costs, supported by its observations at verification of Agro Dutch, that additional compensation for picking specific sizes of mushrooms was required. (*See* Comment 9 below for further discussion) On this basis, we continue to rely upon a weight-based methodology because it reasonably reflects the costs of producing the subject merchandise.

We also disagree with Ponds respondents that PNS and minis could alternatively be considered by-products of whole and sliced mushrooms. In the mushroom growing process, the closest output material to a by-product is the sale of compost. By-products, as opposed to primary products, ''have low relative total sales values,'' resulting from either ''a small output or low unit selling prices or both.'' *See Cost Accounting, Processing, Evaluating, and Using Cost Data* at 157 (Morse & Roth, Third Edition, 1986). Minis and PNS are identical to the primary product (*i.e.,* mushrooms) and, as such, should be treated in the same manner. Furthermore, minis and PNS are not incidental to Ponds' mushroom selling activities, and represent a significant portion of Ponds' sales. In addition, a significant percentage of Ponds' POI mushroom production was sold as either minis or PNS. In *Roses from Ecuador,* the Department also chose not to distinguish between minor aesthetic and quality differences within the broad export quality category, but treated as by-products all roses in the national quality category. This practice was consistent with the court's decision in *Association Colombiana de Exportadores v. United States,* 704 F. Supp. 1114, 1125–26 (CIT 1989), where the court found that ''culls were often disposed of as waste, or if saleable, were sold for low prices in the local markets.'' As petitioners pointed out in their briefs, mushrooms that ultimately become minis and PNS are processed further, exported to the United Sates, and represent a significant portion of Ponds' sales.

We also disagree with Ponds' assertion that, if the actual cost of producing the mushrooms is used as the basis of COP and CV, then when relying on CV as the basis for normal value, the Department should average U.S. sale prices for all products. Ponds errs in citing to *Flowers from Colombia* to support its proposed method. There were case-specific reasons in *Flowers from Colombia* as to why the

Department compared CV to average U.S. prices, such as the fact that flowers are a perishable product. The Department rejected a similar argument in *Salmon from Chile,* where the respondent asserted that the ''Department should average all U.S. prices by form only and not by grade or weight band, such that a form-specific price is compared to a form-specific CV (*see Salmon from Chile* at page 31416).'' In that case, the respondent reasoned that the Department erred ''by comparing U.S. prices . . . by form, grade, and weight band to CVs that, due to the nature of the product, essentially do not vary except by form (*Id.* at 31416).'' In rejecting respondent's assertion that the U.S. prices should be averaged for the comparison to CV, the Department noted that ''while making the same complaint as that made by the respondent in IPSCO, the respondent in the instant proceeding has proposed a different solution. Rather than arguing for an adjustment to CV, the respondent suggests that the Department average the reported U.S. prices without respect to two of the three matching characteristics . . . for comparisons involving CV (*Id.* at 31416).'' The Department went on to explain that ''no change to either side of the antidumping analysis (EP/CEP and normal value) is necessary because, in accordance with IPSCO and with the basic tenet of the antidumping law, the Department's methodology in this case properly compares the price of U.S. sales of a given product with the actual cost of that product where normal value is based on CV, without regard as to whether that product's actual costs are the same as, or different from, other products under investigation (*Id.* at 31417).'' In *Salmon from Chile,* the Department argued further that the proposed methodological changes would ''reduce the accuracy of that analysis and, depending on the manner employed, would either eliminate price-based matches entirely, or would result in inconsistent matching groups depending on whether a U.S. Sale is matched to comparison market sales or CV (*Id.* at 31417).''

Based on the foregoing discussion, for purposes of the final determination we have used a weight-based allocation methodology for all mushroom growing costs, with the exception of picking labor. Furthermore, we have used weighted-average US prices, by product type, in our comparisons to NV (*i.e.*, CV).

Comment 2: Yield Adjustment to Costs for Extraordinary Events

Ponds claims that the Department should consider Ponds' low mushroom yield in 1997 as a highly unusual event generated by extraordinary circumstances that occurred during the year. Ponds cites a major flood, ''wet bubble disease,'' and the death of its experienced plant manager as the extraordinary events that caused its depressed yield in 1997, the POI. Pointing to such cases as *Flowers from Colombia* and the decision in *Floral Trade Council of Davis, Calif. v. United States,* 16 CIT 1014, 1016–17 (1992), Ponds contends that the Department should take into account these extraordinary events, which are infrequent in occurrence, unusual in nature, and cause an unforeseen disruption in production that is beyond management's control, and make an appropriate adjustment to its costs. To make this adjustment, Ponds proposes applying a yield factor based on its mushroom yield history exclusive of 1997.

The petitioners respond that the events cited by Ponds are neither infrequent nor outside management's control and, therefore, the Department should continue to reject Ponds' claim. Petitioners contend that, as various parts of India are subject to seasonal flooding, mushroom diseases are an expected risk to the mushroom growing process, and staffing changes are a normal part of business operations. Thus, according to petitioners, management reasonably should have foreseen these possibilities and taken necessary steps to avoid production problems. Petitioners assert that the POI drop in production yield is the result of inadequate management control, rather than extraordinary events.

DOC Position:

We disagree with Ponds' claim for adjustments to its cost calculation based on the ''alleged'' extraordinary events that occurred during the POI. The SAA at 162 states that ''when unforeseen disruption in production occurs which is beyond management's control. . ., Commerce will continue its current practice, such as using the costs incurred for production prior to such unforeseen event.'' The Department's long-standing practice with regard to ''unforeseen events'' is to treat expense items as extraordinary only when they are both unusual in nature and infrequent in occurrence. *See Final Determination of Sales at Less than Fair Value: Static Access Memory Semiconductors From Taiwan,* 63 FR 8909, February 23, 1998 (''*SRAMS from Taiwan*'') (where the Department rejected respondent's claim for an offset due to losses incurred because of a fire); *Final Determination of Sales at Less than Fair Value: Oil Country Tubular Goods From Argentina,* 60 FR 33539, June 28, 1995 (where the Department rejected respondent's claim for an offset due to restructuring costs); and *Roses from Ecuador* at page 7038 (where the Department allowed an offset for damage due to hurricane-force winds). Because adjustments of this type are by definition extraordinary, the Department has made its decisions regarding these adjustments on a case-by-case basis. Moreover, in our review of the case-specific facts, it is incumbent upon the respondent, as the party knowledgeable about the industry and country, to provide evidence supporting its claim. Ponds did not provide any evidence that heavy rains were abnormal and thus unexpected. In the *Final Determination of Sales at Less than Fair Value: Fresh and Chilled Atlantic Salmon from Norway,* 56 FR 7661 February 25, 1991 (''*Salmon from Norway*''), the Department rejected a respondent's claimed offset for costs related to a disease affecting its salmon harvest by stating that ''[i] In the fish farming industry, disease is an expected occurrence. Respondent submitted no independent data regarding ILA disease in general or the extent to which other farmers in Norway suffered from this disease, and no data was submitted regarding ordinary or abnormal levels of disease.'' Similarly, in this case, Ponds has provided no evidence to demonstrate that the mushroom crop disease experienced during the POI was abnormal or unforseen.

With regard to the death of a production manager, the flooding, and the crop disease experienced by Ponds during the POI, we find none of these events to be extraordinary or unforeseen. We note that India experiences heavy rainfall each year and that Ponds' management had taken steps to prevent the next occurrence by building drainage ditches. We also note that various climate phenomena, from weather to diseases, effect agricultural crops and, therefore, only truly unusual climatic events relative to the geographical area in question would be considered extraordinary. At verification in India, we observed various disease prevention measures in place at both respondents' facilities, which indicates that disease is not an unusual or unforseen occurrence. Finally, we find that the loss of an employee, whether through a tragic death or resignation, is neither unusual or infrequent. Accordingly, we disallowed Ponds' yield adjustment factor for purposes of the final determination.

Comment 3: Reprocessing Costs for Mini Mushrooms

The petitioners contend that the Department should adjust Ponds' reported costs to account for raw material expenses incurred on canned mushrooms reprocessed into minis which Ponds did not include in its questionnaire response. The petitioners methodology for adjusting for reprocessing costs is outlined in their October 29, 1998, case brief.

Ponds contends that the costs of these minis produced in 1996 and repackaged in 1997 should not be considered part of the cost of minis produced in 1997. Ponds explains that the repackaging was performed to mitigate its 1996 losses for failing to sell these products in larger cans, and that including the repackaging costs for the POI merchandise would unfairly inflate those costs for an aberrant, extraordinary situation that is not a normal component of its COP. Should the Department determine that repackaging costs should be included as part of the POI costs, Ponds contends that the Department should allocate the reprocessing costs over the total production of all minis.

DOC Position:

We disagree with Ponds that the costs of the minis produced in 1996 and repackaged in 1997 should not be considered part of the cost of minis produced in 1997. First, approximately two-thirds of minis canned in 1997 were from these reprocessed cans. Second, the cost of reprocessing that took place in 1997 must be accounted for in 1997. However, we agree with Ponds that the Department erred in allocating the total reprocessing costs only over 1997 production of 6 oz. jars. Therefore, for purposes of the final determination, reprocessing costs have been allocated over the total production of all types of product (*i.e.*, container size) into which the original containers were reprocessed during 1997.

Comment 4: SG&A Calculation

The petitioners claim that Ponds' SG&A calculation is incorrect because it includes net financial income and the Department allows short-term interest income as an offset only up to the amount of financial expense. The petitioners argue that the Department should adjust the reported SG&A expenses using the methodology outlined in its October 29, 1998, case brief.

Ponds asserts that its SG&A calculation is correct because it would be unfair to include the costs of managing certain investments in its SG&A expenses, but then exclude the income generated by the investments. Thus, Ponds argues that the Department should either exclude both the costs and the revenues associated with these investments in the SG&A expense, or include both items.

DOC Position:

We agree with petitioners that only the short-term portion of financial income should be included in Ponds' financial expense calculation. Therefore, for purposes of the final determination, we have revised Ponds' combined G&A and financial expense rate. First, we calculated separate rates for G&A and financial expense. Second, we excluded Ponds' financial income because Ponds failed to provide a breakdown of the long-or short-term portions. Third, we excluded the claimed income related to dividends and investments. The Department includes financial expense in its calculation of cost in order to account for the company's cost of financing its activities. In calculating the company's cost of financing, we recognize that in order to maintain its operations and business activities, a company is required to maintain a working capital reserve to meet its daily cash requirements (*e.g.*, payroll, suppliers, etc.). The Department recognizes that the company normally maintains this working capital reserve in interest bearing accounts. The Department, therefore, allows a company to offset its financial expense with the short-term interest income earned on these working capital accounts. The Department does not allow a company to offset its financial expense with the income earned from investment activities (*e.g.*, long-term interest income, capital gains, dividend income). *See Gulf States Tube Division Of Quanex Corp.* v. *United States*, 981 F.Supp 630 (CIT 1997).

Comment 5: Forward Cover Exchange Rates

Ponds contends that the forward cover contracts Ponds made with its bank should be used to calculate the foreign currency exchange rate used to convert Ponds' sales revenues, expenses and costs from Indian rupees to US dollars, in accordance with 19 CFR 351.415(b). In meeting this regulation, Ponds states that its forward cover contracts were verified as clearly linked to its sales and thus it meets the necessary criteria for applying the contract exchange rate in lieu of the actual exchange rate on the date of sale.

DOC Position:

We agree with Ponds' contention that the exchange rate noted on Ponds' forward cover contracts is the appropriate exchange rate for converting Ponds' Indian rupee sales revenues and expenses into US dollars. At verification, we found that Ponds' foreign cover contracts were directly related to its sales. Specifically, we traced each contract to invoices, bills of lading and bank advices (*see* Ponds' Verification Report at 29–30 and Verification Exhibit 33). Therefore, according to the Departments' practice, in the final determination we have used the exchange rate specified in the forward sales agreement instead of the actual exchange rate on the date of sale in making all currency conversions (*see Final Determination of Sales at Less than Fair Value: Large Power Transformers from France*, 60 FR 62808–809, December 7, 1995).

Comment: Facts Available for Packing Costs

The petitioners claim that the Department found various discrepancies in Ponds' sales reporting that reflect systematic errors which undermine the reliability of Ponds' data. In particular, the petitioners cite an allegedly significant, systematic error in the reporting of Ponds' packing costs, and argue that the Department should reject the reported costs and instead apply adverse facts available.

Ponds replies that the petitioners have exaggerated minor, innocuous corrections that Ponds presented to the Department at the commencement of verification. According to Ponds, verification demonstrated that its data is reliable and contained very few errors. Ponds states that the packing cost correction cited by the petitioners resulted from a single error involving a single number, and not any ''systematic'' unreliability; therefore, Ponds maintains that petitioners' assertions should be rejected.

DOC Position:

We disagree with petitioners. For purposes of the final determination, we have used Ponds' sales data in general and packing costs in particular, as revised based on verification findings and noted elsewhere in this notice, rather than facts available as argued by petitioner. At the request of the Department (see Ponds Verification Outline at page 2 dated August 27, 1998), Ponds presented corrections to minor errors found during preparation for verification. Department officials were able to verify all corrections noted including those related to packing costs (*see* Ponds' October 21, 1998 Verification Report at page 2 and at Verification Exhibit 1). Accordingly, the Department has determined that the application of adverse facts available for Ponds' identified packing costs or otherwise is not warranted.

Agro Dutch Comments

Comment 7: Whole Mushroom Size as a Product Matching Characteristic

Agro Dutch argues that the Department should include whole mushroom size as a product matching criterion. Agro Dutch states that it considers mini mushrooms to be a premium product and while Ponds may consider these mushrooms to be a substandard product, both Indian respondents agree that the size of the whole mushroom affects pricing and marketing. In support of its contention, Agro Dutch points to its sales reporting, which shows that its mini mushrooms sales prices are higher than its other mushroom prices. Thus, Agro Dutch argues, the Department should not compare mini mushrooms to larger mushrooms.

The petitioners contend that Agro Dutch's claims are not supported by the record as there is no record evidence that the actual size of the fresh mushroom is a significant characteristic of preserved mushrooms. The petitioners state that the mushroom style, *i.e.*, whole, sliced, or PNS, already incorporates the important and relevant size characteristics for the preserved mushroom product.

DOC Position:

We disagree with Agro Dutch and continue to find an insufficient basis on the record to include whole mushroom size as a product matching criterion. Of all of the respondents in the three concurrent preserved mushrooms investigations from India, Chile, and Indonesia, we note that only Agro Dutch has argued that mushroom size must be accounted for in the product matching characteristics. Moreover, we have determined that there are no cost differences associated with the physical size of the mushroom. Rather, we found that Agro Dutch prices its mushrooms based on the physical size of the mushroom because of the labor involved. While Ponds does identify minis as a product type, as noted above in Comment 1, Ponds considers these mushrooms to be substandard products, in contrast to Agro Dutch's classification of minis as premium product. As also noted in Comment 1, we found no basis on which to treat minis differently with regard to cost accounting, and that mushroom growing costs (with the exception of packing labor) should be allocated on a weight-basis, rather than NRV. Thus, there is no reason to assign different costs to a whole mushroom solely for its different physical size. While one respondent out of all of the respondents involved in the market economy preserved mushroom investigations sells minis at higher prices relative to other mushrooms, the development of a successful market niche for one company is not, in itself, a basis for establishing a separate product characteristic.

Comment 8: Startup Adjustment

Agro Dutch claims that the Department should grant it a startup cost adjustment in accordance with Section 773(f)(1)(C) of the Act for its 50 percent expansion of growing rooms in a stand-alone facility during the POI. Agro Dutch states that these additional growing rooms began production during the POI and their construction constitutes the ''major undertaking'' contemplated in the SAA at 166 for granting the startup adjustment.

The petitioners state that Agro Dutch has failed to demonstrate its eligibility for a startup adjustment because the claim is based on the expansion of its existing mushroom growing facilities, rather than on a new production facility or production of a new product, as required under section 773(f)(1)(C) of the Act. In addition, the petitioners argue that the decline in production levels experienced at that time were related to ongoing improvements to existing facilities, rather than adjustments for the operation of a new facility. Further, the petitioners contend that Agro Dutch has failed to demonstrate that the lower mushroom yield rates it may have experienced were the result of technical factors associated with the allegedly new facility, as required by the statute.

DOC Position:

We disagree with Agro Dutch that a startup adjustment is warranted in this case. Section 773(f)(1)(C)(ii) of the Act authorizes adjustments for start-up operations ''only where (I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and (II) production levels are limited by technical factors associated with the initial phase of production'' during the POI. Based on our analysis of the information Agro Dutch submitted to support its claim, we have determined that Agro Dutch's production expansion of its operations does not satisfy these criteria.

Agro Dutch's production operations were only expanded by one third during the POI. The SAA at 166 states that ''[m]ere improvements to existing products or *ongoing improvements* to existing facilities will not qualify for a startup adjustment'' (emphasis added). Agro Dutch's original production operations were several years old at the start of the POI. Agro Dutch added two new sections of growing houses, only one of which was used for production during the POI. Agro Dutch made no claim that commercial production levels at the preexisting operations were limited by any technical factors associated with the new capacity. In addition, Agro Dutch's start-up claim is addressed only with respect to the first of the two new sections of growing houses.

Furthermore, Agro Dutch claims that commercial production levels in the new sections were limited by technical factors. First, we do not think that the expansion of capacity by one third rises to the level of expansion contemplated by the language in the SAA. The SAA at 166 states that ''Commerce also will not consider an expansion of the capacity of an existing production line to be a start-up operation unless the expansion constitutes such a major undertaking that it requires the construction of a new facility and results in a depression of production levels due to technical factors associated with the initial phase of commercial production of the expansion facilities.'' Second, the technical factors cited by Agro Dutch did not appear to limit commercial production levels. Agro Dutch argues that after the new sections were completed, the environmental conditions inside the growing houses had to be adjusted in order for production levels to rise to the levels of the preexisting growing houses. While we do not take issue with this assertion, we note that the SAA states that ''the attainment of peak production levels will not be the standard for identifying the end of the start-up period, because the start-up period may end well before a company achieves optimum capacity utilization.'' Although production levels at the growing houses in question were not at their peak levels, Agro Dutch was able to produce sizable quantities of mushrooms.

We note that Agro Dutch failed to establish that its production levels during the POI were limited by technical factors associated with the initial phase of production in accordance with section 773(f)(1)(C)(ii)(II) of the Act. Specifically, Agro Dutch has provided insufficient evidence to support a claim that production levels were limited by technical factors. The only information provided by Agro Dutch to support its claim that POI production levels were limited is a comparison of its production yields to yields of its preexisting growing houses. The SAA, however, does not refer to quality of merchandise produced or the efficiency

of production operations as a criterion for measuring production levels. The SAA at 166 directs the Department to examine the number of units processed as a primary indicator of production levels in determining the end of the start-up period. *See* also *SRAMS from Taiwan* at 8930. In other words, the Department must look at processed units, not output yields. Agro Dutch provided no information, for example, on historical production or capacity usage at its facilities to serve as a benchmark for measuring commercial production levels during the POI. The only evidence Agro Dutch submitted was a comparison of its yields to the yields at its pre-existing growing houses, asserting that such levels are not indicative of commercial production levels. Moreover, we note that under a comparative yield approach, a respondent may never leave the start-up phase because it may never reach comparative yields.

Section 773(f)(1)(C)(ii) of the Act establishes that both prongs of the startup test must be met to warrant a startup adjustment. In this case, we find that Agro Dutch has failed both prongs of the test and, accordingly, we have denied Agro Dutch's claim for a start-up adjustment.

Comment 9: Allocation of Costs Based on Mushroom Size-Based Yields

Agro Dutch contends that its COP should be allocated based on yield factors reflecting the various mushrooms it grows. Specifically, Agro Dutch contends that higher harvesting and material costs should be allocated to mini mushrooms which have a smaller yield than the larger mushrooms. In support of its argument, Agro Dutch refers to on-site experiments conducted at verification which it claims demonstrated the different yield factors based on whole mushroom size.

The petitioners claim that a yield factor reported by Agro Dutch derived from an experiment solely for the purpose of this investigation does not demonstrate that yield factors have any impact on raw material costs. While the petitioners may agree that labor costs may differ depending on the size of the fresh mushroom picked, they contend that Agro Dutch provided no evidence that the cost of production for any of the growing materials varies by the size of the mushroom. Moreover, the petitioners state that, as indicated in the verification report, Agro Dutch's financial records do not rely on yield factors to allocate costs in its normal course of business; rather, Agro Dutch tracks costs on an overall basis without regard to per-unit costs for any specific type of preserved mushroom product.

DOC Position:

We agree with Agro Dutch, in part. Agro Dutch argues that it is more efficient to grow the larger size mushrooms than it is for them to grow smaller mushrooms. Therefore, Agro Dutch reasons that a greater amount of costs must be allocated to smaller sized mushrooms. Agro Dutch accomplishes this shifting of costs through the use of estimated growing yields. While we agree with Agro Dutch that, as demonstrated at verification, the time required to pick the smaller mushrooms was longer than the time needed to pick the larger sizes, we disagree that there is a significant, if any, growing cost difference between sizes of mushrooms.

As discussed in *Comment 1*, above, in accordance with section 773(f)(1)(A) of the Act, the Department normally relies on data from a respondent's books and records where those records are prepared in accordance with the home country's GAAP, and where they reasonably reflect the costs of producing the merchandise. However, in those instances where it is determined that a company's normal accounting practices result in a mis-allocation of production costs, the Department will adjust the respondent's costs or use alternative calculation methodologies that more accurately capture the actual costs incurred to produce the merchandise. Agro Dutch does not have an established cost accounting system that allocates costs between products and, therefore, for purposes of this investigation, Agro Dutch developed a reporting methodology. Agro Dutch chose to allocate costs to different size ranges of mushrooms produced based on certain estimated product yield factors. At the request of the Department, Agro Dutch submitted a revised response which allocated costs using a weight-based methodology.

As also noted in *Comment 1*, ''when determining the appropriate method for allocating costs among products, the Department may take into account production quantities, relative sales values, and other quantitative and qualitative factors associated with the manufacture and sale of the subject merchandise and the foreign like product.'' For purposes of the final determination, we rejected Agro Dutch's yield-based allocation methodology for materials and other non-picking labor costs because the method relies purely on estimates of the mushroom yield factors for each size range, and because the cost per kilogram of growing a large or small mushroom is identical. We disagree with Agro Dutch that it is more efficient to grow a larger versus a smaller mushroom. Mushrooms in India are grown in large bags that contain the compost, mushroom fungus and other necessary materials. These bags are stored in large growing houses where the climate is controlled. Since three to four pickings can be made from any given bag, a company like Ponds' may choose to have shorter periods of time between the picking of each ''flush,'' in order to ensure that the harvests are predominantly small-to-medium sized mushrooms. Alternatively, a company like Agro Dutch may choose to wait longer between pickings, in order to ensure that the harvests are predominantly medium-to-large sized mushrooms. Thus, companies have some control over the relative sizes of mushrooms produced. While a weight-based allocation may not be perfect (*i.e.*, because on a per-mushroom basis slightly more costs are applied to a larger mushroom, given that a larger mushroom will produce more kilograms of products) we do not find this to be a substantial problem. Within the normal mushroom size ranges and given the nature of the production growing process, we consider weight-based allocation reasonable.

Therefore, it is the Department's position that the per-kilogram materials, non-picking labor, and overhead costs, within the normal ranges of mushroom sizes, are virtually identical, irrespective of the minor variations in the size of the specific mushroom. First, there is very little growing time difference between a 15–20 millimeter mushroom and a 35–45 millimeter mushroom. Second, different size mushrooms grow side-by-side, incurring the identical costs (*i.e.*, materials, non-picking labor, and overhead). Third, the mushroom companies limit the outlying sizes (*i.e.*, under 15 mm and over 45 mm) because smaller than 15 mm is considered scrap and greater than 45 mm have open gills and become too fibrous. Furthermore, it is reasonable to derive cost on the basis of weight because: (1) both Ponds and Agro Dutch track the mushrooms through the production process by weight, not by number of mushrooms, estimated yields, or by relative sales value; (2) mushrooms are sold by weight; (3) virtually the same activities and expenses are incurred in growing each kilogram; and (4) regardless of whether the mushrooms are sold as preserved or fresh product, wholes or PNS, they are substantially the same product. Simply stated, the cost-generating elements of growing mushrooms for both preserved and fresh, whole or pieces, large or small mushrooms are identical as evidenced

by the fact that a considerable quantity of mushrooms initially selected for the fresh sales market were eventually canned, and canned whole mushrooms may be re-processed into PNS.

Finally, the Department has accounted for specific cost differences, such as differences in picking costs, supported by our observations that additional time was required to harvest the smaller mushrooms. On this basis, consistent with *Mushrooms from Chile*, we continue to rely upon a weight-based methodology because, while ignoring differences in aesthetics and quality, it reasonably reflects the costs of producing the subject merchandise. *See IPSCO, Salmon from Chile, Flowers from Colombia* as cited in Comment 1.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after August 5,1998 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. The suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Agro Dutch Foods Limited	6.28
Ponds India, Ltd.	14.19
Alpine Biotech Ltd.	243.87
Mandeep Mushrooms Ltd.	243.87
All Others	10.87

Note: The margins based on facts available were not included in the calculation of the All Others rate in accordance with 735(c)(5)(A) of the Act.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 18, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–34703 Filed 12–30–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 31, 1998.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351 (April 1998).

Final Determination

We determine that certain preserved mushrooms (''mushrooms'') from the People's Republic of China are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination (*Preliminary Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 41794, August 5, 1998), the following events have occurred:

The respondent exporters in this investigation, China Processed Food Import & Export Company (''China Processed'') and its affiliate Xiamen Jiahua Import & Export Trading Company, Ltd. (''Xiamen Jiahua''), Shenzhen Cofry Cereals, Oils, & Foodstuffs Company, Ltd. (''Shenzhen Cofry''), and Tak Fat Trading Corporation Co. (''Tak Fat''), submitted revisions and corrections to their questionnaire responses in August 1998. An importer of the subject merchandise, Gerber Food (Yunnan) Co., Ltd. (''Gerber''), submitted shipment data on August 12, 1998.

On August 7, 1998, the petitioners in this investigation, L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushroom Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp., requested a public hearing. An importer of the subject merchandise, Hop Chong Trading Company, Inc. (''Hop Chong''), and the respondents subsequently requested a public hearing on August 17 and August 25, 1998, respectively.

We issued supplemental questionnaires to the respondents, the China Chamber of Commerce of Importers and Exporters of Foodstuffs, Native Produce and Animal By-Products (''China Chamber''), and the PRC Ministry of Foreign Trade and Economic Cooperation (''MOFTEC'') on August 7 and 10, 1998. We received responses to these questionnaires from the respondents and the China Chamber on August 21, 1998, and from MOFTEC on September 2, 1998.

In August and September 1998, we conducted verifications of the respondents' questionnaire responses, including information provided by the producers who supplied the subject merchandise during the POI—Dongya Food Company Ltd. (''Dongya''), Longhai Cannery Inc. (''Longhai''), Mei Wei Foods Industrial Co. Ltd. (''Mei Wei''), Fujian Province Putian Cannery (''Putian Cannery''), Fujian Zhaoan Canned Food Factory (''Zhaoan''); and Fujian Zishan Group Co., Ltd. (''Zishan'')—as well as Zhaoan's affiliated can producer Zhangzhou

Ruida Can Making Co., Ltd. (''Zhangzhou Ruida''). We issued reports on our findings of these verifications during September and October 1998.

The respondents submitted additional surrogate value data on October 1, 1998, and petitioners' responded to this submission on October 13, 1998.

The petitioners, respondents, Hop Chong, and importer Liberty Gold Fruit Co. Inc. (''Liberty Gold'') submitted case briefs on October 23, 1998, and rebuttal briefs on October 30, 1998. We held a public hearing on November 4, 1998.

Scope of Investigation

For purposes of this investigation, the products covered are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation are the species Agaricus bisporus and Agaricus bitorquis. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the investigation are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this investigation are the following: (1) all other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (''HTS''). Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of this investigation (''POI'') comprises each exporter's two most recent fiscal quarters prior to the filing of the petition. For all exporters, this period was July 1 through December 31, 1997.

Nonmarket Economy Country

The Department has treated the PRC as a nonmarket economy (''NME'') country in all past antidumping investigations (*see, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585, May 2, 1994) (''*Silicon Carbide*'') and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22545, May 8, 1995) (''*Furfuryl Alcohol*''). As discussed in the preliminary determination, the respondents claimed that economic changes in the PRC warrant revocation of PRC's NME status. We determined that the information proffered by the respondents provided insufficient support for their claim for market economy status and did not address a number of important factors for determining market economy status (*see* Memorandum from the Team to Lou Apple, dated July 27, 1998). No further information has been provided for the record since the preliminary determination. Therefore, in accordance with section 771(18)(C) of the Act, we have continued to treat the PRC as an NME in this investigation.

Market Oriented Industry Claim

Shortly before the preliminary determination, the respondents claimed that their material inputs were acquired at market prices and that, accordingly, the Department should determine that the PRC mushroom industry is a market-oriented industry (''MOI'') and should rely on the actual PRC prices for valuing these inputs. We did not have sufficient time to analyze this claim for the preliminary determination. Subsequent to the preliminary determination, we obtained additional information from the respondents, China Chamber, and MOFTEC, and conducted verifications that included examination of the respondents' claims. Based on our analysis, as discussed in detail below in Comment 1 of the ''Interested Party Comments'' section of this notice, we have determined that the respondents have failed to establish that the preserved mushrooms industry is a MOI. Therefore, we have continued to calculate normal value using the factors of production methodology, in accordance with section 773(c) of the Act.

Separate Rates

Each respondent exporter has requested a separate company-specific rate. China Processed is wholly owned by China National Cereals, Oils, & Foodstuffs Import & Export Corp., which in turn is owned by ''the whole people.'' Its affiliated exporter Xiamen Jiahua is a domestic joint venture between China National Cereals, Oils & Foodstuffs Corp. and Xiamen Special Economic Trade Group Cereals, Oils, & Foodstuffs Import & Export Company. Both of these companies are also owned by ''the whole people.'' Shenzhen Cofry is a limited liability company owned by the China Ocean Helicopter Company and the Anhui Cereals, Oils, & Foodstuffs Import & Export Group, which, in turn, are both owned by ''the whole people.'' Tak Fat is a Hong Kong trading company which is wholly-owned by Hong Kong entities; therefore, we determined that no separate rates analysis is required for this exporter.

As stated in *Silicon Carbide* and *Furfuryl Alcohol,* ownership of the company by ''all the people'' does not require the application of a single rate. Accordingly, the above-mentioned companies named as mandatory respondents as well as the companies who submitted a Section A response are eligible for consideration of a separate rate.

The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls, *e.g.*, export licenses and quotas and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757, November 19, 1997; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279, November 17, 1997; and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value,* 60 FR 14725, 14726, March 20, 1995 (''*Honey*'').

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588, May 6, 1991, and amplified

in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The respondents have placed on the record a number of documents to demonstrate absence of de jure control, including the ''Foreign Trade Law of the People's Republic of China'' and the ''Law of the People's Republic of China on Industrial Enterprises Owned By the Whole People.''

In prior cases, the Department has analyzed these laws and found that they establish an absence of de jure control. (*See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472, October 24, 1995); *see also Furfuryl Alcohol*.) We have no new information in this proceeding which would cause us to reconsider this determination.

As discussed in the preliminary determination, exports of mushrooms are also affected by quota allocations under a December 17, 1997, *Notice Regarding Printing and Distributing ''List of Commodities Subject Export License Administration and Issuance of Licenses at Different Levels'' and Relevant Issues* issued by MOFTEC (''*Notice*''). We noted that, in past cases, the Department has determined that there is an absence of government control over export pricing and marketing decisions of firms even though there may be some government involvement with respect to the export of products subject to investigation. *See Honey* at 14727. In this investigation, the involvement of the PRC government under this law is negligible with regard to a determination of separate rates. Accordingly, we determined that, within the preserved mushroom industry, there is an absence of *de jure* government control over exporting pricing and marketing decisions of firms.

2. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

During verification, our examination of correspondence and sales documentation revealed no evidence that any of the respondent exporters' export prices are set, or subject to approval, by any governmental authority, other than the export quota system identified above. That these exporters have the authority to negotiate and sign contracts and other agreements independent of any government authority was evident from our examination of correspondence and written agreements and contracts. Finally, we have determined that the responding exporters have autonomy from the central government in making decisions regarding the appointment of management. We also noted that the responding exporters retained proceeds from their export sales and made independent decisions regarding disposition of profits and financing of losses, based on our examination of financial records and purchase invoices (*see, e.g.*, China Processed October 16, 1998, verification report at pages 3–4).

Consequently, we determine that the respondent exporters in this investigation have met the criteria for the application of separate rates.

Margins for Exporters Whose Responses Were Not Analyzed

As discussed in the preliminary determination, for the responding companies that provided all the questionnaire responses requested of them and otherwise fully cooperated with the Department's investigation, but nonetheless, were not fully analyzed by the Department due to limited resources, we are assigning the weighted-average of the rates of the three fully analyzed exporting companies, or a non-adverse facts available rate. Companies receiving this rate are identified by name in the ''Suspension of Liquidation'' section of this notice.

PRC-Wide Rate

As stated in the preliminary determination, U.S. import statistics indicate that the total quantity and value of U.S. imports of mushrooms from the PRC is greater than the total quantity and value of mushrooms reported by all PRC exporters that submitted responses in this investigation. Given this discrepancy, it appears that not all exporters of PRC mushrooms responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the PRC-wide rate—to all exporters in the PRC, other than those specifically identified below under the ''Continuation of Suspension of Liquidation'' section of this notice, based on our presumption that the export activities of the companies that failed to respond to the Department's questionnaire are controlled by the PRC government (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, April 30, 1996) (''*Bicycles*'').

As explained in the preliminary determination, this PRC-wide antidumping rate is based on adverse facts available, in accordance with Section 776 of the Act. As adverse facts available, we are assigning the highest margin in the petition, 198.63 percent, because the margins in the petition (as recalculated by the Department at initiation) were higher than any of the calculated margins.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994) (hereinafter, the ''SAA''), states that ''corroborate'' means to determine that the information used has probative value. See SAA at 870. As discussed in the preliminary determination at 41798, we determined that the calculations set forth in the petition have probative value.

Fair Value Comparisons

To determine whether sales of the subject merchandise by China Processed/Xiamen Jiahua, Tak Fat, and Shenzhen Cofry to the United States were made at LTFV, we compared the export price (''EP'') to the normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to weighted-average NVs.

Export Price

China Processed/Xiamen Jiahua

We used EP methodology in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and constructed export price (''CEP'') methodology was not otherwise indicated. We calculated EP

based on the same methodology applied in the preliminary determination, with the following exceptions:

- We made corrections to the reported billing adjustments on certain China Processed sales, as identified in the September 18, 1998, pre-verification submission.
- We corrected the starting price for certain sales made by Xiamen Jiahua to reflect the price from its affiliated trading company to unaffiliated customers, as identified in the September 14, 1998, submission (*see* Comment 15).

Tak Fat

We used EP methodology in accordance with section 772(a) of the Act because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and CEP methodology was not otherwise indicated. We calculated EP based on the same methodology applied in the preliminary determination, with the following exception:

- We included certain sales in our calculations that were excluded in the preliminary determination because they appeared to have been made by another exporter. We determined at verification that, in fact, these sales were made by Tak Fat.

Shenzhen Cofry

We used EP methodology in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and CEP methodology was not otherwise indicated. We calculated EP based on the same methodology applied in the preliminary determination, with the following exceptions:

- We recalculated the international freight expenses paid to a market-economy supplier based on our verification findings.
- We made revisions to the reported billing adjustment amounts based on our verification findings.
- As Shenzhen Cofry's supplier, Zhaoan, used its own trucks to transport the finished merchandise to port, according to our verification findings, we made no deduction for foreign inland freight.

Normal Value

A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Sri Lanka, Egypt, and Indonesia are countries comparable to the PRC in terms of overall economic development (*see* Memorandum on Nonmarket Economy Status and Surrogate Country Selection from Jeff May, Director, Office of Policy, to Louis Apple, Office Director, AD/CVD Enforcement Group II, Office 5, dated February 23, 1998). According to the available information on the record and as stated in our preliminary determination, we have determined that both India and Indonesia meet both statutory requirements for an appropriate surrogate country for the PRC. In the final determination, we have continued to rely on India as the surrogate country, based on the quality and contemporaneity of the currently available data. Accordingly, we have calculated NV using Indian surrogate values for the PRC producers' factors of production, except in those instances where an input was sourced from a market economy and paid for in a market economy currency, such as glass jars consumed by Longhai and labels consumed by Mei Wei. We have obtained and relied upon publicly available information (''PAI'') wherever possible.

The selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POI and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics. For a complete analysis of surrogate values, see the Final Determination Valuation Memorandum from the Team to the File (''Valuation Memorandum''), dated December 18, 1998. In addition, the selection of many of these surrogate values is discussed below in the ''Interested Party Comments'' section.

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the companies in the PRC which produced mushrooms for the exporters which sold mushrooms to the United States during the POI. As in the preliminary determination, we calculated NV based on the factors of production reported by the respondents.

To calculate NV, the verified per-unit factor quantities, adjusted where appropriate, were first multiplied by the surrogate values; the resulting products were then summed. We then added amounts for overhead, selling, general, and administrative expenses (including interest) (''SG&A''), and profit, and packing expenses incidental to placing the merchandise in packed condition and ready for shipment to the United States. We calculated NV based on the same methodology used in the preliminary determination with the following exceptions:

For all respondents: we did not value separately the reported factors for salt, ascorbic acid, vitamin C, chlorine, and monosodium glutamate because the surrogate value for factory overhead includes these factors and we were not able to separate these factors from the factory overhead percentage (*see* Comment 5). We have also reclassified labels from a direct material expense to a packing expense (*see* Comment 14).

China Processed/Xiamen Jiahua

- We used corrected factor data reported by Zishan in its September 18, 1998, submission and resubmitted on November 20, 1998.
- We applied revised packing factors for Longhai and Zishan, as reported in the September 18, 1998, submission.
- We applied revised supplier distances for certain Longhai inputs, as reported in the September 18, 1998, submission.
- For Dongya, Longhai, and Zishan, we corrected consumption factor data for various inputs, as identified in each company's verification report. However, we did not use all of the corrected data in our calculations because some of the consumption factors are not classified as part of factory overhead (see Comment 5).

Shenzhen Cofry

- For Zhaoan, we made revisions to the reported electricity, packing material, and packing labor consumption factors based on our verification findings.
- Because Zhaoan used its own trucks to transport cartons and labels from the suppliers to the factory, according to our verification findings, we did not add an input freight value for these factors.

Tak Fat

- We valued paper labels consumed by Mei Wei based on the market economy price paid for this market economy-sourced input by the affiliated exporter Tak Fat.

• We revised several of the packing material weights used in our valuation calculations based on measurements taken at the Mei Wei verification.

C. Surrogate Values

We valued fresh mushrooms using the average of (a) the unit value for fresh mushroom purchases derived from the 1996–1997 annual report from an Indian preserved mushroom producer, and (b) a published September 1996 wholesale price quote for fresh mushrooms (see Comment 3 and the Valuation Memorandum). We were unable to identify an appropriate surrogate value for brined (provisionally preserved) mushrooms; thus, as in the preliminary determination, we used the fresh mushroom value to value brined mushroom consumption but adjusted the reported brined mushroom consumption factor to an amount equivalent to a fresh mushroom consumption factor using an industry standard ratio (*see* Comment 4). For tin cans and lids, we used values derived from the average unit price paid by an Indian preserved mushrooms producer, Agro Dutch Foods (India) (''Agro Dutch'') (*see* Comment 6). For glass jars, and labels, we used Indian import values from *Monthly Statistics of the Foreign Trade of India* (''*Monthly Statistics*'').

For Longhai, which resold scrap can material, we made a deduction to the surrogate cost of production using an average unit value for tin waste and scrap derived from 1997 U.S. import statistics. As in the preliminary determination, use of this U.S. value was necessary because we were unable to identify an appropriate surrogate value from a surrogate country. As in the preliminary determination, we have not made a deduction for scrap mushrooms not consumed in the canning/jarring process because no party has proffered an appropriate surrogate value and this factor does not appear to have a significant impact on the calculation of NV.

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

As in the preliminary determination, we valued electricity using the 1996 electricity rates reported in an article ''All Charged Up Over the Cost of Power in India'' published in *Business World* in August 1996. We based the value of coal on the import values from the *Monthly Statistics*. We revised the valuation of diesel fuel to rely on the average of the prices reported in a December 1997 issue of *Economic Times of India* (*see* Comment 9 and the Valuation Memorandum).

We based our calculation of factory overhead (which includes several materials valued separately in the preliminary determination), SG&A expenses, and profit on data contained in the financial reports of Agro Dutch (*see* Comment 5).

As in the preliminary determination, we valued truck freight rates using a 1994 rate from *The Times of India.* As we were unable to identify a surrogate value for inland water transportation, we valued boat and barge transportation using the surrogate value for truck freight. With regard to rail freight, we based our calculation on information from the *Indian Railway Conference Association.*

The CAFC's decision in *Sigma Corp.* v. *United States,* 117 F. 3d 1401 (CAFC 1997) requires that we revise our calculation of source-to-factory surrogate freight for those material inputs that are based on CIF import values in the surrogate country. Therefore, we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory, or from the domestic supplier to the factory on an import-specific basis.

For the following reported packing materials: glue, tape, labels, corrugated paper, wooden pallets, and shrink wrap, we used import values from the *Monthly Statistics.* While we used the same source for the surrogate value for glue, we used a different import category than that used for the preliminary determination (*see* Comment 8).

In addition, we have corrected the POI average exchange rate used to convert all surrogate values in Indian rupees to U.S. dollars because in the preliminary determination we inadvertently used the International Monetary Fund's Special Drawing Rights rate rather than a U.S. dollar rate. For the final determination, we have used the POI average of the Federal Reserve exchange rates for India. The use of the POI average rate for conversion of the surrogate values, rather than the rate on the date of sale under section 773A(a) of the Act, is in accordance with our policy and practice, as discussed in *Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination not to Revoke Order in Part: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China,* 63 FR 63842, 63854, November 17, 1998.

Critical Circumstances

We have determined that critical circumstances exist for one of the mandatory respondents, Tak Fat, and the non-responding exporters. With regard to the other two mandatory respondents, Shenzhen Cofry and Xiamen Jiahua, we have determined that critical circumstances do not exist based on our analysis of updated shipment data. Furthermore, we have reversed our preliminary critical circumstances finding with regard to the companies who submitted responses but whose responses were not analyzed due to the Department's own administrative constraints. In accordance with *Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China,* 62 FR 9160, February 28, 1997 (''*Brake Drums and Brake Rotors*''), and *Notice of Preliminary Critical Circumstances Determination: Honey from the People's Republic of China,* 60 FR 29824, June 6, 1995 (''*Honey* Critical Circumstances''), we do not find critical circumstances for these non-mandatory respondents. For additional discussion, *see* Comment 2, below.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, and original source documents provided by respondents.

Interested Party Comments

A. General Issues

Comment 1: Preserved Mushrooms as a Market-Oriented Industry

The petitioners contend that the Department should reject the respondents' claim that the preserved mushrooms industry should be treated as a MOI and thus the normal value should be based on constructed value using the producers' costs for the inputs, because the PRC industry has failed to participate sufficiently in the investigation for the Department to determine whether a MOI exists. The petitioners assert that much of the PRC industry has not responded to the Department's questionnaires, given that only 13 exporters responded out of the total of 62 companies to whom the Department issued a questionnaire. As Department practice requires a response from all producers, the petitioners assert that this deficiency is a fatal flaw in the respondents' claim. According to the petitioners, to base the MOI determination solely on the basis of the information provided by the PRC entities that chose to respond, as the petitioners suggest that the respondents

are contending, would change the MOI analysis in such a way as to obviate the usefulness and validity of the test, which rightly requires analysis of the entire industry in question.

In addition, the petitioners contend that the respondents fail to meet any of the MOI criteria. As stated in the *Amendment to Final Determination of Sales at Less than Fair Value and Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts from the People's Republic of China*, 57 FR 15054, April 24, 1992 (''*Lug Nuts*''), an affirmative MOI finding requires (1) no state controls over pricing or production; (2) an industry characterized by private or collective ownership; and (3) market-determined prices for virtually all inputs. The petitioners' arguments against the respondents' MOI claim address all three criteria as follows:

Pricing

- The PRC government is involved in the industry by maintaining and enforcing, through the China Chamber, a minimum price floor that requires companies to follow the controlled prices.
- The PRC government is also involved through the imposition and enforcement of an export quota, which affects production quantities since the industry is primarily export-oriented.

Ownership

- The Department must determine that the industry is not characterized by private or collective ownership because many producers did not respond to the Department's questionnaire and thus are presumed to be state-controlled.
- The limited ownership data provided by respondents relies on information collected specifically for this proceeding and support documentation selected by the respondents. This information constitutes an inadequate and biased sampling from which to determine that the entire preserved mushroom industry is characterized by private or collective ownership.

Market Prices for Inputs

- The respondents' support for the claim that market-determined prices are paid is inadequate because it lacks objective corroboration or is too narrow in scope to be considered as generally acceptable throughout the PRC.
- Prices for salt, electricity, vitamin C, citric acid, and paper are not market-determined because they are either subject to price controls or are controlled by state-owned enterprises.
- The respondents have failed to establish that prices for chemicals, coal, labor, real estate, and capital markets, which were found not to be market oriented in previous cases, are market oriented.
- The respondents provided no information to indicate that suppliers to the preserved mushroom industry paid market-determined prices for their inputs (*e.g.*, fertilizer and pesticides for mushroom growing), in accordance with the Department's request as part of the fourth administrative review of *Chrome-Plated Lug Nuts from the PRC.*

The respondents hold that the information they have supplied for the record of this investigation to support their MOI claim for the preserved mushrooms industry provides sufficient coverage for virtually the entire industry. The respondents assert that, because the exporters who responded to the Department's questionnaire account for 89 percent of POI exports to the United States and the mandatory respondents cover 57 percent, this information should satisfy the ''virtually entire industry'' test. Moreover, the respondents note that the Department only issued the MOI questionnaire to the mandatory respondents, the producers who supplied the merchandise to them, the China Chamber, and MOFTEC, and these entities responded; thus, they maintain that they cannot be faulted for not supplying additional information regarding industry coverage.

With regard to the MOI test, the respondents claim that they meet all three criteria of this test and point to their submissions and verification findings to support their position. The respondents make the following arguments to demonstrate that the industry is a MOI:

Pricing

- The PRC government is not involved in setting the prices, production quantities, or allocation of preserved mushrooms.
- ''Floor prices'' of preserved mushrooms, to the extent they exist, were not established by the PRC government but by the exporters to prevent market disruption in foreign markets; and notwithstanding this test, examination of the actual sales prices shows that the exporters did not follow the floor prices consistently, and there is no evidence that MOFTEC enforced them.
- Quota allocations are marketable and can be exchanged among the PRC exporters, thus lessening any trade distortions and further demonstrating the market orientation of the industry.

Ownership

- There is no state ownership in the preserved mushroom production or exporting industries, as none of the 52 canneries is currently run by the state and the exporters are all either privately owned or collectively owned.
- The Department verified the respondents to confirm the absence of state control over their operations, and reviewed the business licenses of non-mandatory respondents and producers, thus establishing that there is no ''substantial state ownership'' in the PRC preserved mushrooms industry.
- The Department cannot presume that the industry is state-owned due to the failure of some producers to participate in the investigation because totaling all of the ownership information submitted and reviewed at verification provides sufficient coverage of the entire preserved mushroom industry.

Market Prices for Inputs

- The respondents have placed substantial evidence on the record, verified by the Department, that they pay market-determined prices.
- The disparity in input prices reported by the respondents' suppliers demonstrates the absence of government control in pricing, except for salt and electricity.
- Even though local governments can control salt and electricity prices, these input prices also vary to the same extent as the other inputs and, at any rate, these inputs constitute only an insignificant amount of the total inputs, by value.
- The respondent exporters and producers reported and the Department verified the freedom with which the producers enter and use capital markets, and buy and sell machinery and land rights.
- The petitioners' argument that the input pricing criterion of the MOI test requires evidence that the inputs used to create the inputs to the subject merchandise are market oriented is an expansion of the existing MOI test. If this condition is included as part of the test, no industry in a NME country would be able to establish MOI status because of all the input suppliers the Department would be forced to investigate.

DOC Position:

We disagree with the respondents and have not found the preserved mushrooms industry in the PRC to be a MOI.

As a threshold matter, we agree with the petitioners that the respondents

have not provided information for the record that covers virtually all of the producers of the industry. As the petitioners note, only 13 exporters responded to the Department's questionnaire and provided at least some information about their suppliers. The respondents provided information that there are at least 52 producers of the subject merchandise in the PRC, but there is no information on the record which defines how large the universe of preserved mushrooms producers in the PRC is with any specificity. While the respondents claim that the exporters who responded to the questionnaire account for 89 percent of PRC exports to the United States, there is no information on the record to identify what percentage of preserved mushrooms producers, including those who do not export to the United States, is covered by the respondents' data. In addition, the import data on the record indicate that there are PRC exporters which did not respond to the questionnaire, as noted in the preliminary determination at 41798. Even in those cases where the number of investigated firms is limited by the Department, a MOI allegation must cover all (or virtually all) of the producers in the industry in question (*see Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat from the PRC*, 62 FR 41347, 41353, August 1, 1997). Thus, the record evidence provides only a partial picture of the preserved mushrooms industry.

Putting aside the coverage problem, the record does not support a finding that the preserved mushrooms industry has met all three prongs of the MOI test. As noted above, three conditions must be met for the Department to determine that a MOI exists: (1) no state controls over pricing or production; (2) an industry characterized by private or collective ownership; and (3) market-determined prices for virtually all inputs. The limited picture available from the record is a positive one from the standpoint of the first prong of the MOI test. The PRC preserved mushroom industry appears to consist of a large number of firms of varying size that do not appear constrained by government pricing or output mandates. Ownership of firms in the industry appears diverse, consisting of state-owned enterprises (''SOEs''), joint-ventures, collectives, ''privately run'' enterprises, and stock companies (of unknown type). The six producers we verified appear unconstrained by government pricing, production mandates, or controls that directly interfere with their business operations or efforts to make a profit.

Notwithstanding the issue of PRC industry coverage, even if we were to assume that such operational independence exists for the industry as a whole, so that the first prong of the MOI test were met, the extent of private and collective ownership in the industry, under the second prong of the MOI test, is unclear. First, while the industry is, indeed, characterized by diverse ownership interests, the number of private enterprises and collectives in the industry, and the share of total industry production capacity they account for, is quite small. By contrast, the largest mushroom cannery in the PRC is a SOE, *i.e.*, a company owned ''by all the people,'' accounting for almost 7 percent of total industry production capacity accounted for by the producers identified by the respondents, and two of the three largest mushroom canneries are SOEs, accounting for over 12 percent of this production capacity. The eight SOEs together account for approximately 20 percent of total industry production capacity accounted for by the identified producers (*see* Exhibit 6–A of the China Chamber's August 21, 1998, submission).

Second, the vast majority of firms in the industry are classified as ''shareholding'' enterprises. Shareholding enterprises in the PRC are the result of corporatization and other past and current efforts by the government to ''invigorate'' SOEs and increase their productive efficiency, but in the absence of a system of well-defined, enforceable private property rights (and the social and legal institutions necessary to support such a system). In the absence of such rights and the necessary supporting legal and social institutions, it is not at all clear to what extent effective ownership of these ''new'' (or what respondents refer to as ''former'') SOEs has changed and how it has changed. *See Forging Reform in China: The Fate of State-Owned Industry*, Edward S. Steinfeld, 1998 (relevant pages included in the record as part of a December 18, 1998, memorandum to the file). In any case, these shareholding enterprises in effect remain SOEs; only their labels have changed.

The status of these shareholding enterprises under the second prong of the MOI test is therefore unclear. Where shareholders are predominantly private individuals, private enterprises, collectives, or foreign-invested enterprises, the shareholding enterprise arguably should be classified as equivalent to a private enterprise or collective for purposes of the second prong of the MOI test. However, where the shareholders are predominantly SOEs (either ''new'' or ''old''), the shareholding enterprise arguably should remain classified as an SOE for purposes of the second prong of the MOI test.

In this case, the evidence on the record leaves unclear the ownership status of the large number of shareholding enterprises in the industry and the Department therefore cannot determine that the second prong of the MOI test has been met.

With respect to the third prong of the MOI test, the Department remains fundamentally concerned about the price of certain key inputs, land and capital, used to produce the subject merchandise. Fresh mushrooms are the primary raw material input used to make preserved mushrooms, making the price of fresh mushrooms an important determinant of the cost and, therefore, the price of the subject merchandise. Since the price of land is an important determinant of the cost and, therefore, price of agricultural products, like mushrooms, whether the price of land in the PRC is market-determined is important from the standpoint of the third prong of the MOI test.

As stated in respondents' August 21, 1998, MOI questionnaire responses, land cannot be privately owned in the PRC. That is, there is no system of well-defined, enforceable, private property rights to protect the interest of individuals who would sell (lease) and buy (rent) it with best use and profit in mind. The respondents cite to the existence of land-use rights in the PRC, how they are negotiable, how terms and conditions of their transfer are negotiated between buyer and seller, and how transfer of these rights are not subject to government limitation so long as they are registered with the government and the relevant land tax is paid. It may be argued that a system of well-defined, enforceable land-use rights that are complete and fully transferable is sufficient to generate market-based outcomes in the terms of land use and land values. However, in the PRC, at least, despite the respondents' suggestions, no such system appears to exist.

We note that local trade in land-use rights may be helping to put the PRC's scarce land resources to better use, and the preserved mushroom producers may, in fact, benefit from such trade. We also note the development of secondary land-use rights markets in the PRC, but this situation should not obscure the fact that non-market factors still play a significant role in determining how and by whom land in the PRC is used. That is, land-use rights in the PRC continue

to be formulated and allocated in large part on an administrative basis by village/township/local leaders who have both personal and social objectives in mind, *e.g.*, personal income, grain quotas and tax collections. The administrative bases upon which land use-rights are determined are inconsistent, are not well defined and differ by time and place, from village to village and township to township. *See* Scott Rozelle and Guo Li, ''Village Leaders and Land-Rights Formation in China,'' *American Economic Review*, May 1998 (included in the record as part of a December 18, 1998, memorandum to the file).

Based on the above, we conclude that, even though the allocation of land may, in some cases and in some sense, be consistent with a market-based outcome, the price or rent paid for the land (or its use) is not. For example, local leaders of a township might decide that it is better for their own personal gain (or better for the township) to use a large plot of land to build a factory than it is to continue farming the land. It is possible that the use of the large plot of land in this manner is consistent with the outcome that would arise in a market economy context in which a businessperson approached a private landowner with an offer to buy or lease the same large plot of land. The difference, however, is that in the PRC, there is no true landowner (protected by well-defined enforceable private property rights) who, in looking out for his or her best interest as a landowner, seeks to receive the best possible price. Instead, there is only the local leader who controls use rights over the land and who therefore can unilaterally modify and transfer those rights from the farmer to him- or herself or to the township at what essentially is an arbitrarily determined price. Thus, we determine that the price of land, an important factor in calculating the cost of producing the subject merchandise, is not sufficiently market-based under the third prong of the MOI test.

With respect to capital costs, we note that preserved mushroom producers typically invest in different types of equipment that cut/slice, cook, sterilize, and can mushrooms, as identified in the production process descriptions included in the questionnaire responses of the producers. Two respondents also reported meeting a substantial share of their working capital needs through bank loans. Capital costs are, therefore, not insignificant in the production of preserved mushrooms. The respondents reported similar working capital loan rates, which one respondent explained are set, with upper and lower limits, by the central government. These rates apply directly to the loans that banks extend to the producers and other enterprises in the PRC, and while the central government sets these rates with inflation in mind, there is no basis to believe that such administratively-set rates are market-based. In fact, the World Bank has identified the PRC's interest rate setting practices as one of several key areas of ongoing, but still incomplete, reform in the banking and finance sectors. *See* ''Monetary and Exchange Rate System Reform in China: An Experiment in Gradualism,'' *IMF*, Occasional Paper 141, September 1996 (included in the record as part of a December 18, 1998, memorandum to the file). Thus, we determine that the cost of capital, an important factor in calculating the cost of producing the subject merchandise, is not sufficiently market-based under the third prong of the MOI test.

Because we have determined that the preserved mushrooms industry is not a MOI for the reasons discussed above, we are not using the costs reported by the respondents in calculating NV. Therefore, the issue raised by the petitioners—that the cost information is inadequate—is moot.

Comment 2: Critical Circumstances

The respondents argue that, because the last antidumping case on the subject merchandise resulted in a negative determination (1983 canned mushrooms case), there is no history of dumping in the United States and therefore there is no reasonable basis to believe or suspect that critical circumstances exist under section 733(e)(1) of the Act. Further, the respondents contend that the Department should examine the imports of the subject merchandise with a seasonal-trends analysis. Finally, respondents and importers Liberty Gold and Hop Chong argue that the Department should not extend its findings to companies which responded but are not being examined. For those companies, these parties contend that the Department should either examine the available company-specific shipment data on the record or follow the practice set forth in *Brake Drums and Brake Rotors* and not find critical circumstances.

Hop Chong further argues that it has been denied due process in this proceeding because it has not had the opportunity to provide shipment data for review by the Department, nor to comment on the import data that may be used eventually by the Department in its final analysis.

The petitioners contend that critical circumstances exist based on an established history of dumping—a Brazilian antidumping duty order—and a massive surge in imports. Because critical circumstances apply to all of the examined exporters and the import statistics also show a massive surge in subject merchandise imports, the petitioners assert that critical circumstances should continue to apply to all exporters, including those who provided data to the Department that were not examined. The petitioners claim that the situation in *Brake Drums and Brake Rotors* and *Honey* Critical Circumstances do not apply in this case because in those cases, the Department did not find critical circumstances for most of the examined exporters, whereas here, the Department has found critical circumstances for all of the examined exporters and has also observed a massive surge in the import statistics.

DOC Position:

We continue to find critical circumstances for mandatory respondent Tak Fat as well as all non-responding PRC exporters covered by the PRC-wide rate. However, in the final determination, we did not find critical circumstances with respect to mandatory respondents Shenzhen Cofry and China Processed/Xiamen Jiahua based on updated shipment data, as described below. In addition, we agree with the respondents, Hop Chong and Liberty Gold with respect to excluding the non-mandatory respondents from any affirmative critical circumstances finding, in accordance with our past practice, as described below.

Section 733(e)(1) of the Act provides that if there is a reasonable basis to believe or suspect that critical circumstances exist, the Department will determine whether: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

As discussed in the preliminary determination, the first critical circumstances criterion is satisfied for this investigation based on the fact that Brazil has levied antidumping duties against preserved mushrooms from the PRC. Brazil's antidumping duty order will be in force until January 2003. Therefore, we determine that there is a

history of dumping of mushrooms elsewhere by PRC producers/exporters and thus the first statutory criterion is met (*see* section 733(e)(1)(A)(i) of the Act), contrary to the respondents' assertions.

Because we have found that the first statutory criterion is met, we must consider the second statutory criterion: whether imports of the merchandise have been massive over a relatively short period. According to 19 CFR 351.206(h), we consider the following to determine whether imports have been massive over a relatively short period of time: (1) volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Under 19 CFR 351.206(h), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we normally will not consider the imports to have been ''massive.'' To determine whether or not imports of subject merchandise have been massive over a relatively short period for the final determination, we compared each mandatory respondent's export volume for the seven months subsequent to the filing of the petition (January-July 1998) to that during the seven months prior to the filing of the petition (June-December 1997). These periods were selected based on the Department's practice of using the longest period for which information is available from the filing of the petition through the effective date of the preliminary determination.

Based on our analysis, we find that the increase in imports was greater than 15 percent with respect to Tak Fat. However, with respect to Shenzhen Cofry and China Processed/Xiamen Jiahua, we find that the increase in imports was less than 15 percent. Although the respondents have claimed that these imports should be examined in the context of a seasonal trend analysis, we are unable to discern a seasonal pattern for Tak Fat, based on the information on the record.

As both of the statutory criteria for finding critical circumstances have been met for respondent Tak Fat, we therefore determined that critical circumstances exist for this exporter. Because we determined that imports were not massive for Shenzhen Cofry and China Processed/Xiamen Jiahua, both of the statutory criteria for finding critical circumstances have not been met for these exporters and, accordingly, we did not find critical circumstances. For those companies subject to the PRC-wide rate (*i.e.*, companies which did not respond to the Department's questionnaire), we determined, based on the facts available, and making the adverse inference permitted under section 776(b) of the Act because these entities did not respond to our questionnaires, that there were massive imports of preserved mushrooms with respect to these companies. Therefore, we determined that critical circumstances exist with regard to these companies, consistent with *Brake Drums and Brake Rotors.* With regard to the respondents who were not analyzed in this investigation, we have reconsidered our preliminary determination finding of critical circumstances. For the final determination, we are following the practice set forth in *Brake Drums and Brake Rotors* at 9165 and *Honey* Critical Circumstances. Therefore, because the Department did not analyze company-specific data for the non-mandatory respondents due to the Department's own administrative constraints, we do not believe it is appropriate to find critical circumstances with regard to these companies.

B. Surrogate Value Issues

Comment 3: Valuation of Fresh Mushrooms

The respondents claim that the fresh mushroom surrogate value used in the preliminary determination—average unit value derived from three Indian producers' annual reports—is inappropriate because the growing method used by the Indian producers is completely different from that used by the PRC growers. Thus, the respondents argue that the Indonesian value they placed on the record is more appropriate because it reflects a growing method closer to that of the PRC producers and no Indian fresh mushroom price is of the same quality in that regard. If the Department nevertheless relies on Indian data for valuing fresh mushrooms, the respondents propose a September 1996 wholesale price for mushrooms quoted in the Indian publication *Business Line.* The respondents contend that this price is a more appropriate surrogate value because the value used in the preliminary determination, derived from the financial statements of three Indian producers, was based on transfer prices of vertically-integrated Indian producers and there is no information on the record indicating that these values reflect arms-length market prices.

The petitioners contend that India remains the appropriate surrogate country and thus, consistent with the Department's regulations and practice, Indian values should be used except where Indian values are unreliable or inappropriate. The petitioners argue that the respondents have failed to demonstrate that the Indian values are inappropriate and, therefore, the Department should continue to use the value derived from the Indian producers because it represents the experience of Indian producers over an annual period that is at least partly contemporaneous with the POI. The petitioners reject the respondents' characterization of the Indonesian growers' techniques as ''low tech'' and assert that attributing differences in Indian and Indonesian surrogate values solely to growing techniques is oversimplified and faulty. The petitioners state that the Indian value proposed by the respondents is inferior because it reflects experience in North India, away from the primary Indian mushroom growing area in South India, and because it is a single price observed prior to the POI.

DOC Position:

We disagree with the respondents with respect to the use of Indonesian fresh mushroom prices over Indian prices for the fresh mushroom surrogate value. Because we have already determined that India is the appropriate surrogate country, we would use data from Indonesia only if the Indonesian surrogate value is superior in terms of specificity, quality, and contemporaneity. The Indonesian mushroom price proposed by the respondents is not superior in any respect. The respondents claim that the Indonesian value is more specific to the PRC factor than the Indian prices because the Indonesian mushrooms allegedly are produced in a manner more similar to that of the PRC mushrooms. However, the factor to be valued here is fresh mushrooms, and based on the information on the record, there is no physical difference among the mushrooms grown in India, Indonesia, and the PRC, regardless of the means used to produce them. In other words, there is no distinguishing physical characteristic that makes an Indonesian mushroom more similar to a PRC mushroom than an Indian mushroom.

Even if the Department were to consider the production method of an input as a factor in determining the appropriate surrogate value, the available evidence does not support the respondents' argument that Indonesian production methods are ''low tech''

compared to Indian production methods and thus more similar to PRC production methods. The respondents rely on the statements in the Indonesian respondents' April 3, 1998, questionnaire responses that their mushrooms are grown in ''sheds'' and on other information indicating that the ambient climate is a factor for the location of Indonesian farms to conclude that such operations are equivalent to the PRC grower's ''huts'' which lack climate control (*see* Respondents' May 28, 1998, submission at pages 5–7 and Exhibit 2). However, the information on the public record of the companion investigation of certain preserved mushrooms from Indonesia indicates that the Indonesian growers are *not* like the PRC growers and, in fact, are more like the ''high tech'' Indian growers, as noted by the petitioners at pages 11–12 and Exhibit 1 of their June 3, 1998, submission. For example, while the PRC growers used a fixed bed system (May 28, 1998, submission at page 5), the Indonesian respondents used a tray system (*see* P.T. Dieng Djaya/Surya Jaya Abadi Perkasa's (''Dieng/Surya Jaya'') and P.T. Zeta Agro Corporation's April 23, 1998, responses at pages 51 and 22, respectively [1]). Contrary to the respondents' assertions, the Indonesian growers employ a climate control system (*see, e.g.*, Dieng/Surya Jaya's June 22, 1998, response at pages 7–9, respectively). Accordingly, there is no basis to reject the Indian surrogate values in favor of the Indonesian surrogate values.

With regard to the Indian mushroom prices, we have analyzed further the average unit values from the three Indian producers to derive the surrogate value in the preliminary determination. We found that two of the unit values are based on the producer's sales of fresh mushrooms to unspecified domestic customers, while the unit value for the third company, Premier Mushrooms Farms (''Premier''), is based on its purchases of fresh mushrooms for its canning operations. As the factor to be valued is fresh mushrooms consumed as an input for preserved mushrooms, we find the unit value derived from Premier's fresh mushrooms purchases during 1996–1997 to be more specific for the factor being valued than the value derived from the other two producers' fresh mushroom sales.

Moreover, in comparing the Premier mushrooms purchase price to the *Business Line* quote, we found no basis to conclude that either price is superior to the other in terms of quality, specificity, and contemporaneity. Both prices are equally specific—a wholesale trade level price to canners of fresh mushrooms grown in India. Both prices are essentially from the same time period—the price quote is from September 1996, while the Premier annual report covers the period of April 1996 through March 1997. Neither source is from the POI, and the price quote corresponds to the mid-point of the annual report's time period. Both prices are based on PAI and there is no basis to determine that one is more reliable than the other. Thus, we find that these surrogate values are equally valid. Accordingly, we have based the surrogate value for fresh mushrooms on the simple average of these two sources for the final determination.

With regard to petitioners' arguments on the price quote, we find no basis to determine that a surrogate value is inferior simply on the grounds that it is from a part of the surrogate country that is not the purported principal production area of the subject merchandise. The petitioners have provided no evidence that this price is unacceptable for that reason.

Comment 4: Valuation of Brined (Provisionally Preserved) Mushrooms

The petitioners contend that the Department should value brined mushrooms used as a material input for the subject merchandise by adjusting the brined mushroom consumption factor to a fresh mushroom equivalent, as applied in the preliminary determination. The petitioners state that this methodology is reasonable because it accounts for the higher yield and costs associated with brined mushroom inputs, and there is no alternative surrogate value for brined mushrooms on the record.

The respondents assert that the Department has already accounted for the costs of using brined rather than fresh mushrooms as an input through the higher consumption factors of labor and water used to debrine mushrooms before canning. The respondents contend that the increased consumption of these factors serves as an adjustment factor for the brined mushroom input. Thus, the respondents argue that, if the Department continues to adjust the brined mushroom factor to a fresh mushroom factor, it must reduce the labor and water consumption factors to avoid double-counting these values.

DOC Position:

In the absence of a better methodology, we agree with petitioners and continue to adjust the brined mushroom input factor to a fresh mushroom equivalent in the same manner as that in the preliminary determination. We made the adjustment by applying an industry standard ratio to the brined mushroom factor. Furthermore, we find no basis on which to conclude that the alleged increased labor and water factors for brined mushrooms served as an adjustment factor. There is no information on the record to demonstrate that brined mushroom inputs had different labor and water factors associated with them. Our review of the factors shows no relatively higher consumption factor corresponding to subject merchandise produced from brined mushrooms. Accordingly, we have no basis to assume that these factors are double-counted through the brined mushroom adjustment methodology employed.

Comment 5: Valuation of Overhead, SG&A and Profit

The respondents contend that the ratios used to calculate factory overhead, SG&A, and profit in the preliminary determination, as derived from the annual reports of three Indian producers of preserved mushrooms, are inappropriate for calculating the surrogate values for these factors. According to the respondents, these Indian producers are large, vertically integrated, technologically advanced farms/canneries, while the PRC producers who supply the respondent exporters are canners who purchase mushrooms from low technology farms. Thus, the respondents continue, these Indian ratios are based on production costs reflecting growing costs. The respondents contend that a more appropriate source for these ratios is the data provided by respondents from the Indonesian vegetable and fruit canning industry, since this information reflects the experience of a surrogate country food canning industry. In the alternative, the respondents state that if the data from Indian annual reports are to be used, the Department should rely only on the Agro Dutch Annual Report because the other two companies' reports reflect a disproportionate amount of non-subject merchandise.

The petitioners respond that the respondents have provided no evidence that the Indonesian figures are based on data that are more representative than the Indian data. The petitioners note that the Indonesian data include data from the production of non-subject merchandise and there is no evidence that these data relate solely to canning operations. According to the petitioners, the Indonesian data may also include fully integrated producers (*i.e.* producers who grow the product as well as can it) since the Indonesian

[1] Relevant pages from the public versions of the Indonesian responses have been included in the Valuation Memorandum.

producers of preserved mushrooms are also mushroom growers. In addition, while the petitioners concede that one of the three Indian companies' financial data may be distortive due to a disproportionate amount of non-subject merchandise, they assert that the other two, Agro Dutch and Saptarishi Agro, are predominantly producers of preserved mushrooms. The petitioners argue that, as the respondents have failed to identify any significant difference in the quality and representativeness of the data contained in the financial statements of these latter two companies, the Department should use this financial data to value the surrogate value percentages.

DOC Position:

We agree with the petitioners with respect to the selection of Indian financial statement data. As we discussed above, we have determined that India is the appropriate surrogate country. Thus, we rely on Indian data unless alternate data is superior in terms of specificity, quality, and contemporaneity. In this instance, the Indonesian data offered by the respondents are not superior in any respect. While both sets of financial data are equivalent in terms of time period, the Indian data are more specific to the industry under investigation. While the Department would take into consideration whether the Indian data included a high proportion of mushroom growing production over canning operations, we note that there is no basis on which to conclude that the Indonesian canned vegetable producer data do not also include growing production data—a point conceded by the respondents at the Department's hearing (*see* Transcript of November 4, 1998, hearing at page 77).

However, we have revised our preliminary determination methodology to base the surrogate values for factory overhead, SG&A, and profit solely on the data from the Agro Dutch 1996–1997 financial statement. Although we used the data from all three Indian producers for the preliminary determination, we have concluded based on further analysis of the data that only the Agro Dutch data are appropriate for use in the final determination. As noted by both the respondents and the petitioners, the Transchem data are based on a higher proportion of nonsubject merchandise than those of the other two producers. However, we also note that Saptarishi Agro has accounted for its raw materials in a manner inconsistent with this investigation. As discussed in more detail in the Valuation Memorandum, Saptarishi Agro's materials total is comprised of raw materials and packing materials. The packing material amount is almost as large as the raw materials amount. The raw materials schedule does not include cans or jars in the listing of the major raw materials. Accordingly, we have made the reasonable assumption that Saptarishi Agro included the costs of containers in the packing materials amount, and we are unable to break out this amount further. In turn, we cannot calculate a materials total consistent with our methodology that would enable us to properly calculate factory overhead, SG&A, and profit ratios from Saptarishi Agro's data. Therefore, we have relied solely on the Agro Dutch data.

We also note that the factory overhead ratio calculated using Agro Dutch's financial statement appears to include the costs for materials such as salt, water, chlorine, and ascorbic acid (vitamin C). As discussed in more detail in the Valuation Memorandum, according to the public versions of Agro Dutch's questionnaire responses in the companion certain preserved mushrooms from India investigation, raw materials costs in the financial statement include mushroom growing costs and cans, but not the other factors. The unspecified materials appear to be included under ''consumables,'' since water is specifically identified as being part of this category (*see* Agro Dutch's April 21, 1998, public version response at page 59, also included in the Valuation Memorandum). Consumables are included in the factory overhead calculation and we have no further information from Agro Dutch's public responses to break out this information further. Accordingly, we have also revised our preliminary determination methodology to value raw materials other than fresh mushrooms and containers as part of factory overhead, and have not valued them separately so as to avoid double-counting.

Because we are including the valuation of all factors other than mushrooms and containers in factory overhead, the specific valuation and factor consumption issues raised by the parties concerning chlorine, salt, vitamin C, and citric acid are moot.

Comment 6: Valuation of Cans

The respondents contend that the Department should value tin cans based on the domestic prices for Indian tin cans, as placed on the record by respondents. The respondents argue that these values, derived from Agro Dutch's Annual Report, are appropriate because (a) they match the fact that the PRC producers obtain all of their tin cans from domestic sources, (b) they are consistent with the Department's preference for domestic surrogate values, as stated in *Brake Drums and Brake Rotors* at 9163, and (c) they are more specific than the Import Statistics value used in the preliminary determination, which was based on a ''basket'' HTS category for tin containers of 50 liters or less.

The petitioners assert that the Department should continue to value cans based on the Indian import statistics average unit value because it more accurately reflects the experience of the Indian industry, which imports the overwhelming majority of the cans used in the production of the subject merchandise. Alternatively, if the Department uses Agro Dutch's purchase data to value cans, petitioners contend that the Department should calculate the value using both domestic and imported cans, since the purchases from both sources reflect the commercial environment of the surrogate country. The petitioners add that this value should also be adjusted to reflect the different rates of consumption based on can size, using data supplied by the petitioners.

DOC Position:

We agree with the respondents with regard to the source of the surrogate value and, therefore, have revised our preliminary determination methodology to value tin cans based on the unit values derived from the 1996–1997 Agro Dutch Annual Report, since this information is more specific to the input being valued than the import statistics. However, we agree with the petitioners that there is no reason to base this value solely on the domestic purchase value. There is no basis in Department practice or precedent to select only the domestic surrogate value when the overwhelming majority of that input consumed by a producer in the surrogate country is imported. In selecting the appropriate surrogate value, the Department is attempting to reflect the purchase experience of a producer in the surrogate country, not necessarily to mimic the purchase pattern of the producer in the NME.

In addition, we have adjusted the Agro Dutch unit price data for can size according to the weight-based methodology outlined by the respondents (*see* Valuation Memorandum). We note that the petitioners' adjustment methodology is based on a single price quote offered to an unidentified party. Because we have no further information to test the representativeness or reliability of this quote, we determined that this information is insufficient for our price adjustment purposes. Therefore, we

have relied on the weight-based alternative which, as noted by the respondents, was used by the petitioners in their calculations for the antidumping duty petition.

Comment 7: Valuation of Water Inputs

The respondents claim that the Department erred in valuing separately the water placed in the container with the mushrooms. Citing such cases as *Final Determination of Sales at Less Than Fair Value: Persulfates from the PRC,* 62 FR 27222, May 19, 1997, and *Final Determination of Sales at Less Than Fair Value: Saccharin from the PRC,* 59 FR 58818, November 15, 1994, the respondents state that it is the Department's practice to presume that water consumption is included in the factory overhead ratio calculation and that, in this investigation, there is no evidence on the record to reject this presumption. Without such evidence, the respondents allege that the separate water valuation results in double-counting of the water input.

The petitioners contend that water is a direct input for particular segments of the preserved mushrooms production process and, thus, water consumed in that process should be treated as a direct material valued separately from factory overhead. The petitioners argue that the respondents have misstated the Department's practice in that the Department's presumption that water consumption is part of factory overhead is dependent on whether the input is classified as an indirect material in the production process. In this instance, petitioners continue, the water in the can is a required input in the production process and thus a direct material. As such, the petitioners contend that the presumption should be that water is not part of factory overhead, consistent with *Final Results of Administrative Review: Helical Spring Lock Washers from the PRC,* 62 FR 61794, November 19, 1997.

DOC Position:

We agree with petitioners in principle that water packed in the can or jar with the preserved mushrooms is a direct material. However, as discussed above under Comment 7, we have determined that all water consumed by the Indian producer Agro Dutch is recorded in its financial statement as part of ''consumables,'' which are a component of factory overhead. It is not possible to break out this water consumption from the rest of the ''consumables'' included in the financial statement. Accordingly, since all water consumption, for whatever purpose, is included in factory overhead, we have not valued water separately so as to avoid double counting.

Comment 8: Valuation of Glue

The respondents argue that the Department's selection of a surrogate value for glue consumed in the packing process, which was derived from Indian import statistics, was incorrect because the value used was based on retail-level size containers. According to the respondents, the verifications demonstrated that the PRC producers obtain glue in larger size containers, and thus the respondents contend that glue should be valued based on a value exclusive of glue sales in containers of one kilogram or less. For this surrogate value, the respondents advocate use of the Indonesian import statistics value that they placed on the record of this investigation.

DOC Position:

Based on further analysis of the surrogate value data on the record, we have revised our selection of the Indian surrogate value to rely on a different set of Indian import statistics than that used for the preliminary determination. The imports statistics we have used in the final determination correspond to a type of glue more similar to that employed by the respondents, which is covered by the HTS category for glue that the respondents proposed in their May 28, 1998, submission (*see* Valuation Memorandum). We have made this change to the surrogate value selected because the revised value appears to be more specific to the type of glue consumed by the producers, and not because of the size of the containers associated with the glue.

Comment 9: Valuation of Diesel Fuel

The petitioners contend that diesel fuel should be valued using prices reported in the Indian publication *Economic Times of India* (''*Times*''). The petitioners claim that the Times value is superior to the unit value derived from Indian import statistics used in the preliminary determination because it is based on domestic sources, more product-specific, and more contemporaneous than the import statistics value.

DOC Position:

We agree with the petitioners with regard to the source of the surrogate value at issue. This source is contemporaneous with the POI, while the import statistics values are based on 1995–1996 values. For the final determination, we have applied the average of the ''old'' prices listed in the *Times* value for diesel fuel. We used the ''old'' prices rather than the ''new'' prices published in the *Times* because, according to the published report, the latter did not take effect until the very end of the POI. Thus, it is a reasonable assumption that the ''old'' prices were in effect during the POI.

C. Production Factor Issues

Comment 10: Allocation Methodology for Input Factors

The petitioners argue that the consumption factors for three producers, Longhai, Putian, and Zishan, should be recalculated to allocate over the different can sizes based on drained-weight of the mushrooms, rather than net or packed weight. The petitioners contend that to allocate factors on a basis other than drained weight is distortive because per-unit EP is based on drained weight.

The respondents reply that the petitioners are mistaken and, in fact, the producers reported consumption factors on a drained-weight basis. The respondents state that the producers in question all record production on a net-weight basis, but they all converted production factors to drained weight using net weight as the allocation basis.

DOC Position:

We agree with the respondents. Our verification reports for Longhai, Putian, and Zishan confirm that the consumption factors have been reported on a drained-weight basis (*see, e.g.,* Longhai verification report of October 13, 1998, at pages 4–5) and therefore no recalculation is necessary.

Comment 11: Treatment of Cans and Jars as Direct Materials or Packing Materials

The respondents claim that the Department erred in classifying containers (*i.e.* tin cans and glass jars) as direct materials and instead should consider these items to be packing materials. The respondents contend that section 773(c)(1)(B) of the Act specifies that the cost of containers shall be added to NV after accounting for the factors of production utilized in producing the merchandise. According to the respondents, the containers are simply a means of transporting preserved mushrooms and are not an integral part of the product. As such, the respondents continue, valuation of container materials should not be included in the valuation of the cost of manufacturing. The respondents distinguish the facts in the instant case from those in *Washington Red Raspberries Commission* v. *United States,* 859 F.2d 898 (Fed. Cir. 1988) (''*Red Raspberries*''), in which the Department's treatment of containers as an integral part of the subject merchandise was affirmed by the Court

of Appeals for the Federal Circuit. In this respect, the respondents argue that the containers case do not preserve the mushrooms but serve merely as a vessel in which to ship them.

The petitioners state that the containers are properly treated as part of the direct materials factors as they are an integral part of the production process and subject merchandise. The petitioners also cite the decision in *Red Raspberries* to support the position that, where the materials are not incidental to the cost of the merchandise, but rather the product cannot exist in its natural form but for the container, that container cost may be included in direct materials.

DOC Position:

Consistent with our approach in the three other preserved mushrooms investigations, including *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile*, 63 FR 56613, October 22, 1998, we have treated the containers (*i.e.*, cans or jars) as part of the subject merchandise. We note that preserved mushrooms include the container as an integral part of the product, as noted above in the ''Scope of Investigation'' section of this notice, and the product does not exist as the subject merchandise without the container. This treatment is also consistent with our rationale in *Red Raspberries* and our methodology in similar cases involving preserved products, such as the *Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553, June 5, 1995.

Comment 12: Accounting for Water Loss

The petitioners contend that the Department should adjust the reported water input consumed by the PRC producers (*i.e.* the water packed in the cans or jars) to account for water lost during production. According to the petitioners, most of the producers reported a theoretical factor for this water input which failed to account for water lost. As Putian accounted for this input loss through a theoretical water waste ratio, the petitioners contend that the Department should apply Putian's water waste ratio to the other producers as facts available.

The respondents state that the petitioners have misunderstood the producers' reporting. According to the respondents, the reporting methodology accounts for all water consumed by the producers and thus includes any water that was allegedly lost. They add that while Putian's methodology was different than that employed by the other producers, it provided the same results.

DOC Position:

We agree with the respondents. The verification reports indicate that the producers have accounted adequately for water consumption. However, as noted above in our responses to Comment 5 and Comment 7, all water consumed is included in factory overhead and we have not included a separate value for water in the final determination. Thus, since all water factors consumed have been valued as part of factory overhead, this issue is moot.

Comment 13: Facts Available for Can Supplier Input Factors

The petitioners contend that the Department should apply facts available for the factors of production reported by Zhaoan's affiliated can supplier, Zhangzhou Ruida, because the Department was unable to verify these factors. Citing Zhangzhou Ruida's verification report, the petitioners assert that the factors could not be verified because the manufacturer had used a cost-based allocation methodology rather than a quantity-based allocation methodology. As facts available for these inputs, the petitioners claim that the Department should apply the surrogate value selected for cans.

DOC Position:

We agree with the petitioners. As discussed in the verification report, Zhangzhou Ruida was unable to support its response and therefore we cannot rely on its information for the final determination. Accordingly, we have applied the surrogate value for cans, as identified in Comment 6 above, to Zhaoan's can consumption factors.

Comment 14: Treatment of Labels as Packing Materials

As discussed above under Comment 11, the respondents assert that the containers used for preserved mushrooms should be treated as packing materials rather than direct materials. Similarly, the respondents contend that the labels affixed to the containers should also be considered packing materials.

DOC Position:

We agree with respondents with respect to labels. While cans are an integral part of the subject merchandise (*see* Comment 11), cans may or may not have labels, which serve more as a packaging component to identify and market the finished product. Therefore, we have valued labels as part of packing materials in the final determination.

D. Company-Specific Issues

Comment 15: Xiamen Jiahua's Sales Prices

Xiamen Jiahua contends that certain U.S. sales prices should be revised to reflect the price charged by Xiamen Jiahua's affiliated trading company to unaffiliated customers, as Xiamen Jiahua reported at the commencement of verification, rather than the previously reported prices, which reflect the sale from Xiamen Jiahua to the affiliated trading company.

DOC Position:

We agree and have revised the sales data pursuant to Xiamen Jiahua's September 14, 1998, submission, which we verified. This revision is in accordance with the statutory requirement of section 772(a) of the Act to base EP on the price to the first unaffiliated customer.

Comment 16: Dongya Firewood Consumption

The petitioners state that the Department should include a valuation for firewood consumed by Dongya to start the boilers used in production of the subject merchandise in the Dongya NV calculation. The petitioners note that consumption of this input was not reported by Dongya in the questionnaire response.

Dongya responds that the firewood is used as kindling to ignite coal used to generate steam in the production process. As such, Dongya contends that this input is properly regarded as part of factory overhead rather than a separate factor of production.

DOC Position:

We agree with Dongya and treated firewood as part of factory overhead, rather than valuing it separately.

Comment 17: Zishan Scrap Factors

The petitioners argue that, as Zishan was unable to support the sale and receipt of payment for scrap materials at verification, the Department should not adjust Zishan's NV to account for the sale of these by-products.

Zishan states that it demonstrated to the Department at verification that it sells its by-product. While it did not provide support for one particular month requested by the Department, Zishan claims that nevertheless, it established the fact for another month examined at verification and thus is entitled to an adjustment in the calculation of its NV.

DOC Position:

We agree with the petitioners and have rejected Zishan's by-product adjustment to its NV because Zishan was unable to document sales of its by-

products during the POI. The by-product sales shown at verification occurred several months prior to the POI. December was the only month of the POI where there was subject merchandise production and since Zishan could not support by-product sales for that month or any other month of the POI, we have no basis to conclude that it in fact sold its by-products during the POI.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after August 5, 1998, the date of publication of the preliminary determination in the **Federal Register** except for subject merchandise exported by Tak Fat or other companies not specifically named below. For merchandise exported by Tak Fat or by other companies not specifically named below, we are directing the Customs Service to continue to suspend liquidation of all imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after May 7, 1998, the date 90 days prior to the date of publication of the preliminary determination in the **Federal Register**, in accordance with our critical circumstances finding. Furthermore, we will instruct the Customs Service to refund all bonds and cash deposits posted on subject merchandise exported by all the companies specifically named below, except Tak Fat, that was entered or withdrawn from warehouses for consumption prior to August 5, 1998.

The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage	Critical circumstances
China Processed Food I&E Co./Xiamen Jiahua I&E Trading Company, Ltd..	154.71	No
Tak Fat Trading Co.	178.59	Yes
Shenzhen Cofry Cereals, Oils, & Foodstuffs Co., Ltd..	126.16	No
Gerber (Yunnan) Food Co..	158.79	No
Jiangsu Cereals, Oils & Foodstuffs Group Import & Export Corporation.	158.79	No
Fujian Provincial Cereals, Oils & Foodstuffs I&E Corp..	158.79	No
Putian Cannery Fujian Province.	158.79	No
Xiamen Gulong I&E Co., Ltd..	158.79	No
General Canned Foods Factory of Zhangzhou.	158.79	No
Zhejiang Cereals, Oils & Foodstuffs I&E Corp..	158.79	No
Shanghai Foodstuffs I&E Corp..	158.79	No
Canned Goods Co. of Raoping.	158.79	No
PRC-wide Rate	198.63	Yes

The PRC-wide rate applies to all entries of subject merchandise except for entries from exporters/factories that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 18, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–34704 Filed 12–30–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–802]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mary J. Jenkins or David J. Goldberger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1756 or (202) 482–4136, respectively.

THE APPLICABLE STATUTE:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351 (April 1998).

FINAL DETERMINATION:

We determine that certain preserved mushrooms (''mushrooms'') from Indonesia are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the amended preliminary determination (*Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia,* 63 FR 46776, September 2, 1998, the following events have occurred:

In September 1998, respondents submitted to the Department the 1997 annual reports for PT Indofood Sukses Makmur Tbk (''Indofood'') and PT IndoEvergreen Agro Business Corp. (''IndoEvergreen''). PT Zeta Agro Corporation (Zeta) provided the Department with supplemental information regarding its start-up adjustment claim.

PT Dieng Djaya (Dieng) and PT Surya Jaya Abadi Perkasa (Surya Jaya) (Dieng/Surya Jaya) and Zeta submitted to the Department on September 24, 1998, and

October 5, 1998, respectively, corrections to their previously submitted responses for errors that were found during their preparations for verification. During September and October 1998, we verified Dieng/Surya Jaya's and Zeta's questionnaire response. Following verification, we requested Surya Jaya to submit a revised sales tape to include previously unreported, transaction-specific bank charges incurred on U.S. sales. We also requested that Zeta submit a revised sales tape to include the above-mentioned charges, as well as revisions to brokerage and inland freight charges that were previously submitted on October 5, 1998. The requested revised data were submitted to the Department on November 5, 1998. On November 2 and 3, 1998, we issued our verification reports for Dieng/Surya Jaya and Zeta, respectively (*see* Memoranda to the File Regarding Verification of Sales and Cost Responses dated November 2, 1998 for Dieng and Surya Jaya, and November 3, 1998 for Zeta (''Dieng, Surya Jaya and Zeta Verification Reports,'' respectively).

The petitioners, respondents and Pillsbury Company, an importer of subject merchandise (''Pillsbury''), submitted case briefs on November 9, 1998. On November 10, 1998, petitioners withdrew their request for the public hearing which they submitted on August 7, 1998. Petitioners, respondents and Pillsbury submitted rebuttal briefs on November 13, 1998.

Scope of Investigation

For purposes of this investigation, the products covered are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation are the species *Agaricus bisporus* and *Agaricus bitorquis*. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the investigation are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this investigation are the following: (1) all other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (''HTS''). Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1997, through December 31, 1997.

Fair Value Comparisons

To determine whether sales of mushrooms from Indonesia to the United States were made at LTFV, we compared export price (''EP'') to the normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Furthermore, for Dieng/Surya Jaya, we calculated weighted-average EPs based on the combined set of Dieng's and Surya Jaya's U.S. sales, and then compared the consolidated set of weighted-average EPs with a single set of weighted-average NVs to properly derive the final weighted-average margin for the collapsed entity. (*See* Comment 5 in the ''Interested Party Comments'' section of this notice for further discussion.)

In this proceeding, we verified that none of the respondents had a viable home market or third country market. Therefore, consistent with our preliminary determination, we used CV as the basis for NV when making comparisons, in accordance with section 773(a)(4) of the Act.

Export Price

As in the preliminary determination, for both Dieng/Surya Jaya and Zeta we used EP methodology, in accordance with section 772(a) of the Act, because the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated.

Dieng/Surya Jaya

We calculated EP using the same methodology as in the preliminary determination, with the following exceptions: We made a deduction to the starting price for discounts associated with certain sales reported by Surya Jaya (*see* Surya Jaya Verification Report at 14). We did not deduct foreign inland insurance charges incurred by Dieng because we verified that these costs were associated with imports of raw materials rather than sales of subject merchandise (*see* Dieng Verification Report at 22). We also did not make an adjustment for Dieng's claimed duty drawback, as Dieng could not provide evidence of linkage between import duties paid and taxes rebated during the POI. (*See* Comment 9 in the ''Interested Party Comment'' section for further discussion.)

Based on our verification findings, we made the following revisions to Dieng's U.S. sales database: (1) revised the product, style, grade, customer codes, and payment dates for certain transactions, where appropriate (*see* Dieng Verification Report at 19–20); (2) revised the POI per-unit bank charge, incorrectly reported as brokerage and handling expense in the response, to reflect a value-based allocation (*see* Dieng Verification Report at 22–23); (3) revised the reported POI per-unit freight charge (*see* Dieng Verification Report at 21–22); and (4) recalculated credit expense based on the revised payment dates for certain transactions and the short-term interest rate verified for Surya Jaya (*see* Dieng Verification Report at 25 and Surya Jaya Verification Report at 16).

Based on our verification findings, we made the following revisions to Surya Jaya's U.S. sales database: (1) changed the product code, style, customer code, grade, weight, control number, number of cans per carton, sales date, payment date, brokerage charge, and quantity for certain transactions, where appropriate (*see* Surya Jaya Verification Report at 14–15, and Exhibit 15 of the Dieng/Surya Jaya September 24, 1998 submission); (2) accounted for discounts granted on certain transactions, where appropriate (*see* Surya Jaya Verification Report at 14); and (3) recalculated credit expense based on the short-term interest rate and payment dates verified for Surya Jaya (*see* Surya Jaya Verification Report at 16).

Zeta

We calculated EP using the same methodology as in the preliminary determination. Based on our verification findings, we made revisions to Zeta's

U.S. sales database, where appropriate, to correct errors in: (1) the reported sales dates for certain transactions (*see* Zeta Verification Report at 11–12); (2) the reported shipment date, type of container, weight, product code, control number, number of cans per-carton, and quantity for certain transactions (*see* Zeta Verification Report at 20, and Zeta October 5, 1998 submission at 2; and (3) the per-unit expense amounts reported for insurance, inland freight, and brokerage/handling for certain transactions (*see* Zeta Verification Report at 20–22, and Zeta's October 5, 1998 submission at Exhibit 2).

Normal Value

After testing home market viability as noted above, we calculated NV as noted in the ''Price-to-CV Comparisons'' section of this notice.

Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication costs, selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. In accordance with section 773(e)(2) of the Act, we based selling expenses and profit on amounts incurred and realized in the foreign country. Because none of the respondents had a viable home market, we based selling expenses and profit on one of the alternatives under section 773(e)(2)(B) of the Act. Specifically, section 773(e)(2)(B)(iii) of the Act permits the Department to use any reasonable method. Therefore, we based selling expenses and profit on amounts derived from the 1997 financial statements of an Indonesian foods producer. *See* Comment 2 in the ''Interested Party Comments'' section of this notice.

Dieng/Surya Jaya

We made the following adjustments to the cost data submitted by Dieng/Surya Jaya:

Dieng

1. We calculated CV based on the cost of manufacturing (''COM'') during the POI, instead of the cost of goods sold (''COGS'') during the POI. *See* Comment 3 in the ''Interested Party Comments'' section of this notice.

2. We recalculated Dieng's per-unit CVs using a weight-based allocation methodology instead of relying on Dieng's standards to allocate costs. *See* Comments 6 and 7 in the ''Interested Party Comments'' section of this notice.

3. We calculated the cost of fancy and non-fancy mushrooms based on the weighted-average cost of Dieng's purchases of mushrooms and Dieng's own cost to produce mushrooms. *See* Comment 7 in the ''Interested Party Comments'' section of this notice.

4. We recalculated Dieng's general and administrative (G&A) expense ratio excluding selling expenses.

5. We recalculated the reported financing expense ratio excluding the double counting of short-term interest income.

Surya Jaya

1. We calculated CV based on the COM during the POI, instead of the COGS during the POI. *See* Comment 3 in the ''Interested Party Comments'' section of this notice.

2. We recalculated Surya Jaya's per-unit CV's using a weight-based allocation methodology instead of relying on its affiliated company's (Dieng's) standards to allocate costs. *See* Comments 6 and 7 in the ''Interested Party Comments'' section of this notice.

3. We recalculated the reported financing expense ratio, excluding bank charges associated with letters of credit directly related to U.S. sales of subject merchandise and including short-term interest income. *See* Comment 4 in the ''Interested Party Comments'' section of this notice.

4. We excluded from the reported cost of preserved mushrooms the offset for fresh mushroom sales revenues, and we allocated the resulting total costs equally to all mushrooms produced. *See* Comment 10 in the ''Interested Party Comments'' section of this notice.

Zeta

We made the following adjustments to the cost data submitted by Zeta:

1. We calculated CV based on the COM during the POI, instead of the COGS during the POI. *See* Comment 3 in the ''Interested Party Comments'' section of this notice.

2. We allocated growing costs to sales of fresh mushrooms based on weight rather than sales value as discussed in the preliminary determination at 41785.

3. We recalculated the cost of fancy and non-fancy mushrooms based on the weighted-average cost of Zeta's purchases of mushrooms and Zeta's own production cost of mushrooms. *See* Comment 13 in the ''Interested Party Comments'' section of this notice.

4. We reclassified certain claimed offsets to COM as G&A and combined these amounts with the G&A expenses verified and reported by Zeta as G&A in its audited financial statements to derive the G&A expense ratio applied to COM. *See* Comments 12 and 15 in the ''Interested Party Comments'' section of this notice.

5. We excluded the revenue and cost associated with casing soil and spawn compost sales from the reported cost of preserved mushrooms. *See* Comment 12 in the ''Interested Party Comments'' section of this notice.

6. We recalculated the reported financial expense ratio to include certain foreign exchange gains on accounts payable.

7. We recalculated CV using the net production quantity of preserved canned mushrooms instead of the reported gross production quantity. *See* Comment 16 in the ''Interested Party Comments'' section of this notice.

8. We denied Zeta's claimed start-up adjustment because it did not satisfy the criteria under section 773(f)(1)(C) of the Act. *See* Comment 11 in the ''Interested Party Comments'' section of this notice.

Price-to-CV Comparisons

For price-to-CV comparisons, we applied the same general methodology used in the preliminary determination. However, we also made a circumstance-of-sale adjustment, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), for U.S. bank charges which we verified to be direct selling expenses. (*See* Comment 4 in the ''Interested Party Comments'' section of this notice for further discussion.) In addition, we made a circumstance-of-sale adjustment for revised U.S. credit expenses, where appropriate.

Petitioners argue that the Department should use two averaging periods in its margin calculations to account for the effect of the devaluation of the Indonesian rupiah. Petitioners contend that CV differs significantly and dramatically over the course of the POI when exchange rates are taken into account.

We have continued to use POI averages for this final determination. For further details, please see the discussion in Comment 1 of the ''Interested Party Comments'' section of this notice, below.

Currency Conversion

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, ignoring fluctuations, in accordance with section 773A of the Act.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant

accounting and production records and original source documents provided by respondents.

Interested Party Comments

General Comments

Comment 1: Averaging Periods to Account for the Effect of Time on Price Comparability

Petitioners request that the Department reconsider its preliminary decision not to use two six-month averaging periods to calculate the dumping margins in this investigation. Petitioners urge the Department to depart from its standard use of a single weighted-average price to ensure that the currency conversion methodology does not distort the Department's calculations of the dumping margins. Petitioners point out that the first half of the POI (January-June 1997) was characterized by low inflation (approximately 1.5 percent) and virtually no depreciation of the currency (less than 3 percent), and that the second half of the POI (July-December 1997) was characterized by unexpected, sudden and dramatic inflation (approximately 8.1 percent) and extraordinary currency devaluation (over 60 percent). Petitioners state that the respondents' pricing practices remained the same, in that respondents did not take any affirmative actions to minimize or eliminate their dumping margins in the second half of 1997 in comparison to the first half of 1997. They argue, however, that with respect to the calculation of NV, when the rupiah is converted to dollars during the second half of the POI, the constant annual weighted-average will be as much as 65 percent lower than the identical CV that is converted during the first half of the POI. In this instance, petitioners state that an otherwise stable and constant CV changes dramatically over the course of the investigation period when converted to U.S. dollars simply because of the currency conversion method that is used. In face of these facts, petitioners argue that the merit of using a single weighted-average normal value for the entire POI must be carefully evaluated.

Petitioners cite a number of cases to demonstrate that the Department has the authority, under section 777A(d)(1)(A) of the Act, to use a variety of methods to compare prices in determining whether sales at LTFV exist. Moreover, petitioners note that the SAA at 843 recognizes that in determining sales comparability for purposes of inclusion in a particular average, time is a factor which may affect the comparability of sales and that the Department may resort to short time periods when NVs included in the averaging group differ significantly over the POI. The cases cited by petitioners to support their statement, include: the *Final Determination of Sales at Less Than Fair Value: Nitrocellulose from Brazil,* 55 FR 23120, June 6, 1990 (''*Nitrocellulose from Brazil*''), where the Department recognized and attempted to minimize the effect of severe currency devaluation; *Certain Fresh Cut Flowers from Colombia: Final Results and Partial Recission of Antidumping Duty Administrative Review* (62 FR 53287, October 14, 1997) (''*Colombian Flowers*''), where the Department revised its methodology in light of the ''devaluation of the Colombian currency;'' the *Final Determination of Sales at Less Than Fair Value: Fresh Kiwi Fruit from New Zealand,* 57 FR 13695, April 17, 1992 (''*Kiwi Fruit from New Zealand*''), where the Department expanded the POI to ensure ''an accurate measure of less than fair value sales;'' and the *Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan,* 61 FR 14106, March 29, 1996 (''*PVA from Taiwan*''), where the Department established two averaging periods because of a ''distinct dividing line'' between price trends in the home market.

In addition to the cases previously cited, the petitioners further point out that the SAA at 841 notes that the ''goal'' of the Department's practice ''is to ensure that the process of currency conversion does not distort dumping margins.'' Citing *Melamine Chemicals* v. *United States,* 732 F. 2d 924, 929; 932 (Fed. Cir. 1984), and *Koyo Seiko,* 20 F. 3d 1156,1158 (Fed. Cir. 1994), petitioners assert that dumping margins should not be ''artificially'' eliminated because of unanticipated changes in the exchange rate given that the goal of the antidumping law is to protect the domestic industry from unfair trade practices.

In response to the respondents' contention prior to the preliminary determination that the decline in the rupiah did not cause any distortions or ''masking'' of dumping because the decline affected both respondents'' sales revenues and costs, petitioners maintain that: (1) the devaluation did not affect the respondents costs because the purchases of cans, which comprise a major portion of their costs, made after the rupiah devalued were excluded from their reporting; and (2) petitioners' foreign market research and respondents' past financial statements showed substantial losses until the rupiah devaluation at which point the respondents showed a profit.

Moreover, petitioners assert that the Department has on other occasions made special adjustments to a respondent's costs to account for ''extraordinary events'' that occurred during the POI or period of review to achieve a fair result, particularly when a company's own financial statements highlight the unusual and extreme nature of the event. (*See e.g., Notice of Final Determination of Sales at Less than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan,* 51 FR 38139, 38153 July 23, 1996.)

Petitioners conclude that if a respondent is dumping during a time of stable inflation and currency valuation, dumping should not be eliminated by of an extraordinary devaluation of the currency that otherwise has no impact on the respondent's pricing practices.

According to respondents, none of the cases cited by petitioners support their argument. Respondents assert that the statute and the regulations already provide a methodology for making currency conversions in the face of movements in exchange rates such as the devaluation at issue. Absent a rational explanation from petitioners as to why the currency conversion provisions are inadequate to handle exchange rate movements, respondents maintain that the Department should not use currency changes as a reason to depart from the averaging requirements. Respondents contend that the facts in all of the cases cited by petitioners can be distinguished from those in this investigation on the basis that respondents' U.S. prices did not ''move significantly'' during the POI.

Furthermore, respondents assert that no data are available to calculate CVs for two six-month averaging periods because the Department required the respondents to report CV on an annual basis. Unlike other cases such as *Static Random Access Memory Semiconductors From Taiwan,* 62 FR 8909, February 23, 1998, where the Department solicited and used quarterly price and cost data in its analysis in recognition of significant price movement during the POI, respondents claim that the Department did not solicit CV data on a semi-annual basis in this case allegedly because respondents' U.S. prices did not move significantly.

Finally, respondents state that the calculated NV in rupiah terms was stable during 1997, but that does not mean that respondents were not affected by the rupiah's decline. Respondents

point out that, first, the rupiah's decline meant that the interest and principal payments for U.S. dollar-denominated loans increased. Second, the rupiah's decline meant that production inputs based on imported material, such as cans, became more expensive. Respondents claim that contrary to petitioners' allegations, these higher can purchase costs were incorporated into Dieng's actual costs, which were used as the basis for Dieng's reported costs. Therefore, respondents maintain that comparing CV based on a full year, which includes the effects of the rupiah's decline, to two averages based on half-yearly prices, will create dumping margins where none existed. Based on the foregoing arguments, respondents conclude that the Department's regulations are sufficient to address currency exchange fluctuations and, therefore, the Department should adhere to its preliminary decision and continue to average prices over the entire POI.

Similarly, Pillsbury, an importer of subject merchandise, argues that the Department should continue to reject petitioners' request for two averaging periods after finding no evidence that there has been a significant change in the respondents' pricing or marketing behavior during the POI. Pillsbury points out that the Department has subdivided the POI in the limited circumstances where exporters behaved differently at different times in the investigation period. Pillsbury attests, based on its own knowledge, that the Department's finding of no change in the exporters' pricing or marketing behavior during the POI is correct. Pillsbury argues that the cases cited by petitioners to support their arguments are neither a precedent for the result they seek, nor broadly analogous to the circumstances of this investigation and, in fact, support rejection of petitioners' position.

DOC Position

Whether the Department should use shorter averaging periods where there is a significant decline in the value of the foreign currency over the POI is a complex issue. In such cases, we are concerned that using a single average NV for the POI could mask significant dumping during the period prior to the devaluation. Consequently, it may be necessary to use two or more averaging periods to avoid a distortion in the dumping analysis. However, we note that using two averaging periods in this case, as proposed by the petitioners, would have virtually no effect and therefore this issue is without consequence. Thus, we have declined to alter our methodology in this case. We will continue to examine in future cases whether it is appropriate to use two or more averaging periods, or some other method, to avoid distortion in the dumping analysis. We note that we have given further consideration to the reasons stated in the preliminary determination for using one averaging period. Although we continue to find that there are distinctions between *PVA from Taiwan* and this case, we believe that consideration of those distinctions is not sufficient. In addition to changes in selling practices, we believe that we should also consider other factors, such as prolonged large changes in exchange rates, in determining whether it is appropriate to use more than one averaging period.

Comment 2: Calculation of Profit and Selling Expenses for CV

Respondents argue that the Department improperly calculated profit and selling expenses in Dieng/Surya Jaya's and Zeta's CV calculation in the preliminary determination by basing its calculations on the selling expenses and profit contained in the 1996 financial statement of Indofood, an Indonesian food producer that does not produce preserved mushrooms. Respondents contend that the Department should have used the 1997 financial statements of IndoEvergreen, a producer of subject merchandise and a non-mandatory respondent in this investigation, as it is the only available information on the record which satisfies the statutory requirements under Section 773(C)(2)(B) of the Act for calculating CV profit and selling expenses based on alternative methods.

Pillsbury states that, regardless of whether the Department decides to use information from IndoEvergreen or Indofood in determining profit for the mandatory respondents, it should use the available 1997 profit data. According to Pillsbury, in determining an exporter's actual profit under 19 U.S.C. Section 1677b(e)(2)(A), the Department considers profit realized during the POI, not an earlier period. Pillsbury continues that, because 19 U.S.C. Section 1677b(e)(2)(B)(ii) and (iii) are designed as substitute methods to determine the exporter's profit, they too should reflect the POI.

Petitioners disagree, stating that the Department cannot use any financial statements from 1997 because: (1) neither IndoEvergreen nor Indofood recorded any net income (or profit) in 1997; and (2) the substantial depreciation of the Indonesian rupiah in 1997 significantly impacted the financial results of both companies, thus making their expenses and financial results aberrational and, thus, unusable for our purposes.

Specifically, petitioners contend that the Department cannot assign ''zero'' profit to CV in an investigation because profit, which reflects net income, is positive, and that the SAA directs the Department to include profit in the calculation of CV. While petitioners agree with Pillsbury that it is ''axiomatic'' that 1997 data would normally provide the appropriate basis for determining profit in this investigation, they state that there is no profit information from 1997 on the record of this investigation. Citing *Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, October 1, 1997 (''*Collated Roofing Nails from Taiwan*'') and *Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review*, 62 FR 37869, July 15, 1997 (''*Silicomanganese from Brazil*''), among other cases, the petitioners emphasize that zero profit is not a valid option. Therefore, the petitioners maintain that the Department must use profit data on the record from 1996. Moreover, petitioners assert that, as noted in the SAA, if the Department were to assign a ''zero'' profit rate to respondents based on the 1997 results of IndoEvergreen, then respondents would benefit ''perversely'' from their own unfair pricing because IndoEvergreen is not a mandatory respondent in this investigation, and is therefore subject to the ''all others'' rate which is determined by the weighted-average dumping margin of Dieng/Surya Jaya and Zeta.

Furthermore, petitioners argue that not only is there no profit on the record for the two 1997 financial statements submitted by respondents, but the results contained therein are aberrational and unusable for purposes of determining selling expenses and profit because they reflect extraordinary losses as a result of the depreciation of the Indonesian rupiah which affected both Indofood's and IndoEvergreen's performance in 1997.

In addition, the petitioners point out that just as IndoEvergreen's 1997 financial statement is unusable for the reasons previously stated, IndoEvergreen's 1996 financial statement is also unusable and was properly rejected by the Department in its preliminary determination because it was unaudited. Citing the *Final Determination of Sales at Less than Fair Value: Canned Pineapple Fruit from Thailand* 60 FR 29553, June 5, 1995 (''*CPF from Thailand*''), petitioners point out that it is the Department's practice to use audited financial

statements in the calculation of expenses and profit for CV because these statements provide the most accurate and reasonable basis for estimating actual expenses. Therefore, petitioners argue that the Department has only one option in the final determination, and that is to derive CV profit and selling expenses using the 1996 financial statements of Indofood.

DOC Position:

We agree with respondents, Pillsbury, and petitioners in part. While our general methodology for calculating CV profit did not change since the preliminary determination, we are using a different source of financial data to recalculate selling expense and profit amounts. As in the preliminary determination, we applied alternative three under section 773(e)(2)(B) of the Act to obtain an amount for selling expense and profit. As facts available, we used the 1997 financial statements of Indofood, adjusted as described below, in our calculation of CV selling expenses and profit. For G&A expenses, we have continued to use the actual expenses contained in the respondents' financial statements, as revised based on verification findings.

As noted correctly by petitioners, the use of a zero or negative profit in our CV calculation would be inconsistent with the SAA and the Department's past practice. (*See, e.g., Silicomanganese from Brazil* at 37877, where the Department determined that a positive amount for profit must be included in the CV calculation.)

While in this case the 1997 financial statements of both IndoEvergreen and Indofood record losses in 1997, we have determined that the use of Indofood's 1997 financial statement to calculate CV selling expenses and profit is reasonable after making certain appropriate adjustments. Indofood's financial statement represents financial results predominately on home market sales and thus, the resulting income reasonably represents a home market profit. In addition, while Indofood's 1997 income statement shows a net loss for the year, it was profitable in 1997 before taking into account an extraordinary expense that appears to relate to foreign currency losses associated with debt. The Department's practice with respect to foreign currency losses associated with debt is to recognize only the loss related to the current portion of the debt. (*See Fresh Atlantic Salmon from Chile,* 63 FR 31430, June 9, 1998 (''*Salmon from Chile*'').) Therefore, by including only the current portion of the foreign currency loss, the company's operations show a profit. We did not use the 1997 financial statement of IndoEvergreen, a producer of subject merchandise and a non-mandatory respondent in this investigation, because it represents financial results predominately on sales to the U.S. and third country markets. Thus, it was not possible to compute a home market profit figure from IndoEvergreen's financial statements.

Based on the foregoing, we conclude that Indofood's 1997 financial statement, adjusted as previously described, is the most reasonable alternative on the record of this proceeding on which to base the calculation of CV selling expenses and profit under section 773(e)(2)(B)(iii) of the Act because Indofood is a large processor of food products, its 1997 financial statement overwhelming reflects home market sales, and the information is contemporaneous with the POI.

Comment 3: Use of COM Versus COGS.

Petitioners argue that the Department must revise respondents' reported costs to properly reflect respondents' COM during the POI, not their costs of producing the goods sold during the POI which include historical costs of inventory from the prior period and exclude the cost of ending inventory. Petitioners contend that since COGS includes beginning inventory and net purchases during the period, but excludes ending inventory, respondents have effectively ignored the increased costs of imported materials associated with the devaluation of the rupiah during the last few months of the POI. Petitioners further argue that, pursuant to respondents' reporting methodology, the costs of a product that was produced during the POI, but not sold during the POI, are not included in CV. Petitioners assert that respondents should not be allowed to manipulate reported costs by including costs incurred prior to the start of the POI and excluding costs incurred towards the end of the POI. Finally, petitioners contend that the use of COM in the calculation of NV based on CV is a long-standing practice that has been required by the Department in virtually all cases.

DOC Position:

We agree with petitioners that the reported costs should be derived using the COM rather than the COGS. The Department's long-standing practice is to calculate the cost of production (''COP'') and CV based on the COM of the subject merchandise during the POI, where available, rather than on the COGS during the POI. The COM represents the cost to manufacture the product during the period. The Department does not use the COGS because it typically includes the value of merchandise held in inventory at the beginning of the period and excludes the value of merchandise produced but not sold during the period. The value of the merchandise sold from beginning inventory relates to a previous period. Additionally, COGS may include inventory values that have been adjusted (*e.g.*, inventory written down) to the lower of cost or market and, therefore, do not represent the actual production costs. As stated in section 773(e)(1) of the Act, the COM for CV shall include the COM ''during a period which would ordinarily permit the production of the merchandise in the ordinary course of business.'' Using the COM during the POI normally covers the period needed to produce the subject merchandise just prior to export and excludes the changes in inventory. Furthermore, only under case-specific circumstances does the Department extend the period used to calculate the COM outside of the POI (*e.g.*, if the production cycle of the subject merchandise extends beyond the POI). Although the CV section of the Act does not specifically address a cost reporting period, section 773(b)(2)(D) of the Act states that the recovery of costs is provided for ''[i]f prices which are below the per unit cost of production at the time of sale are above the weighted average per unit cost of production *for the period of investigation or review*'' (emphasis added).

Moreover, in this case, the respondents incorrectly derived the per-unit costs that were used in the preliminary determination by dividing the COGS by the units produced during the POI, not the units sold. To properly derive the per-unit costs, we divided the COM incurred during the period by the units produced during the period.

Therefore, in the final determination, we have adjusted the reported costs for each respondent based on the COM during the POI in accordance with our normal practice and our findings at verification. (*See* Calculation Memorandum for Dieng/Surya Jaya and Zeta, respectively, dated December 18, 1998.)

Comment 4: Zeta and Surya Jaya's Bank Charges

Petitioners argue that the bank charges found at verification that were incurred by Zeta and Surya Jaya should be deducted from U.S. price because the bank charges were directly related to the two companies' U.S. sales of subject merchandise.

Respondents note that if the Department deducts bank charges from

Surya Jaya and Zeta's U.S. sales prices, the Department should not include these bank charges in the financial expenses calculated for CV purposes.

DOC Position:

We agree with both petitioners and respondents in part. We verified that bank charges directly associated with U.S. sales of subject merchandise were incorrectly included in the calculation of the financial expense for Surya Jaya and the SG&A expense for Zeta. (*See* Surya Jaya Verification Report at 16, and Zeta Verification Report at 23, respectively.) Accordingly, we have made a circumstance-of-sale adjustment to NV for the bank charges at issue in accordance with section 351.410(c) of the Department's regulations, and have excluded them from the calculation of the financial expense and G&A expense for CV purposes, where applicable, for each company.

Dieng/Surya Jaya Comments

Comment 5: Failure to Calculate Weight-averaged EP for Dieng/Surya Jaya

Respondents maintain that the Department failed to treat affiliated producers, Dieng and Surya Jaya, as a single collapsed entity in the preliminary determination based on the calculation methodology employed. Specifically, respondents assert that, although the Department calculated one set of weighted-average NVs for both Dieng and Surya Jaya, it incorrectly calculated a separate set of weighted-average EPs for Dieng's U.S. sales and Surya Jaya's U.S. sales. The Department then proceeded to calculate separate margins for Dieng and Surya Jaya, and averaged these two margins to derive the preliminary margin for both companies. In order to comply with section 777A(d)(1)(A)(i) of the Act which was the Department's stated intent in the preliminary determination, respondents argue that the Department should calculate a single set of weighted-average EPs based on the combined set of U.S. sales of both Dieng and Surya Jaya, and then compare these consolidated U.S. sales with a single set of weighted-average NVs (in this case CVs) to properly derive the final weighted-average margin for the collapsed entity.

DOC Position:

We agree with respondents and have adjusted our calculations as appropriate as explained in the ''Fair Value Comparisons'' section of this notice.

Comment 6: Use of Dieng's Standard Cost System and Reported Cost Allocation

Petitioners argue that the Department should reject Dieng's cost allocation methodology because it is based on standard costs that yield illogical and inaccurate results. To support their argument, petitioners present an analysis of the difference in the reported adjusted or ''actual'' cost and the standard cost for the direct material costs of a four-ounce product. Petitioners argue that the analysis shows that the difference between the ''standard'' cost and the ''actual'' cost cannot be considered reasonable or accurate and, therefore, should be rejected. Petitioners point out that, at verification, when the Department compared the per-unit standard cost for several products from the ending inventory to the reported adjusted per-unit costs, it noted inconsistencies for all products, and that the variance percentage was negative for some products and positive for others. According to petitioners, such inconsistencies should not exist between products in which the only difference is the total net drained weight of the container size. According to petitioners, the first major problem is not the direction or sign of the variance, but the magnitude of the variance. The second major problem is that Dieng's standard costs have not been used historically by Dieng in the normal course of business, which is in violation of the statute and the SAA. With respect to the first problem, petitioners state that Dieng offers no explanation as to the gross disparities between standard costs and its reported ''actual'' costs, other than the fact that total costs overall do not vary as dramatically as per-unit costs. Petitioners argue that the issue is whether Dieng's standard costs and its allocation of these overall costs to each individual product are accurate. With respect to the second problem, petitioners point out that according to the verification report, the ''simple'' standard cost system was not designed or implemented until the end of 1995, just one year prior to the beginning of the POI.

Petitioners assert that the Department's practice is to calculate costs on the basis of records kept by the respondent if the Department is satisfied, among other things, that the respondent's records reasonably reflect the costs of producing the subject merchandise. If the Department determines that a company's normal accounting practices result in a unreasonable allocation of production costs, petitioners assert that the Department will make certain adjustments or may use alternative methodologies that more accurately capture the costs incurred. Petitioners maintain that Dieng's standard cost allocations have not been used historically in the normal course of business and do not reasonably reflect the costs associated with the subject merchandise, as the above analysis indicates. Therefore, petitioners contend that the Department should adjust Dieng's reported costs using the weight-based methodology proposed in petitioners' case brief and used in the Chilean preserved mushrooms investigation.

Respondents argue that the Department should continue to use the reported costs of Dieng/Surya Jaya for purposes of calculating the final dumping margin because the Department has verified that Dieng's standard cost system is reliable and reasonably reflects the actual costs incurred by Dieng during the POI. Respondents further state that the Department's statements in the Dieng verification report questioning the reliability of Dieng's cost standards based on the observation that ''individual standard costs are adjusted by different percentages and different directions'' are flawed because they are based on incorrect data or misapplied accounting principles. Respondents maintain that petitioners ignore the substantial record evidence demonstrating the reliability of Dieng's standard cost system, which has been fully verified and audited by an independent auditor.

Respondents contend that petitioners' comments should be rejected for the following specific reasons: First, respondents maintain that a comparison of total per-unit standard costs to total per-unit actual costs is inappropriate because it overlooks the effects of the individual variances calculated for each cost element. According to respondents, the approach suggested in the verification report and by petitioners would require the calculation of a uniform variance based on the total actual cost and the total standard cost, but the application of this uniform variance would inappropriately cut across all cost elements and distort the individual variances specifically calculated for each cost element. This approach would be inconsistent with Department practice, as exemplified in *New Minivans from Japan: Final Determination of Sales at Less Than Fair Value*, 57 FR 21937, May 26, 1992 (''*Minivans from Japan*''), where the Department used individual variance factors for materials and for labor and overhead and adjusted the reported production costs for each minivan

model to reflect the use of the revised variance factors for each cost element; and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom*, 60 FR 10900, February 28, 1995, where the Department rejected application of plant-wide variances to all products (instead of product-specific variances) because it overstated costs for non-subject merchandise. Respondents continue that Dieng never reported total standards and Dieng's cost accounting system does not use the total standards that the verification report used for comparison.

Second, respondents assert that the questions raised in the Department's verification report rely on the erroneous proposition that variances from a standard occur in one direction, which is inconsistent with cost accounting principles. Respondents explain that, by definition, variances from a standard are not adjusted in the same direction. Respondents state that Dieng complied with the requirements of the Department's questionnaire and reported all of the variances calculated for each cost element (material, labor, variable and fixed overhead) in its normal standard cost system. Dieng then calculated a percentage variance that was applied uniformly to the standard cost established for that element for all of Dieng's products. According to the respondents, the analysis in the verification report ignored the variances calculated at each cost element and instead compared only total per-unit variances. Although the variance for each cost element is uniformly applied to all products, respondents explain that the overall variances calculated by the method used in the verification report (*i.e.*, the sum of all cost elements) will be favorable for some products, but unfavorable for other products. Respondents point out that this result is not inconsistent with the variances calculated for elements which are uniform. In respondents' opinion, the conclusions suggested in the verification report provide no legitimate basis on which to question the reliability of Dieng's standard cost accounting system.

Third, respondents maintain that, regardless of the magnitude of the variances, the Department verified that Dieng's standard costs distributed all of Dieng's actual costs as tied to the audited financial statement. Accordingly, respondents argue that Dieng's reported production costs accurately reflect Dieng's actual costs because they were based on Dieng's reliable standard cost allocation system. Moreover, respondents point out that the magnitude of the variance for each cost element does not determine the reliability of a company's standard cost system. To support their statements, respondents cite to *Final Results of Antidumping Duty Administrative Review: Porcelain-on-Steel Cookware from Mexico*, 62 FR 42496, August 7, 1997 (''*Porcelain-on-Steel Cookware from Mexico*''), where the Department refused to use facts available because of the magnitude of the respondent's reported variances and determined that the respondent's variances were allocated to a sufficient level of product-specific detail to satisfy the Department's questionnaire requirements. Respondents maintain further that petitioners' suggestion that the Department ignore the variances calculated for each cost element and apply an overall variance is contrary to Department practice and fundamental accounting principles. According to the respondents, record evidence shows that the total of all standard costs is very close to the total of actual costs reported. In this regard, respondents point out that after adjusting the reported cost data for the difference between COM and COGS, as noted in the Department's verification report, Dieng's actual material costs (and thus total actual costs) increase, resulting in a small overall variance between standard and actual costs. Respondents interpret this result to mean that the total standard material costs virtually match the actual costs incurred by Dieng, and that the material cost system accurately measures Dieng's production costs.

Fourth, respondents argue that petitioners ignore the Department's statutory preference for using the existing cost system of a respondent if it is consistent with local Generally Accepted Accounting Principles (''GAAP'') and is not distortive pursuant to section 773(f)(1)(A) of the Act. Respondents point out that Dieng's independent auditor and the Department both confirmed that Dieng's accounts are consistent with the GAAP of Indonesia. Respondents conclude that in light of these facts, the Department's practice requires the acceptance and use of Dieng's standard costs to calculate the CV of Dieng/Surya Jaya.

Pillsbury argues that the Department should continue to base its CV calculation on the standard costs reported by Dieng in the final determination because the Department verified that these costs are used in the normal course of business, are consistent with GAAP in Indonesia, and reasonably reflect the cost of producing the subject merchandise in Indonesia.

DOC Position:

We agree with petitioners that the per-unit costs generated by Dieng's standard cost system are distorted and cannot be relied upon to form the basis of CV for the final determination. In accordance with section 773(f)(1)(A) of the Act, the Department normally relies on data from a respondent's normal books and records where those records are prepared in accordance with the home country's GAAP, and where they reasonably reflect the costs of producing the merchandise. Normal GAAP accounting practices provide both respondents and the Department with a reasonably objective and predictable basis by which to compute costs for the merchandise under investigation. However, in those instances where it is determined that a company's normal accounting practices result in a mis-allocation of production costs, the Department adjusts the respondent's costs or uses alternative calculation methodologies that more accurately capture the actual costs incurred to produce the merchandise. *See, e.g., Minivans from Japan* at FR 21952 (adjusting a respondent's U.S. further manufacturing costs because the company's normal accounting methodology did not result in an accurate measure of production costs); and *CPF from Thailand* at FR 29559 (where the Department rejected the use of Dole's normal cost allocation methodology because it did not ''reasonably reflect'' the cost of producing the merchandise).

In the instant case, we find that Dieng's standard costs do not, as noted below, reasonably allocate costs to individual products. While we agree with respondents that the variances for individual cost elements may be favorable or unfavorable and that the net effect of variances could make individual unit standard costs move in different directions, the magnitude of Dieng's individual variances seriously calls into question the reasonableness of the individual product standard costs. In the *Porcelain-on-Steel Cookware from Mexico* proceeding cited by Dieng, the Department accepted the large variances because inflation in Mexico was greater than 50 percent during the period and therefore large price variances in one direction were expected. However, the magnitude of the variances in Dieng's system cannot be explained by inflation. Extraordinarily large variances, by definition, mean that the standard costs that went into deriving those variances do not reasonably reflect the actual costs

incurred to produce the individual products. These large variances occurred even though the standards were new, which raises questions as to whether the standards were accurately developed by Dieng. Furthermore, our observations at verification imply that they were not accurately developed. We note that the individual cost elements of Dieng's per-unit standards, such as direct labor, indirect labor, energy, and depreciation, are identical to each other and do not vary according to the specific requirements of each cost element necessary to produce the individual products. Additionally, Dieng used the price of the two mushroom qualities (*i.e.*, fancy and non-fancy) it purchased as the standard cost of all mushrooms in its derivation of per-unit standards, without factoring in its own production cost. This methodology artificially allocates more mushroom costs to products that use fancy mushrooms (*i.e.* mushrooms sold whole or in slices). The reliability of Dieng's standard costs is further undermined by Dieng's apparent unfamiliarity with calculating variances. As Dieng admits, it improperly calculated the variance between standard and actual materials by using the COGS rather than the COM, and now argues that, after this problem is corrected, the remaining variance is reasonable for the reasons previously explained. We disagree that after this adjustment the materials variance is reasonable for the reasons previously explained. Furthermore, Dieng does not address the other large variances (*i.e.* direct labor, indirect labor, energy, and depreciation).

We also disagree with Dieng's argument that it is not a problem that the individual variances are large because the overall variance is not great. The fact that the inaccurate standards for each major cost element add up to a total that is closer to the actual total costs does not support the claim that individual standard costs are reliable. The issue here is the allocation of costs between products or, in other words, the reliability of the standards, not the inclusion of total costs. We are not persuaded by the fact that there was no objection to the use of its standard costs noted by the auditors in Dieng's financial statements. Consistent with CPF from Thailand and *Salmon from Chile*, the absence of the auditor's direct comment does not indicate reasonableness of those standards for CV calculation purposes; rather it indicates that either the standards used to value ending inventory were lower than market prices or any mis-statement was not significant to the financial statement's presentation.

For the final determination, we rejected the use of Dieng's standard costs and derived CV using a weight-based allocation methodology, as explained further in *Comment 7* below. For the same reasons, we have not used Dieng's standard costs to derive Surya Jaya's per-unit costs, as reported, but have derived CV using a weight-based allocation methodology.

Comment 7: Revision of Dieng's Submitted Costs Using Production Quantity and Total Costs

Petitioners argue that the Department should reject Dieng's cost allocation methodology since it yields unreasonable results, and revise Dieng's submitted costs to reasonably reflect the costs of producing the subject merchandise using a weight-based allocation. For example, petitioners point out that a careful review of Dieng's production process shows that Dieng's claim that whole mushrooms ''require longer actual time to process'' than pieces and stems is due to the fact that the ''workers set aside the whole mushrooms until there are sufficient mushrooms to manufacture whole mushrooms (or sliced mushrooms) in a production batch.'' Therefore, the petitioners assert that the only extra ''time'' involved is the time mushrooms must be ''set aside,'' which, despite Dieng's claim to the contrary, does not imply that the production time is any longer. Petitioners suggest that the Department revise the submitted costs by allocating Dieng's reported production costs using a drained-weight methodology. Petitioners state that such an allocation methodology based on net drained weight produced is consistent with the Department's chosen methodology in the companion investigation of preserved mushrooms from Chile, where respondent's reported allocation methods were rejected by the Department. Petitioners also note that Dieng's affiliate Surya Jaya improperly used Dieng's standard costs even though it did not use a standard cost system to record its own costs. Since Dieng's standard cost system is unreliable and Surya Jaya does not use a standard cost system, petitioners argue that Surya Jaya's costs must also be restated according to the methodology previously described.

Respondents argue that petitioners failed to provide an alternative allocation methodology that would be more reasonable than Dieng's standard cost system. According to respondents, petitioners' proposal to use a weight-based allocation of costs is not more accurate because a weight-based allocation does not properly account for the cost and processing time differences in producing the different types of canned mushrooms. Specifically, respondents point out that: (1) petitioners have used the purchase price of cans during the POI which is inappropriate and inconsistent with the Department's practice of using consumption costs; (2) petitioners' methodology would ignore the additional time and costs associated with the processing of fancy mushrooms in manufacturing sliced and whole mushrooms; (3) Dieng's standard cost system differs from that of the respondent in the Chilean preserved mushrooms case, because unlike Dieng, the Chilean respondent had no established cost accounting system and had to develop a methodology; and (4) Dieng's standard costs are an acceptable and accurate means to report costs that are specific to each grade of subject merchandise sold to the United States, whereas allocating costs purely on the basis of weight would render the product characteristics useless in this investigation

Respondents further contend that use of a weight-based allocation would result in the creation of dumping margins simply by comparing a uniform per-kilogram cost to products, the actual costs and prices of which reflect more than weight. Respondents point out that the Department has recognized that a weight-based allocation is not appropriate in the context of a processed agricultural product. Respondents state, for example, that in *CPF from Thailand*, at FR 29560), the Department rejected a proposal to depart from the respondents' normal cost allocation in favor of a weight-based allocation. In that case, respondents state that the Department explained that a weight-based allocation of pineapple fruit costs would not be appropriate, and that ''using weight alone as the allocation criteria sets up the illogical supposition that a load of shells, cores, and ends [used to produce juice products] cost just as much as an equal weight of trimmed and cored pineapple cylinders used to produce canned pineapple fruit.'' Respondents state that, for mushrooms, a weight-based allocation would make the analogous illogical presumption that a load of fancy mushrooms used to produce whole or sliced preserved mushrooms costs just as much as an equal weight of non-fancy mushrooms when the record evidence shows that fancy and non-fancy mushrooms have different acquisition costs.

DOC Position:

We agree with petitioners that Dieng's reported costs are unreliable and have recalculated Dieng's per-unit costs using a weight-based methodology. Because Surya Jaya's submitted costs were based on Dieng's standard cost system which we have rejected for purposes of the final determination, we have also recalculated Surya Jaya's costs using a weight-based methodology.

As discussed in *Comment 6* above, we have determined that Dieng's standard cost system is not reliable because the allocation methods used in Dieng's system distort costs. While Dieng argues we must use its standard costs to account for processing differences, we note that one reason the standards were rejected was that they do not differentiate costs based on product differences. Moreover, we agree with petitioners that the set-aside time in canning whole mushrooms does not imply that the production time for whole mushrooms is longer. In fact, sliced mushrooms and pieces and stems require an additional processing step.

We also disagree with Dieng's assertion that there are cost differences in specific grades of mushrooms. As stated by company officials during verification, the cost of producing different qualities (*i.e.,* grades) of mushrooms is the same. (*See* Dieng Verification Report at 7.) The actual cost of growing mushrooms is the same regardless of the value of the different grades of mushrooms. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile,* 63 FR 56613, October 22, 1998 (''*Mushrooms from Chile*''). Mushrooms are grown in batches where the natural process results in product of varying size and quality. Mushrooms can be either sold directly after harvest or be processed further and sold in several different forms and containers. The production processes may be manipulated by the producer, within the confines of the natural growing process, to obtain different yields on certain sizes and qualities. Furthermore, mushrooms are sold by weight. Because the identical process, climate conditions, and production factors are applied to fancy and non-fancy mushrooms, the actual cost to grow each kilogram of mushroom is the same regardless of whether it is sold fresh or preserved, whole or in a variety of other forms. In *Salmon from Chile* at FR 31416, as in the instant case, the Department found that, ''with minor exceptions, each company's recorded costs of the subject merchandise did not vary by grade or weight band [(*i.e.,* size)] * * * and that the costs of certain of these matching groups are the same.'' In citing to *Ipsco* v. *United States,* 965 F2d 1056 (Fed. Cir. 1992) (''IPSCO'') in the *Salmon from Chile* case, the Department stated that ''as with premium salmon, prime-grade pipe was of higher quality and, as such, commanded a higher price in the marketplace (*Id.* at 1058). In the proceeding underlying the IPSCO decision, the Department compared U.S. sales of prime and limited service grade pipe to CVs based on the actual costs of each grade, which were identical. Therein the respondents objected to this methodology vis-a-vis comparisons involving U.S. sales of lower grade of merchandise. The Court of Appeals for the Federal Circuit (''CAFC'') rejected this claim, ruling that the Department had 'calculated constructed value precisely as the statute directs' in basing CV on the actual cost of production for each grade (*Id.* at 1060).'' *See Salmon from Chile* at FR 31416–31417.

Furthermore, Dieng incorrectly cites to *CPF from Thailand* to support its position that a weight-based allocation is not appropriate. In that case, the cost of producing the pineapple was allocated between products, not between different grades of the same product. Different grades of mushrooms are not separate and distinct products, they are different grades of the same product.

Consistent with *Mushrooms from Chile,* we have determined that an allocation methodology based on weight is reasonable for the following reasons: (1) both Dieng/Surya Jaya and Zeta track the mushrooms through the production process by weight, not by number of mushrooms or by grade; (2) mushrooms are sold by weight; (3) virtually the same activities and expenses are incurred in growing each kilogram; and (4) regardless of whether the mushrooms are sold as preserved or fresh product, they are substantially the same product (*i.e.,* they are not joint products). Simply stated, the cost-generating elements of growing mushrooms for both preserved and fresh, ''fancy'' or ''non-fancy,'' whole or pieces, large or small mushrooms are identical; and canned whole mushrooms may be, and often are, re-processed into pieces and stems. On this basis, we are relying upon a weight-based methodology because it reasonably reflects the costs of producing the subject merchandise. The respondents' argument that a weight-based methodology would render the product characteristics useless is incongruous because the actual costs for each grade of mushrooms are the same and would not be distorted by a weight-based allocation.

As to Dieng's argument concerning the value of purchased mushrooms, although Dieng does purchase different grades of mushrooms at different costs, the differences in purchase prices should not be used to create artificial differences in the cost of Dieng's own mushroom production. First, we note that a product's market price does not always follow its cost of production. Second, in this case, it is Dieng's supplier that is benefitting from the higher price commanded by higher quality mushrooms and Dieng is incurring the cost of having to buy these mushrooms at higher market prices. Dieng's cost of its purchased mushrooms is its purchase price, but its cost of its self grown mushrooms is its growing costs. Therefore, we have weight averaged Dieng's cost of producing mushrooms with its acquisition price for purchases of different grades of mushrooms in the final determination. (*See* December 18, 1998, Calculation Memorandum.)

Comment 8: Revision of Dieng's Can Cost

Petitioners contend that the Department should revise Dieng's reported can costs to include the higher prices paid by Dieng during the latter part of the POI after the depreciation of the rupiah in accordance with the Department's past practice. Citing such cases as *CPF from Thailand,* petitioners state that the Department has determined in past cases that it is inappropriate to exclude the cost of material purchases toward the end of the POI in its submitted costs. According to petitioners, Dieng shows in its response the actual prices it paid for cans during the POI, but does not use these prices in reporting its can costs. Petitioners further contend that Dieng records its raw materials and indirect materials inventory at a moving average cost. Therefore, petitioners argue that Dieng's can cost should be reported on a moving average cost basis, which would include the higher prices of cans purchased toward the end of the POI and exclude the historical cost of beginning inventory, in accordance with the Department's cost reporting objective to determine the COP during the POI.

Respondents state that petitioners' proposal is contrary to Department practice and unnecessary. According to respondents, record evidence demonstrates that Dieng's can purchases in late 1997 were incorporated into Dieng's reported can cost. Moreover, respondents state that using Dieng's 1997 can purchase cost would

unreasonably ignore the fact that Dieng consumed cans from inventory that included pre-POI purchases. Citing *Certain Welded Stainless Steel Pipe From the Republic of Korea* 57 FR 53693, November 12, 1991, respondents maintain that the Department has consistently held that purchase prices do not accurately value material input costs because they fail to account for the cost of material already in inventory and actually used during the POI. Finally, respondents assert that no adjustment to can costs is necessary because Dieng allocated the actual costs of cans—which is a moving average cost that incorporates both the change in raw materials inventory and all purchases during the fiscal year (POI)—in its CV calculations.

DOC Position:

We agree with the respondents. As stated in *Comment 3* above, it is the Department's practice to use the cost of manufacturing the subject merchandise during the POI. Dieng's reported cost of cans appropriately included the cost of cans consumed in producing the subject merchandise during the POI, rather than the cost of cans purchased during the POI. The Department uses the replacement cost of an input only in high inflation situations. Because we did not find high inflation in Indonesia during the POI, we have continued to use the cost of cans consumed in producing the subject merchandise during the POI in calculating the COP.

Comment 9: Duty Drawback Adjustment Claim

Given that Dieng could not provide any evidence of linkage between duties paid and taxes rebated for excise taxes paid on imported glass jars during the POI, petitioners argue that the Department should reject Dieng's duty drawback adjustment claim.

DOC Position:

We agree with petitioners. It is the Department's practice to allow an upward adjustment to U.S. price for duty drawback if the respondent meets the Department's long-standing two-part test: (1) that there be a direct link between the import duty and the rebate granted; and (2) that the respondent has sufficient imports of raw materials used in the production of the final exported product to account for the drawback received on the exported product. At verification, Dieng could not provide any evidence of a nexus between import duties paid and taxes rebated during the POI (*see* Dieng Verification Report at 2 and 25). Because Dieng did not satisfy part one of the two-part test, we have rejected its claim for a duty drawback adjustment in the final determination.

Comment 10: Offset to COM and G&A for Non-subject Merchandise

Petitioners argue that the Department incorrectly indicates in its verification report that certain items identified by Surya Jaya to offset production costs, such as fresh mushrooms and used compost sales, bank interest, or reevaluation of ending inventory, should probably be reclassified to G&A expenses. Petitioners state that, for some of these items, there is no information on the record to indicate that they are related to the subject merchandise. As such, the petitioners claim that it would be inappropriate to offset G&A expenses with such items. The petitioners also state that should the Department decide to offset Surya Jaya's G&A expenses with the items that were used to offset production costs, it must make sure that the same items will not be used as offsets to COM.

DOC Position:

We agree with petitioners in part. Consistent with our normal methodology, we have continued to allow used compost sales as an offset to COM, as they constitute revenue from the sales of scrap resulting from the production of subject merchandise. (*See e.g., Collated Roofing Nails From Taiwan*, 62 FR 51427, October 1, 1997.) Additionally, we have continued to include Surya Jaya's adjustments of raw material costs (*e.g.*, revaluation of ending inventory) in the COM. However, we have excluded the revenue from fresh mushroom sales from Surya Jaya's offset calculation (and reallocated growing costs) because they constitute sales of a primary product, not a scrap resulting from production of the subject merchandise. Furthermore, we included the short-term bank interest income cited by petitioners in the financing expense calculation as an offset to interest expense in accordance with our normal practice.

Zeta Comments

Comment 11: Zeta's Start-up Adjustment Claim

Zeta contends that it has demonstrated that it is a producer using new production facilities and that production levels were limited by technical factors associated with the initial phase of production. Consequently, it should be granted a start-up adjustment under section 773(f)(1)(C) of the Act in the final determination. Zeta argues that the Department's preliminary determination, which rejected Zeta's claim for a start-up adjustment because Zeta failed to identify suitable technical factors limiting production levels in the initial phase of production, is inconsistent with the statute and fails to consider the nature of Zeta's operations.

First, Zeta asserts that its claimed start-up cost relates to new production facilities, explaining that its mushroom growing facilities and cannery were not mere improvements to existing facilities but were built new and were not substantially completed until after the POI. Second, in accordance with 19 CFR section 351.407(d)(2) and (3), Zeta states that it has properly quantified the start-up period and has provided evidence that establishes the end of the start-up period which marks the end of the initial phase of commercial production. In addition to production units, Zeta states that it provided data demonstrating that the capacity utilization rates for January through June 1997 were substantially lower than those of July through December 1997.

Third, Zeta maintains that its technical factors relate to the integrated nature of Zeta's operations for producing preserved mushrooms. Unlike many of the U.S. preserved mushroom producers, Zeta explains that it is an integrated producer, growing fresh mushrooms that are processed into preserved mushrooms. According to Zeta, fresh mushrooms are not merely raw material for the canning operations, but are actually an intermediate state of production in the process of producing canned mushrooms. Zeta states that it reported its production costs based on the following direct cost centers: spawn making, compost manufacture, casing soil manufacture, growing and harvesting, and cannery. Accordingly, Zeta argues that the Department must not consider Zeta's canning operations to be the only production stage relevant to start-up operations but, rather, only the final part of Zeta's production process which begins with fresh mushroom growing operations (spawn, compost, casing soil, growing, harvest).

Moreover, Zeta asserts that the integrated nature of its operations was part of Zeta's original business development plan. According to Zeta, the feasibility study of its corporate plan reflects several important facts relevant to the Department's analysis of Zeta's start-up adjustment. As outlined in the feasibility study, Zeta sought funds to complete Stage I (which planned for the construction of Zeta's cannery and growing facilities) and Stage II (which planned for the construction of additional growing facilities for the independent farmers) of the construction of production facilities. According to respondent, completion of

both Stage I and Stage II was necessary to provide Zeta with a sufficient supply of mushrooms to achieve full production levels for both growing and canning. Zeta asserts that Stage II construction was not substantially completed until February 1998, because Zeta encountered substantial engineering difficulties in the construction of the foundations for the growing facilities due to heavy rainfall and unexpected drainage and runoff problems. Zeta explains further that the delay in Stage II construction due to engineering adjustments prevented Zeta from reaching full capacity for its fresh mushroom growing operations. As a result, Zeta claims that it was unable to reach full commercial production levels of preserved mushrooms until the fresh mushroom growing facilities were substantially completed. Zeta claims further that its start-up period did not end until July 1997 when it had completed enough growing facilities to achieve significant production levels.

Zeta concludes, based on the foregoing points, that it has fully satisfied the statutory criteria for a start-up adjustment. Zeta proposes that the Department grant a start-up adjustment by substituting the unit production costs incurred with respect to the merchandise at the end of the start-up period for the unit production costs incurred during the start-up period, and that the Department amortize the start-up costs over the shelf-life of preserved mushrooms (*i.e.*, 24 months).

Pillsbury argues that Zeta qualifies for a start-up adjustment to account for its new facilities' mushroom growing shortfall in the first half of 1997 which resulted from technical factors that limited the volume of fresh mushrooms that were grown and, therefore, the amount of preserved mushrooms that could be produced. Pillsbury argues that the Department's characterization of Zeta's start-up problem in the preliminary determination as a ''shortage of raw materials'' implies that the production of canning-quality mushrooms is a different operation than the production of certain preserved mushrooms. Pillsbury states further that Zeta's questionnaire response shows that the production of mushrooms is an integral part of the canning process, and thus growing the requisite number and quality of mushrooms is part of the production process, not a precursor to it.

Petitioners disagree, stating that the integrated nature of Zeta's operations is not in dispute, nor is it germane to the question of start-up. Petitioners argue that the difficulties encountered at some other point in the production process are simply part of poor business planning, and are not related to the start-up costs incurred to build the new canning facility. Rather, petitioners state that the engineering difficulties experienced by Zeta during the construction of the growing facilities were attributable to weather-related conditions that affected the growing facility construction, not the new canning facility. According to petitioners, technical factors that limit production at the cannery facility might include things such as difficulty getting new machinery to operate properly, or engineering problems encountered with canning the goods. Petitioners point out that the SAA makes clear that the limited production must not be related to factors unrelated to start-up, such as ''chronic production problems.'' Petitioners argue that based on Zeta's own admission, the limit in production had more to do with weather-related problems rather than the actual operation of the canning facility. Accordingly, petitioners maintain that the Department should reject Zeta's claimed start-up adjustment in the final determination.

DOC Position:

We disagree with Zeta that a start-up adjustment is warranted in this case. Section 773(f)(1)(C)(ii) of the Act authorizes adjustments for start-up operations ''only where a producer is using new production facilities or producing a new product that requires substantial additional investment, and production levels are limited by technical factors associated with the initial phase of production'' during the POI. Based on our analysis of the information Zeta submitted to support its claim, we have determined that Zeta's production levels were not limited by technical factors associated with the initial phase of production.

Prior to the POI, Zeta built its own mushroom growing facility and its own canning facility. Both of these facilities were in operation prior to the POI. Zeta stated that, to fulfill the government's requirement of local participation in new agricultural industries, a certain amount of Zeta's mushrooms had to be sourced from local farmers. As a result, an unaffiliated cooperative of mushroom farmers built a mushroom growing facility, to which Zeta provided its technical expertise. The mushroom growing facility owned by this unaffiliated cooperative is the facility that experienced the delays in construction (*i.e.*, due to the building of retaining walls as a result of heavy rainfall which caused excessive erosion of the foundations for the growing facility) that Zeta claims constituted the technical factor (*i.e.*, shortage of fresh mushrooms) that limited Zeta's canned mushroom production. Therefore, Zeta is not claiming a start-up adjustment based on technical factors experienced at its own facility, but rather the technical factors associated with the unaffiliated farmer cooperative's growing facility.

We disagree with Zeta that our preliminary determination failed to consider the nature of Zeta's operations. In making this determination, we followed the guidelines set forth in the SAA at page 837, which provide that the analysis will vary from industry to industry and product to product, requiring a fact-intensive inquiry. Similarly, the preamble to the Department's proposed regulations states that the start-up criteria ''are somewhat generalized because they must allow for any number of start-up operation scenarios'' (61 FR 7339, February 27, 1996).

We acknowledge that Zeta's growing and canning facilities are new production facilities. However, Zeta's growing and canning facilities were completed before the beginning of the POI and its commercial production levels were not limited by technical factors associated with the initial phase of its commercial production, as evidenced by significant production levels during the POI. (*See* the Verification Report at page 16.) We also note that the ''technical factors'' alleged by Zeta relate solely to the operations of Zeta's unaffiliated mushroom supplier. Zeta's own preserved mushroom operations include only its mushrooms growing operations and canning facility, not those of an unaffiliated supplier. We do not believe that technical difficulties experienced at an unaffiliated supplier's facility qualify as sufficient ''technical factors'' under section 773(f)(1)(C) of the Act. The result of the technical difficulties experienced by the cooperative—the lack of supply of the raw material input to Zeta's canning factory and the resulting underutilization of capacity—does not satisfy the criteria for a start-up adjustment.

Moreover, Zeta reached commercial production levels before the POI and increased production during the POI. While Zeta may not have been able to utilize its canning facility at a higher production rate, we note that the SAA at page 836 states that ''the attainment of peak production levels will not be the standard for identifying the end of the start-up period, because the start-up period may end well before a company achieves optimum capacity utilization.''

See also Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8930, (February 23, 1998.

In sum, section 773(f)(1)(C)(ii) of the Act establishes that both prongs of the test must be met to warrant a start-up adjustment. In this case, we found that Zeta failed to meet the second prong of the test and, accordingly, have denied Zeta's claim for a start-up adjustment in the final determination.

Comment 12: Items Used to Offset Zeta's Material Production Costs

Zeta contends that items related to the production of subject merchandise (i.e., spawn compost and casing soil sales revenue, and scrap mushrooms sales revenue) should be offset against Zeta's material production costs; and items unrelated to the production of subject merchandise (*i.e.*, ''gain from claim'' and ''loss on others'') should not be offset against production costs, but rather should be offset against Zeta's G&A expenses.

With respect to revenues from the sale of spawn compost and casing soil, Zeta explains that it sold these items to independent farmers who used them to grow fresh mushrooms. Zeta further explains that it purchased fresh mushrooms from the independent farmers, offsetting its accounts payable to the farmers for fresh mushroom purchases by the value of its sales of spawn compost and casing soil to the farmers. Zeta states that the Department has recognized that the revenue from sales of intermediate products used in the production of subject merchandise such as spawn compost and casing soil must be taken as an offset to the COM regardless of whether these sales are classified as ''scrap'' or ''rejected'' merchandise. Although the Department's verification report notes that revenue from Zeta's sales of spawn compost and casing soil was not generated from scrap or rejected merchandise, Zeta argues that the Department must also acknowledge that Zeta received revenues that were used directly to offset Zeta's material input costs in Zeta's accounting system. Zeta points out that the Department has made similar adjustments to production costs for revenue associated with production inputs in past cases (*e.g., CPF from Thailand* at 29566, and *Certain Fresh Cut Flowers from Colombia*, 59 FR 15159, (March 31, 1994). Accordingly, Zeta contends that the Department should offset Zeta's material costs with the revenue from the sales of spawn compost and casing soil. Finally, with respect to the revenue received from the sale of scrap mushrooms, Zeta argues that the Department should use this revenue as an offset to Zeta's production costs, consistent with the Department's past practice (*e.g, Chrome Plated Lug Nuts from Taiwan*, 56 FR 36130, 36134, July 31, 1991).

Petitioners argue that Zeta's sales of spawn compost and casing soil should not be used to offset its production (material) costs, and that the revenue from the spoiled or sample mushrooms should only be allowed as an offset to Zeta's material costs if it was reported in Zeta's books and accounted for in its reported production costs. With regard to Zeta's claim for sales of spawn compost and casing soil as an offset to production costs, the petitioners assert that these ''sales'' did not generate actual revenues for Zeta because Zeta and the independent farmers were involved in a barter arrangement where Zeta traded its spawn compost and casing soil for fresh mushrooms. Therefore, since Zeta's accounts receivable for sales of spawn compost and casing soil were offset by its accounts payable for purchases of fresh mushrooms, petitioners contend that there were no actual revenues or payments involved. Furthermore, petitioners state that Zeta's reference to *CPF from Thailand* and *Certain Fresh Cut Flowers from Colombia* in support of its argument that the sales revenue in question related to material costs should be used to offset production costs is not relevant because Zeta's claimed offset is not based on revenue actually received, as its accounts receivable was offset by its accounts payable under the barter arrangement. Petitioners claim that pursuant to the Department's practice, claims of credits, rebates or offsets should always be tied to the actual amounts received, not the amount claimed. Petitioners point out that in *CPF from Thailand* respondent's offset for sugar refunds was rejected by the Department because it was based on amounts earned, not received. Accordingly, petitioners maintain that the Department should not account for Zeta's ''artificial'' sale of spawn compost and casing soil as an offset to Zeta's material input costs. Petitioners further state that even if the Department were to grant such an offset, however, the offset should not be allocated only across canned mushrooms, but must be allocated across all mushroom products, including both fresh and canned mushrooms.

Finally, petitioners argue that certain items such as ''gain from claim'' and ''loss on others'' included in Zeta's production cost offset calculation should not be reclassified as G&A expenses, as suggested in the Department's verification report. Because there is no information on the record to indicate that the ''gain from claim'' is related to the subject merchandise, petitioners contend that it would be inappropriate to offset G&A expenses with this amount if it is not related to the subject merchandise. However, petitioners assert that should the Department decide to offset Zeta's G&A expense with certain items that were used to offset production costs, it should be careful to not use the same items as offsets to production costs.

DOC Position:

We agree with petitioners and respondents in part. With respect to the revenue from scrap mushrooms (*i.e.* mushrooms falling to the floor or samples taken during the pre-canning selection process, and mushrooms selected for quality control purposes in the post-canning process), we have allowed it as an offset to COM, as it constitutes revenue from the sale of scrap resulting from the production of subject merchandise, consistent with our normal practice. (*See Collated Roofing Nails from Taiwan*.) With respect to the revenue from spawn compost and casing soil sales, however, we have not allowed it as an offset to production costs because it relates to sales of a primary product (*i.e.*, not scrap or a by-product). We note that these sales constitute a separate line of business and Zeta plans to continue to sell these items on a regular basis to the unaffiliated farmers. If we were to include these revenues as an offset to production costs, as Zeta suggests, we would be reducing the cost of preserved mushrooms by any profit earned on the sales of spawn compost and casing soil. Although these products are raw materials in the production of preserved mushrooms, Zeta's sales of spawn compost and casing soil are made to unaffiliated parties and, therefore, not used in the production of Zeta's preserved mushrooms. While the sales of spawn compost and casing soil should not offset the cost of producing preserved mushrooms, the cost of producing these products for sale should also not be included in Zeta's preserved mushrooms production costs. Therefore, we have excluded an amount for the cost of sales of spawn compost and casing soil from Zeta's reported mushroom cost. Furthermore, we disagree with petitioners that because the sales of spawn compost and casing soil to the independent farmers and the purchases of mushrooms from the independent farmers are cleared through the same account, they are not

actual sales and purchases. Zeta practices accrual accounting and as such recognizes the sales or purchases when booked. We found at verification that these transactions were independent and therefore have treated them accordingly.

With respect to the ''gain from claim'' included in respondent's COM offset calculation, we verified that this item related to revenue obtained from an insurance claim on a shipment of subject merchandise, which is more appropriately classified as an offset to G&A expenses, rather than production costs. (*See* Zeta Verification Report at 26.) Therefore, we have excluded it from Zeta's production cost offset calculation and included it in the calculation of the G&A expense ratio. We have treated the ''loss on others'' which relates to safety deposit box rental charges incurred during the POI as G&A expenses, and removed it from the COM offset calculation because it relates to the general expenses of the company rather than production costs. We also verified that the ''loss on claim'' included in the COM offset calculation as a reduction to the offset amount related to payment made to a U.S. customer for excess glass jar wastage. Because the cost of containers are included in the COM for purposes of our dumping analysis in this case, we have continued to include the ''loss on claim'' in the calculation of COM. (*See* Zeta Verification Report at 26.)

Comment 13: Cost of Producing Fancy Mushrooms and Non-fancy Mushrooms

Zeta argues that the Department should value its mushroom inputs consistent with Zeta's treatment of these costs in its accounting system. Zeta argues that the Department confirmed at verification that Zeta's costs for fancy mushrooms differ from the costs for non-fancy mushrooms. Contrary to the Department's statements in its verification report, Zeta asserts that it actually over-reported costs of fresh mushrooms in its submitted costs and provided a cost analysis to support this claim in its November 9, 1998 case brief at pages 23 and 24. Therefore, Zeta argues that adjusting the costs for an under-allocation of costs alleged in the Department's verification report is therefore unwarranted.

Petitioners disagree, arguing that the Department should correct Zeta's understatement of fresh mushroom costs based on its verification findings. According to petitioners, Zeta restated its average per-unit cost of internally grown mushrooms to reflect the difference in value (*i.e.*, purchase price) between fancy and non-fancy mushrooms purchased from third parties. Further, petitioners maintain that Zeta's contention that its methodology overstates costs rather than understates costs is illogical because it uses the per-unit mushroom costs that have already been ''restated.'' Therefore, petitioners contend that Zeta's suggestion that its costs were over-reported is unsupported by the evidence on the record and should be rejected by the Department.

DOC Position:

We disagree with Zeta. While the Department verified that Zeta purchases fancy and non-fancy mushrooms at different prices, it incurs and records one average cost for growing its own mushrooms. Zeta's proposed method would create an artificial difference in cost for its own production. As discussed in Comment 7 above, the cost of producing different grades of mushrooms are the same. We note that Zeta purchases only a small quantity of mushrooms and produces the rest of its mushrooms.

We disagree with the analysis of costs set forth in Zeta's case brief. In its case brief, Zeta incorrectly added the quantity of fancy and non-fancy mushroom production. In fact, Zeta transposed the total fancy and non-fancy quantities and therefore used the incorrect amounts in attempting to show the total mushroom cost reported. As stated in the verification report at 2 and 15, Zeta under-allocated mushroom cost in the reported costs. For the final determination, we have allocated Zeta's total mushroom cost based on the weighted-average cost of its mushroom purchases and its own mushroom production costs. (*See* Comment 7, above, for further discussion.)

Comment 14: Cost Allocation Based on Adjustment Factors Derived from Difference in Processing Time

Zeta contends that the Department should accept Zeta's reported cost allocation that is based on its normal accounting records which incorporate time study standards that reflect differences in processing time between mushroom styles (*i.e.*, whole, sliced, and pieces and stems). Zeta argues that it complied with the Department's request to report costs on a product-specific basis. Accordingly, given that its accounting and production records incorporated the processing time studies on a product-specific basis, Zeta maintains that the Department should use Zeta's reported cost allocation because it satisfies the Department's requirement. Furthermore, according to Zeta's cost allocation methodology is consistent with the Department's requirement that respondent allocate costs to subject merchandise at the greatest level of specificity permitted by the respondent's regularly-kept production records, whether or not such allocation is actually used in the company's accounting system. Among other cases, respondents cite *Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Rolled Products: Final Results of Antidumping Administrative Review* (62 13195, March 18, 1998) and *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Korea* (63 FR 40404, July 29, 1998) to support the proposition that respondents can allocate costs on a more detailed, product-specific level than that in their normal cost accounting methodology in order to report costs on a control number-specific basis, as required by the Department. Zeta argues that its cost allocation methodology is also consistent with its production process. For example, Zeta states that it has higher costs for fancy mushrooms than non-fancy mushrooms, and that petitioners' methodology would ignore the additional time and cost associated with the processing of fancy mushrooms in manufacturing sliced and whole mushrooms. Zeta argues that the Department's failure to use Zeta's adjustment factor in Zeta's cost allocation would render the product characteristics useless in this investigation because allocation of costs strictly on the basis of weight, as proposed by the petitioners, would mean that all products would have the same per-unit weight cost which is incorrect. Zeta contends that since its normal production records report the processing time studies on a product-specific basis, and since Zeta's submitted cost allocations comply with the Department's requirement that costs be reported on a product-specific basis, Zeta concludes that the Department should accept Zeta's reported cost allocations.

Petitioners maintain that the Department should reject Zeta's cost allocations which have not been historically used in its accounting system in the normal course of business. Petitioners assert that Zeta admits that its reported costs are an ''adaptation'' of its actual cost accounting system. Petitioners state that Zeta's time study standards were never verified by the Department and, more importantly, these studies represent a deviation from Zeta's normal cost accounting system. Petitioners contend that the Department confirmed at verification that these allocations are not, and have not been, used by Zeta in its normal course of

business, and that they were created solely for this investigation. According to petitioners, this violates well-established Department policy, the SAA and the U.S. antidumping law. Petitioners cite *Salmon from Chile* at 31432, stating that the Department's long-standing practice, as codified in section 773(f)(1)(A) of the Act, is to rely on data from a respondent's normal books and records which are prepared in accordance with home country GAAP and reasonably reflect the costs of producing and selling the subject merchandise.

Petitioners assert that Zeta admits that its normal system distinguishes costs by container and drained weight, and not by grade or style, and that there are no meaningful distinctions in the production process between products. Petitioners point out that Zeta states in its response that the cost system does not distinguish between different types of products, and other than the slicing of the mushrooms into sliced mushrooms or pieces and stems, the canning process is identical for all mushrooms. In particular, petitioners contend that Zeta's application of the price differential between ''fancy and non-fancy'' fresh mushrooms sourced from unaffiliated farmers to its own internal costs of production for raw mushrooms is unreasonable because Zeta purchased such a small percentage from unaffiliated farmers and there was no distinction between fancy or non-fancy styles. Petitioners maintain that since Zeta has declared on the record of this investigation that ''the canning process is identical for all mushrooms,'' there is no need for a novel allocation of labor and overhead costs based on the unsupported and unverified claim that whole mushrooms require more time to process than sliced mushrooms. Because Zeta has failed to demonstrate that its normal books and records do not reasonably reflect the costs associated with the production of the subject merchandise, the petitioners state that the Department should reject Zeta's submitted cost allocations and calculate CV based on Zeta's normal books and records, using the methodology proposed by petitioners in its case brief and consistent with the method used in *Mushrooms from Chile.*

DOC Position:

We agree with petitioners. The time studies used by Zeta to adjust reported costs for differences in processing are not used by Zeta in the normal course of business and therefore cannot be used in the final determination. In accordance with section 773(f)(1)(A) of the Act, the Department will normally use a company's allocation methodology ''if such allocations have been historically used'' by the producer. In this case, we verified that Zeta does not allocate costs based on differences in processing times in its normal books and records. Moreover, Zeta did not substantiate processing differences at verification, and the Department did not verify the validity of the time studies or the claim that they are used at all in Zeta's normal production records. Therefore, we have continued to calculate Zeta's costs using a weight-based methodology and have disregarded Zeta's costs adjusted for processing differences.

Comment 15: Use of Revised G&A Rate Calculated in the Verification Report

Zeta argues that the Department, in its verification report, erroneously classified selling expenses incurred at its Jakarta sales office as G&A expenses, claiming that this classification is inconsistent with the findings of the Department recorded elsewhere in Zeta's verification report. Zeta argues that classification of these expenses as selling expenses is consistent with Department practice which has always classified general expenses related to a selling operation as selling expenses. To support its claim, respondent cites a number of cases, (*e.g., Certain Cold-Rolled Carbon Steel Flat Products From Germany: Final Results of Antidumping Duty Administrative Review,* 60 FR 65264, December 19, 1995) where the Department stated that it classified expenses associated with running a sales office or related to sales activities as indirect selling expenses, rather than non-sales-related G&A expenses. Accordingly, Zeta contends that the Department should continue to calculate Zeta's G&A expense factor as it did in the preliminary determination, separating the selling expenses described above from the G&A expenses.

Petitioners reply that Zeta's allegation is in contradiction with Zeta's own audited financial statement which classified the exact amount as G&A expenses. Petitioners state that it is the Department's long-standing policy to use audited financial statements in the calculation of SG&A because they are more reliable than a company's own estimated or reported figures (*see CPF from Thailand* at FR 29565). Petitioners point out that the Department reviewed and verified Zeta's classification of selling and G&A expenses at verification and tied the SG&A expenses from Zeta's trial balances to its audited financial statements. Petitioners argue that, in light of the above facts, the Department should reject Zeta's claim and use the verified figure in the calculation of Zeta's G&A expenses.

DOC Position:

We disagree with Zeta. Section 773(e)(2)(A) of the Act states that CV should include an amount incurred for G&A expenses in connection with the production and sale of the subject merchandise. Based on representations made by Zeta officials and our observations at verification, the expenses Zeta recorded in its audited financial statements as G&A expenses are expenses related to the company operations, not solely to support the company's selling functions. Therefore, we have calculated Zeta's G&A expenses using the amount verified and recorded by Zeta as G&A in its audited financial statements.

Comment 16: Adjusting Zeta's Costs to Account for the Difference Between Gross and Net Production Quantity

Petitioners argue that the Department should adjust Zeta's reported costs upward to account for the difference between net and gross production because the Department discovered at verification that Zeta understated its reported costs by allocating total costs over the gross production of the subject merchandise, rather the net production. Petitioners contend that by using this method, Zeta has improperly allocated total costs over waste, rejects, and samples.

DOC Position:

We agree with petitioners. In order to include yield losses in the canning process, we have derived the per-unit cost using the net production of canned mushrooms. Using this methodology allows us to allocate the cost of waste, rejects, and samples to those products available for sale. We have adjusted respondent's cost in accordance with our findings at verification (*see* Zeta Verification Report at 2).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to begin suspension of liquidation for PT Dieng Djaya/PT Surya Jaya Abadi Perkasa of all entries of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final determination in the **Federal Register**. We are also directing the Customs Service to continue to suspend liquidation for PT Zeta Agro Corporation of all entries of subject merchandise from Indonesia, that are

entered, or withdrawn from warehouse, for consumption on or after August 5, 1998 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
PT Dieng Djaya/PT Surya Jaya Abadi Perkasa	7.94
PT Zeta Agro Corporation	22.84
All Others	11.26

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–34705 Filed 12–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–040]

Stainless Steel Plate From Sweden: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: On November 16, 1998, the Department of Commerce (the Department) published the final results of review in the antidumping duty administrative review on stainless steel plate from Sweden (63 FR 63706). The review covers two manufacturers/exporters (Avesta Sheffield AB (Avesta) and Uddeholm Tooling AB, Bohler-Uddeholm Corporation and Uddeholm Limited (collectively Uddeholm)) of the subject merchandise to the United States and the period June 1, 1996 through May 31, 1997.

On November 19, 1998, pursuant to section 351.224(c) of the Department's regulations, Avesta filed a ministerial error allegation regarding the Department's implementation of the constructed export price (CEP) offset in calculating a margin for Avesta in the final results of the review. The Department is publishing these amended final results to correct this ministerial error.

EFFECTIVE DATE: December 31, 1998.

FOR FURTHER INFORMATION CONTACT: John Totaro or Nithya Nagarajan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1374 and (202) 482–4243, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1998), 62 FR 27296 (May 19, 1997).

Ministerial Error in the Final Results of Review

For purposes of calculating the antidumping margin for Avesta for the POR, as published in the final results, the Department's margin calculation program calculated a CEP offset in accordance with the Department's regulations. However, Avesta alleged that the Department's final results margin calculation program defined the indirect selling expense variable INDEXUS but did not similarly define the variable INDEXPU. Avesta argues that the Department incorrectly tied the CEP offset to INDEXPU instead of INDEXUS. As a result, Avesta's CEP offset was always equal to zero. Avesta alleged that, as a result of this ministerial error, Avesta did not receive the CEP offset to which it was otherwise entitled. Petitioners have not objected to this allegation of ministerial error.

The Department examined the margin calculation program, and we agree with Avesta that this is a clerical error within the meaning of 19 CFR 351.224(f), *i.e.*, a clerical error in connecting the calculation of CEP offset to the variable INDEXPU instead of INDEXUS in the margin calculation program. We have corrected the program so that the CEP offset calculation properly references the variable INDEXUS, rather than INDEXPU.

Amended Final Results of Review

Upon correction of the ministerial error described above, Avesta's margin, as published in the **Federal Register** on November 16, 1998, has been revised from 25.05 percent to 22.67 percent for the period June 1, 1996 through May 31, 1997. The final results margin for Uddeholm remains unchanged. We will instruct the Customs Service accordingly.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. For assessment purposes, we have calculated importer-specific duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total entered value of sales examined during the POR. Individual differences between U.S. price and normal value may vary from the percentages stated above. As a result of this review, we have determined that the importer-specific duty assessments rates are necessary.

Furthermore, the following deposit requirements shall be effective upon

publication of this notice of amended final results of review for all shipments of stainless steel plate from Sweden entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate stated above; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate for this case will continue to be 4.46 percent, which was the ''all others'' rates in the LTFV investigations. The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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 sections 351.305 and 351.306 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This amended administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. §§ 1675(a)(1) and 1677(f)(i)(1)) and sections 351.213 and 351.224 of the Department's regulations.

Dated: December 12, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–34707 Filed 12–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Evaluation of Coastal Zone Management Program and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Guam Coastal Zone Management Program and the Weeks Bay (AL), South Slough (OR), and Hudson River (NY) National Estuarine Research Reserves.

These evaluations will be conducted pursuant to sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of states with respect to coastal program and research reserve program implementation. Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves require findings concerning the extent to which a state has met the national objectives, adhered to its coastal program document or the Reserve's final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Guam Coastal Zone Management Program evaluation site visit will be from February 1–5, 1999. One public meeting will be held during the week. The public meeting will be held on Monday, February 1, 1999, at 5:00 P.M., in the Governor's Cabinet Conference Room at Adelup, Guam.

The Weeks Bay National Estuarine Research Reserve in Alabama site visit will be from February 22–26, 1999. One public meeting will be held during the week. The public meeting will be held on Thursday, February 25, 1999, at 7:00 p.m., at the Weeks Bay Interpretive Center Auditorium, 11300 U.S. Highway 98, Fairhope, Alabama.

The South Slough National Estuarine Research Reserve in Oregon site visit will be from March 8–12, 1999. One public meeting will be held during the week. This public meeting will be on Wednesday, March 10, 1999, at 7:00 P.M. at the Southwestern Oregon Community College in Coos Bay, Oregon.

The Hudson River National Estuarine Research Reserve in New York site visit will be from April 12–16, 1999. One public meeting will be held during the week. This public meeting will be on Wednesday, April 14, 1999, from 5:00 P.M.–7:00 P.M., at the New York State Department of Environmental Conservation Region 3 Office, 21 South Putt Corners Road, New Paltz, New York.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division (PCD), Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT:

Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3155, ext. 126.

Dated: December 23, 1998.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Evelyn Fields,

Captain, Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 98–34687 Filed 12–30–98; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102198A]

Small Takes of Marine Mammals Incidental to Specified Activities

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the Washington State Department of Corrections (WDOC) to take small numbers of harbor seals by harassment incidental to the nonexplosive demolition and construction of the Still Harbor Dock Facility on McNeil Island in southern Puget Sound for a period of 1 year.

DATES: This authorization is effective from January 1, 1999, through December 31, 1999.

ADDRESSES: The application, authorization, and a 1994 environmental assessment (EA) are available by writing to the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or the Northwest Region, NMFS, Bldg 1, 7600 Sand Point Way, Seattle, WA 98115, or by telephoning one of the contacts listed here.

The Washington State Final Environmental Impact Statement (FEIS) and other documents are available for review during regular business hours at these same offices.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, or Brent Norberg, Northwest Regional Office, NMFS, (206) 526–6733.

SUPPLEMENTARY INFORMATION:

Background

Subsections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' ...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines ''harassment'' as:

> ...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Background of Request

On September 18, 1998, NMFS received an application from the WDOC requesting an authorization for the possible harassment of small numbers of harbor seals incidental to work involved in the removal and replacement of the Still Harbor Dock Facility (Dock Facility), a foul weather landing facility for the McNeil Island Corrections Center, McNeil Island, WA. (The Quitclaim Deed, which transferred the property from Federal to state control, limits the use of the Still Harbor Dock to emergency situations because of the Gertrude Island harbor seal population.) Significant deterioration of the existing facility, including the collapse on May 24, 1994, of the steel-pile-supported concrete center portion of the facility, has resulted in the need for major renovation in order to maintain a safe, functional facility.

On January 23, 1995, NMFS issued an IHA to the WDOC under subsection 101(a)(5)(D) of the MMPA for this project (see 60 FR 7046, February 6, 1995). However, removal of the Dock Facility was not completed; the IHA expired 1 year after authorization; and a renewal was not requested since that time.

The renovation will include demolition of the existing facility; construction of a new pile-supported concrete access trestle approximately 350 ft (107 m) long by 10 ft (3.0 m) wide, a new 50 ft (15.2 m) long by 5 ft (1.5 m) wide aluminum gangway, seven new 10 ft (3.0 m) wide and 50 ft (15.2 m) long and one new 14 ft (4.3 m) wide and 60 ft (18.3 m) long concrete floats; and 60 steel pipe and prestressed concrete piles. All new structures will be constructed within the footprint of the existing facility. The new dock will be significantly smaller than planned in 1994 (8,000 ft^2 v. 20,000 ft^2). Additional information on the dock facility and the Corrections Center in general can be obtained by referring to the FEIS published by the WDOC in 1989 in compliance with the State Environmental Policy Act of 1971 (chapter 43.21C, Revised Code of Washington). This document and the 1998 Addendum are available for viewing (see **ADDRESSES**).

In an effort to minimize noise from these activities, no explosives will be used for demolition. The dock removal and construction schedules were developed to avoid reproductively sensitive life history periods of several species of wildlife, including harbor seals. The demolition and pile-driving activities are anticipated to be completed in one season's specified work window, from December 1998 or January 1999 through March 15 or April 1, 1999. Above-water work is scheduled to continue through to the end of August 1999.

Comments and Responses

A notice of receipt of the application and proposed authorization was published on October 29, 1998 (63 FR 58012), and a 30-day public comment period was provided on the application and proposed authorization. During the 30-day comment period, comments were received from the Marine Mammal Commission (MMC).

Comment: The MMC recommends, as it did in 1994, that the proposed incidental harassment authorization not be issued until the uncertainties and details of the monitoring program have been worked out and NMFS is able to

reasonably conclude that the monitoring program is appropriate to detect any possible harmful effects on the local harbor seal population.

Response: NMFS concurs that monitoring should be carried out (as required by the MMPA). NMFS believes that the level and extent of monitoring required for ''harassment'' takings must be weighed against the anticipated level of impact. For this type of activity, NMFS believes that observations prior to, during, and subsequent to any noise disturbance activities will provide sufficient information on the impact of disturbance. Also, since the Gertrude Island harbor seal haul-out is the largest in Puget Sound and has been studied by both Washington Department of Fish and Wildlife (WDFW) and NMFS, sufficient baseline data have already been recorded. To ensure that observations take place during demolition work, a condition of the IHA in 1994, and again this year, is for WDOC to notify both NMFS and the WDFW at least 48 hours prior to commencement of work in order to allow observations of harbor seals prior to work beginning. To ensure that observations take place during demolition work, if NMFS and/or WDFW biologists are not available during demolition, the WDOC is required to contract with trained marine mammal biologists for behavioral observations to be made during any work on the McNeil Island Dock. The IHA requires a report on these observations be provided within 90 days of completion of work.

Harbor Seals

A description of the harbor seals found in Puget Sound and on Gertrude Island can be found in the notice of proposed authorization and need not be repeated here.

Expected Impact to Harbor Seals

The impact to the harbor seals would be disturbance by noise, which is anticipated to result in a negligible short-term impact to a small number of harbor seals. When harbor seals are frightened by noise or by the approach of a boat, plane, human, or other potential predator, the seals will move rapidly to the relative safety of the water. Depending upon the severity of the disturbance, seals may return to the original haul-out site immediately, stay in the water for some length of time before hauling out, or haul out in a different area (Johnson, 1977; Skidmore and Babson, 1981). These short term disturbances and site reoccupation were confirmed by observations conducted during the first phase of the project (WDOC, 1997). Disturbances tend to have a more serious effect when herds are pupping or nursing, when aggregations are dense, and during the molting season (Jones and Stokes, 1989).

Short-term impact of the activities is expected to result in a temporary reduction in utilization of the haulout while work is in progress or until the seals acclimate to the disturbance. The specific activities will not result in any reduction in the number of seals, and they are expected to continue to occupy the same area of Gertrude Island. The abandonment of Gertrude Island as a harbor seal haulout and rookery is not anticipated due to the existing level of human activity on and around the dock for over 50 years (Jones and Stokes, 1989). Human activity increases annually in the late fall and winter months when the use of the dock facility serving as a foul weather moorage for WDOC passenger ferries, barges, tugboats, and patrol boats increases.

In addition, the activities are anticipated to have no long-term impact on the habitat of harbor seals. No direct physical impact to the habitat will occur due to the dock reconstruction as all new facilities will occur within the footprint of the original structure. Mitigation measures (discussed here) under an MMPA IHA are expected to reduce any impacts to a negligible level.

Mitigation

Efforts to ensure negligible impact of the dock renovation project on harbor seals identified by the WDOC include:

1. A December 1–July 15 (or whenever newborn pups are first observed on Gertrude Island) work schedule for those activities that are predicted to disturb harbor seals in order to avoid adversely affecting harbor seals during the pupping and nursing season (July 15 to October 15);
2. A 1,000–ft (305 m) no-entry buffer zone around Gertrude Island to minimize the impact of vessel traffic on harbor seals during the project (the buffer zone will be marked by floats);
3. Construction activities and seal behavior will be monitored by marine biologists to ensure that impacts on seals will be minimal;
4. The demolition will not utilize any explosives;
5. The removal of material and debris will be in the largest sizes possible, and the removed materials will be transported off site for disposal; and
6. To mitigate noise levels and, thereby, impacts to harbor seals, all construction equipment should comply as much as possible with applicable equipment noise standards of the U.S. Environmental Protection Agency (EPA, 1974), and all construction equipment should have noise control devices (e.g., mufflers) no less effective than those provided on the original equipment.

Monitoring

The Gertrude Island haulout has been the site of research projects on harbor seals for a number of years. Research efforts by NMFS and WDFW include a radio tag study to learn about feeding behavior of the seals. The IHA requires WDOC to notify NMFS, and the WDFW prior to work in order to coordinate this research.

While monitoring impacts from construction is planned to be conducted by WDFW, the WDOC may contract with a private contractor to monitor activities if WDFW biologists are unavailable.

Conclusions

NMFS has determined that the short-term impact of taking small numbers of harbor seals by harassment incidental to the demolition and construction of the Dock Facility on McNeil Island is expected to result at worst in a temporary reduction in utilization of the impacted haulout(s) as seals leave the beach for the safety of the water. The activity is not expected to result in any reduction in the number of harbor seals, and these animals are expected to continue to occupy the same area. This behavioral change is expected to have no more than a negligible impact on the animals. Additionally, there will not be any impact on the habitat itself. Since NMFS is assured that the taking would not result in more than the incidental harassment (as defined by the MMPA Amendments of 1994) of small numbers of marine mammals, would have only a negligible impact on these stocks, would not have an unmitigable adverse impact on the availability of these stocks for subsistence uses, and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of subsection 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Authorization

Accordingly, on the date of this notice, NMFS issued an incidental harassment authorization to the WDOC for 1 year for the demolition and reconstruction of the Dock Facility located on McNeil Island in the State of Washington, provided the above mentioned mitigation measures and reporting requirements are incorporated. NMFS has determined that the demolition of the Dock Facility would result in the harassment taking of only

a small number of harbor seals, would have a negligible impact on the harbor seal stock, and would not have an adverse impact on the availability of this stock for subsistence uses.

Dated: December 23, 1998.

Michael Payne,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–34710 Filed 12–30–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122398D]

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and the New England Fishery Management Council will hold joint public meetings.

DATES: On Tuesday, January 19, 1999, the Mid-Atlantic Council and New England Council Scientific & Statistical Committees will meet from 10:00 a.m. until 4:00 p.m. On Wednesday, January 20, 1999, the Joint Spiny Dogfish Committee will meet from 10:00 a.m. until 5:00 p.m.

ADDRESSES: This meeting will be held at the Holiday Inn, 45 Industrial Highway, Essington, PA; telephone: 610–521–2400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to review the overfishing definition for spiny dogfish and consider alternatives for spawning stock biomass rebuilding targets.

Although other issues not contained in this agenda may come before the Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: December 23, 1998.

Gary C. Matlock,

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

[FR Doc. 98–34564 Filed 12–30–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122398C]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings of its Herring and Groundfish Oversight Committees and Groundfish Advisory Panel in January, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on January 21, January 25 and 26, 1999, respectively. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Peabody, MA and Portsmouth, NH. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Thursday, January 21, 1999, 10 a.m.—Herring Oversight Committee Meeting

Location: Holiday Inn, One Newbury Street (Route 1), Peabody, MA 01960; telephone: (978) 535–4600.

Consideration of Atlantic herring management issues including ''grandfathering'' provisions for large fishing vessels (over 165 feet), and, for the Gulf of Maine, a Total Allowable Catch ''set-aside'' for small otter trawl vessels and spawning closure boundaries.

Tuesday, January 25, 1999, 9:30 a.m.—Groundfish Advisory Panel Meeting

Location: Holiday Inn, 300 Woodbury Avenue, Portsmouth, NH 03801; telephone: (603) 431–8000.

Review of the draft final document for the annual plan adjustment (Framework Adjustment 27) to the Northeast Multispecies Fishery Management Plan (FMP) and development of advice to the Groundfish Committee on a preferred alternative for consideration by the Council. The panel also will discuss and advise the Groundfish Committee on priorities for 1999. Topics will include, but may not be limited to action to address rebuilding programs as needed under the new overfishing definitions for all multispecies stocks, implementation of a two-tiered permit system to address latent fishing effort, industry proposals for scientific research and conservation engineering programs, and modification of the annual plan adjustment schedule and a possible change to the fishing year.

Tuesday, January 26, 1999, 9:30 a.m.—Groundfish Oversight Committee Meeting

Location: Holiday Inn, 300 Woodbury Avenue, Portsmouth, NH 03801; telephone: (603) 431–8000.

Review of the draft final document for the 1999 annual plan adjustment (Framework Adjustment 27) to the Northeast Multispecies FMP and development of a preferred alternative for consideration by the Council. The Groundfish Committee also will discuss and recommend priorities for 1999. Issues or topics will include, but may not limited to action to address rebuilding programs as needed under new overfishing definitions for all multispecies stocks, implementation of a two-tiered permit system to address latent fishing effort, industry proposals for scientific research and conservation engineering programs, and modification of the annual adjustment schedule and possible change to the fishing year.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: December 23, 1998.

Gary C. Matlock,

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

[FR Doc. 98–34565 Filed 12–30–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121898A]

Marine Mammals; File No. P79H

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 887, issued to Institute of Marine Sciences, LML, University of California, Santa Cruz, CA 95060 (Principal Investigator: Ronald J. Schusterman, Ph.D.), was amended to extend the expiration date to March 31, 1999.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the provisions of 50 CFR 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: December 24, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–34709 Filed 12–30–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Solicitation of Applications for Membership on Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The Patent and Trademark Office seeks five members for the Public Advisory Committee for Trademark Affairs. Each member will serve a three-year term. A member must be an organization that is representative of the intellectual property community, e.g., a bar group, an intellectual property organization, a business organization or an academic institution. Interested organizations should respond by a letter that includes the information requested in the Supplementary Information section of this notice.

DATES: Submit applications on or before January 29, 1999.

ADDRESSES: Mail letters of request to participate in the Public Advisory Committee for Trademark Affairs to The Honorable Q. Todd Dickinson, Deputy Assistant Secretary of Commerce and Deputy Commissioner of Patents and Trademarks, United States Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Sharon Marsh, Trademark Administrator, by telephone at (703) 308–8910 ext. 45; by fax at (703) 308–9395; or be e-mail to sharon.marsh@uspto.gov.

SUPPLEMENTARY INFORMATION: This Committee is chartered under the Federal Advisory Committee Act (Pub. L. 92–463). Its purpose is to advise the Patent and Trademark Office (Office) on ways to increase the Office's efficiency and effectiveness and to provide a continuing flow of insights and perceptions from the private sector to the Office in the areas of domestic and international trademark law.

The Office amended the charter of the Committee in 1996 to make the Committee more diverse and more representative of trademark owners, trademark practitioners and the Intellectual Property community as a whole. Accordingly, the Commissioner will select five representative organizations from among intellectual property organizations, bar groups, business-related organizations and academia. The five organizations whose terms will expire on December 31, 1998, are not precluded from responding to this notice.

Each organization's letter to the Commissioner should explain the nature, size and characteristics of the organization and what insights and perspective it would bring to the work of the Committee.

The members will be selected based on the following criteria: (1) Organization's familiarity with the operations of the Patent and Trademark Office relating to trademarks and trademark rules, trademark practices, and the administration of the trademark operations; (2) the organization's experience practicing before the Patent and Trademark Office in trademark matters; and (3) evidence of the organization's interest in trademark practices, such as established committees designed to improve trademark operations, or legal education activities regarding trademark practices.

Dated: December 22, 1998.

Q. Todd Dickinson,

Deputy Assistant Secretary of Commerce and Deputy Commissioner of Patents and Trademarks.

[FR Doc. 98–34625 Filed 12–30–98; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Textile Consultations with the Government of Pakistan

December 24, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

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 categories for which consultations have been requested, call (202) 482–3740.

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.

On December 24, 1998, under Article 6 of the Uruguay Round Agreement on Textiles and Clothing (ATC), the Government of the United States requested consultations with the Government of Pakistan with respect to combed cotton yarn in Category 301, produced or manufactured in Pakistan.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Pakistan, the Government of the United States reserves its right to establish a twelve-month limit of not less than 5,262,665 kilograms for the entry and withdrawal from warehouse for consumption of combed cotton yarn in Category 301, produced or manufactured in Pakistan.

A summary statement of serious damage, actual threat of serious damage or the exacerbation of serious damage concerning Category 301 follows this notice.

Anyone wishing to comment or provide data or information regarding Category 301 or to comment on domestic production or availability of products included in this category is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Donald R. Foote. The comments received will be considered in the context of the consultations with the Government of Pakistan.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular commentary or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the implementation of an agreement is not a waiver in any respect of the exemption contained in 5 U.S.C.553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Pakistan, further notice will be published in the **Federal Register**.

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.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Summary of the Statement in Support of Request for Consultations Under Article 6 of the ATC

Combed Cotton Yarn—Category 301

December 1998

Import Situation and Conclusion

The USG has determined that the increase in imports of combed cotton yarn for sale, Category 301, has caused serious damage, or actual threat thereof, to the industry in the United States producing like and/or directly competitive yarn for sale.

Imports of the subject yarn from all sources increased by 91.3 percent in January-August 1998 over January-August 1997, an increase of 9,828,000 kilograms. During this same period, domestic shipments dropped substantially, falling 14,174,000 kilograms, 14.2 percent below the January-August 1997 level. Domestic unfilled orders fell by 15.8 percent and domestic production declined 10.2 percent from January-August 1997 to January-August 1998 as inventories increased 145.9 percent.

Increasing low-valued imports put pressure on domestic prices and margins. Capacity utilization declined as shipments and production fell, causing severe margin pressure as fixed costs had to be allocated over fewer sales, which cut gross margins. Compounded with the pressure to lower prices, mills' profitability evaporated. Operating margins shrank as companies engaged in the production and sale of the subject merchandise, resulting in declining profitability in January-August 1998 compared to the same period in 1997 on the product in question. Two mills fell victim to the price squeeze and shut down. Production worker employment in the defined industry lost 340 jobs during January-August 1998.

The USG concluded that the increase in imports in 1998 has caused serious damage to the industry as reflected in the industry's declining production and shipments, the substantial increase in inventories, the industry's deteriorating financial performance, and the significant fall in unfilled orders and employment.

The USG has also determined that serious damage to this industry is directly attributable to a sharp and substantial increase in imports of the subject yarn from Pakistan. Imports from Pakistan have increased significantly, both absolutely and relative to domestic production and world imports, thereby increasing Pakistan's share of U.S. imports and the U.S. market. Pakistan's low-valued imports adversely affected U.S. domestic prices.

U.S. imports of the subject yarn from Pakistan increased to 3,612,652 kilograms in January-August 1998, 283.2 percent above the 942,756 imported during January-August 1997. For the year-ending October 1998, imports from Pakistan surged to 4,908,094 kilograms, 164.3 percent above the 1,857,294 kilograms imported for the year-ending October 1997.

The USG further determined that increases in imports of the subject yarn from all sources constitute the actual threat of serious damage or the exacerbation of serious damage to the defined domestic industry producing a like and/or directly competitive product, and that, based on sharp and substantial increases in imports of the subject product from Pakistan, such threat is attributable to Pakistan.

[FR Doc. 98–34780 Filed 12–29–98; 12:19 pm]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

The Corporation for National and Community Service (hereinafter the ''Corporation''), 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). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Office of Evaluation, Susan Labin, (202) 606–5000, Extension 160. Individuals who use a telecommunications device for the

deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Mr. Danny Werfel, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C., 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 Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Evaluation of Literacy and Tutoring Programs.

OMB Number: None.

Agency Number: None.

Affected Public: Project Directors.

Total Respondents: Approximately 1,125.

Frequency: One time.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 563 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: The Corporation seeks approval of a survey form for the evaluation of the Corporation's literacy and tutoring programs that it supports through grants. It will allow for the description of delivery systems and program models including the specific literacy and monitoring activities. It will also help identify effective programs. There were no comments received during the initial 60-day public comment period. The change in the number of respondents and burden hours is a result of a change in sampling for several of the programs. Instead of small purposive samples for several of the programs, when feasible the agency is selecting larger representative samples in order to allow for generalizations to the larger universe of agency programs, thus increasing the utility of the data.

Dated: December 23, 1998.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 98–34626 Filed 12–30–98; 8:45 am]

BILLING CODE 6050–28–P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Special Commission Meeting

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing and meeting for business on January 5, 1999 at 10:00 a.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

Possible Drought Emergency Declaration

Section 10.4 of the Delaware River Basin Compact provides that in the event of a drought or other condition which may cause an actual and immediate shortage of available water supply within the Basin, or within any part thereof, the Commission may, after public hearing, determine and delineate the area of such shortage and declare a water supply emergency therein. For the duration of such emergency, the Commission could limit the extent to which water users may divert or withdraw water for any purpose. The Commission is considering whether current and developing conditions of water supply and demand require the declaration of a water supply emergency.

The purpose of this hearing is to permit the public to comment on these matters and to make any suggestions or recommendations concerning possible Commission actions.

There will be a business meeting of the Commission immediately following the hearing to consider possible Commission actions relating to the drought situation.

Dated: December 21, 1998.

Susan M. Weisman,

Secretary.

[FR Doc. 98–34666 Filed 12–30–98; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–898–000]

Allegheny Energy, Inc., and DQE, Inc.; Notice of Extension of Time

December 24, 1998.

On December 22, 1998, the Federal Energy Regulatory Commission's Trial Staff (Commission), filed a motion for an extension of time to submit comments on the Settlement Agreement filed by Allegheny Energy, Inc., on December 10, 1998.

Staff is authorized to state that Allegheny and Chambersburg, the only parties believed to be affected by the Agreement, do not oppose this motion.

Upon consideration, notice is hereby given that an extension of time for Commission Trial Staff to file comments on the Settlement Agreement is granted to and including January 6, 1999.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34677 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–898–000]

Allegheny Energy, Inc., and DQE, Inc.; Notice of Filing

December 24, 1998.

Take notice that on December 10, 1998, Allegheny Energy, Inc., tendered for filing a Settlement Agreement entered into between Allegheny Energy, Inc., and the Borough of Chambersburg.

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 and protests should be filed on or before January 8, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34678 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OA98–12–001; OA98–14–001; OA97–457–002; OA97–421–002; OA97–318–002; OA97–415–002; OA97–453–002; OA97–130–002; OA97–441–002; OA97–515–002; OA97–400–002; and OA97–234–002]

Alliant Services, Inc.; Edison Sault Electric Company; GPU Energy; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; Interstate Power Company; IES Utilities, Inc.; Montaup Electric Company; Wisconsin Power & Light Company; Minnesota Power & Light Company; Montana Power Company; Pacific Gas and Electric Company; Southwestern Public Service Company; Wisconsin Public Service Corporation; Notice of Filing

December 23, 1998.

Take notice that between December 11–14, 1998, the above-named companies submitted revised standards of conduct in response to the Commission's November 13, 1998 Order on Standards of Conduct. 85 FERC ¶ 61,227 (1998).

Any person desiring to be heard or to protest the filings 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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before January 6, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34622 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–184–000]

ANR Pipeline Company, Notice of Proposed Changes in FERC Gas Tariff

December 24, 1998.

Take notice that on December 17, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to be effective February 1, 1999:

Ninth Revised Sheet No. 5
Ninth Revised Sheet No. 7
Ninth Revised Sheet No. 11
Seventh Revised Sheet No. 12
Third Revised Sheet No. 22
Fifth Revised Sheet No. 23
Fourth Revised Sheet No. 32
Fourth Revised Sheet No. 33A
Sixth Revised Sheet No. 39
Fifth Revised Sheet No. 40
Third Revised Sheet No. 61
Third Revised Sheet No. 67
Third Revised Sheet No. 68

ANR states that the purpose of its filing is to provide greater consistency in the determination of its daily rates for overrun service. The proposed tariff sheets apply the same method that is used to calculate daily capacity release rates under Gas Industry Standard Board Standard No. 5.3.22. This change will either not affect or reduce slightly ANR's daily overrun rates.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34589 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–4412–000 and ER98–4423–000 (Not Consolidated)]

CET Marketing, L.P. and Cogen Energy Technologies, L.P.; Notice of Issuance of Order

December 23, 1998.

CET Marketing, L.P. (CET) and Cogen Energy Technologies, L.P. (Cogen) (collectively, Applicants) each filed applications requesting that the Commission authorize them to engage in sales of electric energy and capacity at wholesale at market-based rates, and for certain waivers and authorizations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Applicants. On December 21, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's December 21, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Applicants 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 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Applicants' issuances of securities or assumptions of liabilities. . . .

Notice is hereby given that the deadline for filing motions to intervene

or protests, as set forth above, is January 20, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34618 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–185–000]

CNG Transmission Corporation, Notice of Tariff Filing

December 24, 1998.

Take notice that on December 17, 1998, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 1999:

Nineteenth Revised Sheet No. 31
Forty Third Revised Sheet No. 32
Forty Third Revised Sheet No. 33
Sixteenth Revised Sheet No. 34
Nineteenth Revised Sheet No. 35
Fifth Revised Sheet No. 37

CNG states that the purpose of this filing is to voluntarily reduce CNG's Rate Schedule FT, IT, MCS, GSS, and GSS II rates consistent with Appendix A of the August 31, 1998, Stipulation and Agreement (Stipulation) filed in Docket No. RP97–406 and approved by the Commission on November 24, 1998. Such voluntary reduction will serve the public interest by lowering costs to CNG's customers, which serves to lessen the collection of amounts that will ultimately be refunded under the terms of the above Stipulation.

CNG states that copies of its filing have been mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34590 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–546–000]

Columbia Gas Transmission Corporation; Notice of Availability of the Environmental Assessment for the Proposed Columbia Gas Transmission Corporation RIPX Project

December 23, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Columbia Gas Transmission Corporation (Columbia) in the above-referenced docket. The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The purpose of the proposed project is to abandon the Derricks Creek Storage Field in its entirety and offset any reductions in working gas capacity and deliverability by facility construction at the Ripley Storage Field. Columbia proposes to increase the certificated capacity at Ripley Storage Field by 0.8 billion cubic feet (Bcf). Columbia must also take immediate action at the Derricks Creek Storage Field to comply with a U.S. Department of Transportation Hazardous Facilities Order.

Specifically, the EA assesses the potential environmental effects of the abandonment of the Derricks Creek Storage Field in Kanawha County, West Virginia and the construction and operation of Columbia's proposed pipeline facilities and modifications at the Ripley Storage Field in Jackson County, West Virginia including:

- Abandonment in place of the Derricks Creek Storage Field in its entirety consisting of 13.1 miles of various diameter pipeline and 20 active storage wells;
- Construction of approximately 3.5 miles of various diameter storage pipeline, drilling six new storage wells, and improving the deliverability of nine existing wells at the Ripley Storage Field;
- Increase the capacity of the Ripley Storage Field by 0.8 Bcf of gas;
- Conversion of two observation wells to active injection/withdrawal wells and conversion of three very low performance wells to observation wells in the Ripley Storage Field;
- Abandonment by sale of up to 5.4 Bcf of base gas within the two storage fields; and
- Performing various well pipeline installations and replacements.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send *two* copies of your comments to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label *one* of those copies for the attention of the Environmental Review and Compliance Branch II, PR–11.2;
- Reference Docket No. CP98–546–000; and
- Mail your comments so that they will be received in Washington, DC on or before January 28, 1999.

Comments will be considered by the Commission but will not serve to make

the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Access to the texts of formal documents issued by the Commission with regard to this docket, such as orders and notices, is also available on the FERC website using the ''CIPS'' link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34607 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–415–000]

Commonwealth Chesapeake Company, L.L.C.; Notice of Issuance of Order

December 23, 1998.

Commonwealth Chesapeake Company is a Virginia corporation created for the purpose of developing, building, owning and operating a 300 MW generating facility in Accomack County, Virginia. Commonwealth Chesapeake filed an application requesting that the Commission authorize it to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Commonwealth Chesapeake requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Commonwealth Chesapeake. On December 21, 1998, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's December 21, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (F), (G), and (I):

(F) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Commonwealth Chesapeake 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 385.214.

(G) Absent a request to be heard within the period set forth in Ordering Paragraph (F) above, Commonwealth Chesapeake is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Commonwealth Chesapeake, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(I) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Commonwealth Chesapeake's issuances of securities or assumptions of liabilities. . . .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 20, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34617 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–114–000]

El Paso Natural Gas Company, Notice of Request Under Blanket Authorization

December 23, 1998.

Take notice that on December 14, 1998, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP99–114–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct, and operate a new delivery point in Pinal County, Arizona, to be known as the Kai Farms #5 Delivery Point, to permit the interruptible transportation and delivery of natural gas to Kai Farms Company (Kai Farms). El Paso makes such request under its blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

El Paso states that it provides interruptible transportation service to Kai Farms pursuant to the terms and conditions of a Transportation Service Agreement (TSA) dated August 18, 1988, as amended and restated April 1, 1991. It is indicated that the TSA provides for the interruptible transportation of natural gas from any point of interconnection on El Paso's interstate system to various points in Pima County, Arizona.

El Paso states that Kai Farms has informed El Paso that in addition to its operations in Pima County, that Kai Farms has a farming business in Pinal County, Arizona, and that Kai Farms has installed irrigation pumps requiring natural gas for operation. El Paso by its request is proposing to construct and operate a new delivery point on El Paso's existing 6-inch Hayden Line (Line No. 2023) in Pinal County to serve Kai Farms in Pinal County.

It is stated that the proposed quantity of natural gas to be transported on an interruptible basis to the Kai Farms #5 Delivery Point is estimated to be 219,000 Mcf annually, or an average of 600 Mcf per day. The estimated maximum peak day natural gas requirement is 840 Mcf by the fifth year.

El Paso avers that the construction of the proposed delivery point is not prohibited by El Paso's existing tariff, and that the total volumes to be delivered at the proposed delivery point will not exceed the total volumes

authorized prior to the request. El Paso also states that it has sufficient capacity to accomplish the deliveries of interruptible service without detriment or disadvantage to El Paso's other customers.

El Paso's proposed project cost is estimated to be approximately $11,400. El Paso states that Kai Farms has agreed to reimburse that project cost. It is indicated that Kai Farms will purchase and install one 2-inch mini turbine with a 1-inch insert and 2-inch by-pass and appurtenant facilities to measure gas proposed for delivery at the Kai Farms #5 Delivery Point. El Paso states that Kai Farms agrees to own and El Paso agrees to operate and maintain the metering facilities that Kai Farms purchases and installs.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34609 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–34–000]

Energy East Beaver Falls, LLC; Notice of Application for Determination of Exempt Wholesale Generator Status

December 23, 1998.

On December 10, 1998, Energy East Beaver Falls, LLC, having an address at 2 Court Street, Binghamton, New York 13901, filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The applicant is a limited liability company that will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, an eligible facility in Beaver Falls, New York. The facility will consist of a 80–MW combined-cycle cogenerating facility fueled primarily by natural gas. The facility will include such interconnection components as are necessary to interconnect the facility with the New York Power Authority.

Any person desiring to be heard or to protest such 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 or 385.214). All such motions and protests should be filed on or before January 6, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34616 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–188–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 24, 1998.

Take notice that on December 22, 1998, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets as shown on Appendix A to the filing, with an effective date of February 1, 1999.

Equitrans states that the purpose of this filing is to correct or clarify a number of inconsistencies, ambiguities, and typographical errors its Tariff. Equitrans has also identified certain modifications which are required to comport the Tariff to recent changes in Commission Regulations. These tariff modifications are proposed with the intent of making Equitrans' Tariff easier to use and refer to, thereby enhancing service to Equitrans' customers.

Equitrans states that these tariff revisions will neither impact the nature of services which Equitrans performs, nor will they result in a general increase in Equitrans' revenues. Equitrans requests a shortened suspension period to permit the tariff sheets to take effect on February 1, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34593 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–7–000]

Equitrans, L.P.; Notice of Proposed Change in FERC Gas Tariff

December 24, 1998.

Take notice that December 21, 1998, Equitrans, L.P. (Equitrans), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 1999:

Tenth Revised Sheet No. 400
Thirteenth Revised Sheet No. 401

Equitrans states that this filing is made to update Equitrans' index of customers. In Order No. 581 the Commission established a revised format for the Index of Customers to be included in the tariffs of interstate pipelines and required the pipelines to update the index on a quarterly basis to reflect changes in contract activity. Equitrans requests a waiver of the Commission's notice requirements to permit the tariff sheet to take effect on January 1, 1999, the first calendar quarter, in accordance with Order No. 581.

Equitrans states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34600 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–186–000]

Florida Gas Transmission Company; Notice of Filing of Report of Cash-Out Activity and Request for Waiver

December 24, 1998.

Take notice that on December 18, 1998 Florida Gas Transmission Company (FGT) tendered for filing schedules detailing certain information related to the Cash-Out mechanism from October 1, 1997 through September 30, 1998. No tariff changes are proposed therein.

FGT states that Section 19.1 of the General Terms and Conditions (GTC) of its FERC Gas Tariff provides for an Annual Report containing an accounting for costs and revenues associated with the Cash Out Mechanism, Fuel Recovery Mechanism and various Balancing Tools provided for in FGT's Tariff. FGT states the Instant filing is made in compliance with those provisions.

FGT states that there was a net cost balance for the current Settlement Period of $40,693 and a cumulative underrecovery of $798,235 of system balancing costs.

Further, FGT requests waiver of the provisions of Section 19.1B.4 of the GTC which requires a concurrent tariff filing to increase non-compliance penalties in the event of excess costs. FGT states that because the causes of the cost underrecoveries are not the result of the non-compliance pricing provisions of the Tariff, granting of the waiver is appropriate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34591 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–34–000]

Florida Gas Transmission Company Notice of Proposed Changes in FERC Gas Tariff

December 24, 1998.

Take notice that on December 18, 1998, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective January 1, 1999, the following tariff sheets:

Thirty-First Revised Sheet No. 8A
Twenty-Second Revised Sheet No. 8A.01
Twenty-Third Revised Sheet No. 8A.02
Twenty-Seventh Revised Sheet No. 8B
Twentieth Revised Sheet No. 8B.01

FGT states that in Docket No. TM99–1–34–000 filed on August 31, 1998 and approved by Commission letter order dated September 22, 1998, FGT filed to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 2.84% to become effective October 1, 1998. In the instant filing FGT is filing a flex adjustment of <0.34>% to be effective January 1, 1999, which, when combined with the Base FRCP of 2.84%, results in an Effective Fuel Reimbursement Charge Percentage of 2.50%.

FGT states that the tariff sheets listed above are being filed pursuant to Section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. Pursuant to the terms of Section 27.A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.50%, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline, and is filed no more than sixty and at least seven days before the proposed effective date. The instant filing comports with these provisions and FGT has posted notice of the flex adjustment prior to the instant filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34596 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–143–048]

Great Lakes Gas Transmission Limited Partnership, Notice of Revenue Sharing Report, November 1997–October 1998

December 24, 1998.

Take notice that on December 18, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed its Interruptible/Overrun (I/O) Revenue Sharing Report with the Federal Energy Regulatory Commission (Commission) in accordance with the Stipulation and Agreement (Settlement) filed on September 24, 1992, and approved by the Commission's February 3, 1993 order issued in Docket No. RP91–143–000.

Great Lakes states that this report reflects application of the revenue

sharing mechanism and revenue sharing amounts determined for remittance to eligible firm shippers for I/O revenue collected for the November 1, 1997 through October 31, 1998 period, in accordance with Article IV of the Settlement. Great Lakes states that I/O revenue collected for the applicable period did not exceed the fixed costs allocated to I/O services threshold level. Therefore, revenue subject to sharing was zero. Great Lakes further states that as revenue subject to sharing was zero, it did not make any remittances to eligible firm shippers for I/O Revenue Sharing for the November 1, 1997 through October 31, 1998 period.

Great Lakes states that copies of the report were sent to its firm customers, parties to this proceeding and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 4, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34602 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–189–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 24, 1998.

Take notice that on December 22, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective January 22, 1999.

Twenty-sixth Revised Sheet No. 20
Twenty-third Revised Sheet No. 21
Twenty-fourth Revised Sheet No. 22
Twenty-seventh Revised Sheet No. 24
Second Revised Sheet No. 2708

Koch filed a request with the Commission for authorization to change the SLN numbering scheme on what was formerly Mobile Bay Pipeline Company. The numbering change will be made at the date of Mobile Bay's transfer into Koch. In addition, Koch is adding two new SLN's to the lost of SLN's that are subject to the incremental transportation rates currently in place on the supply lateral.

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34594 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OA97–402–003; and OA97–460–003]

Louisville Gas and Electric Co.; Kentucky Utilities Co.; Notice of Filing

December 23, 1998.

Take notice that on December 14, 1998, the above-named companies submitted revised standards of conduct in response to the Commission's September 29, 1998 Order on Standards of Conduct. 84 FERC ¶ 61,320 (1998).

Any person desiring to be heard or to protest the filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before January 6, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34621 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–116–000]

Mississippi River Transmission Corp., Notice of Request Under Blanket Authorization

December 23, 1998.

Take notice that on December 15, 1998, as supplemented December 21, 1998, Mississippi River Transmission Corp. (MRT), 525 Milam, P.O. Box 21734, Shreveport, Louisiana 71151–0001, filed in Docket No. CP99–116–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations (18 CFR 157.205, 157.211 and 157.216) under the Natural Gas Act (NGA) for authorization to abandon, construct and operate certain facilities in St. Clair County, Illinois, under MRT's blanket certificate issued in Docket No. CP82–489–000, 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.

MRT proposes to upgrade an existing delivery point on its Line A–287 to accommodate a request for increased deliveries to Solutia, Inc. (Solutia). Specifically, MRT proposes to abandon by removal two 3-inch orifice meter tubes and to replace them with two 4-inch orifice meter tubes. It is stated that MRT installed the facilities under Commission authorization in Docket No. G–291. MRT states that the upgraded facilities would be used to deliver up to 12,360 MMBtu equivalent of natural gas on a peak day and 3,504,000 MMBtu equivalent on an annual basis.

MRT also proposes to install a separate positive meter station for Solutia's office facilities. It is stated that the meter station would be used for the delivery of up to 300 MMBtu equivalent on a peak day and 54,750 MMBtu on an annual basis. It is estimated that the cost of the measurement facilities would be $45,035, and it is stated that MRT

would be reimbursed by Solutia for all construction costs. It is asserted that the volumes to be delivered are within Solutia's certificated entitlement from MRT and that MRT's tariff does not prohibit the addition of new delivery points. It is further asserted that MRT has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34610 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–126–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

December 24, 1998.

Take notice that on December 18, 1998, NorAm Gas Transmission Company (NGT), 1111 Louisiana, Houston, Texas 77002–5231, filed in Docket No. CP99–126–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate certain facilities in Oklahoma under NGT's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT specifically proposes to construct and operate two 2-inch delivery taps, first-cut regulators and one 4-inch meter station to serve ARKLA, a division of NorAm Energy Corp. (ARKLA). The proposed facilities will be located on NGT's lines 10 and 10–1 in Stephens County, Oklahoma. The total estimated volume to be delivered to this meter station is 400,000 Dth annually and 4,000 Dth on a peak day. The facilities will be constructed at an estimated cost of $42,872 and ARKLA will reimburse NGT the construction costs.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34599 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–118–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

December 23, 1998.

Take notice that on December 16, 1998, NorAm Gas Transmission Company (NGT), 1111 Louisiana, Houston, Texas 77002–5231, filed in Docket No. CP99–118–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate certain facilities in Louisiana under NGT's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT specifically proposes to construct and operate a 1-inch delivery tap and first-cut regulator to serve ARKLA, a division of NorAm Energy Corp. (ARKLA). The proposed tap to be installed on NGT's Line R–1–N will be located in Desoto Parish, Louisiana. The total estimated volume is 65 Dth annually and 0.5 Dth on a peak day. The tap and first cut regulator will be constructed at an estimated cost of $2,212 and ARKLA will reimburse NGT $1,751 of the construction costs.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34611 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–203–000]

Northern Natural Gas Company; Notice of Informal Settlement Conference

December 24, 1998.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 9:00 a.m. on Wednesday, January 6, 1999, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Sandra J. Delude at (202) 208–

0583, Bob Keegan at (202) 208–0158, or Edith A. Gilmore at (202) 208–2158.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34604 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG99–10–000]

Portland Natural Gas Transmission System; Notice of Filing

December 23, 1998.

Take notice that on December 11, 1998, Portland Natural Gas Transmission System (PNGTS) filed standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2]

PNGTS states that it has served copies of the filing upon all of its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before January 6, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34615 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ97–8–003]

South Carolina Public Service Authority; Notice of Filing

December 24, 1998.

Take notice that on December 21, 1998, South Carolina Public Service Authority (Santee Cooper) submitted revised standards of conduct in response to the Commission's November 25, 1998 Order. 85 FERC ¶ 61,286 (1998).

Any person desiring to be heard or to protest should file 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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before January 8, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34601 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–187–000]

Southern Natural Gas Company; Notice of Refund Report

December 24, 1998.

Take notice that on December 18, 1998, Southern Natural Gas Company (Southern) tendered for filing a Refund Report.

Southern states that pursuant to Section 23.3 of the General Terms and Conditions of Southern's Tariff the Refund Report sets forth Rate Schedule ISS revenues to be refunded to Rate Schedule CSS customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 30, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34592 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP95–64–003, RP96–292–002, and RP98–14–000]

Tennessee Gas Pipeline Company; Notice of Conference

December 24, 1998.

The above referenced dockets relate to Tennessee Gas Pipeline Company's (Tennessee) Annual Cashout Reports. Parties have raised certain concerns with the reports that are currently outstanding. In order to facilitate the resolution of the issues in these proceedings, the Commission Staff is convening an informal conference among the interested parties.

Take notice that the conference will be held on Wednesday, January 20, 1999, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

Tennessee and interested parties should be prepared to discuss in detail the cashout reports in order to resolve the specific concerns raised by the parties in these proceedings. In this regard, all parties should come prepared to discuss settlement, and the parties should be represented by principals that

have the authority to commit to a settlement.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34603 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–120–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

December 23, 1998.

Take notice that on December 17, 1998, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP99–120–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point to provide transportation service to the City of Tomball (Tomball), a municipality, under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to construct and operate a delivery point on its 4-inch Tomball lateral in Harris County, Texas, to provide transportation service up to 3,000 dekatherms per day to Tomball. Tennessee states that it will install a valve assembly at Side Valve (S.V.) 21B–121, electronic gas measurement and communications equipment. Additionally, Tennessee states that it will either modify or remove, as necessary, an existing check valve and appurtenant facilities located at or near Tennessee's existing S.V. 21B–101–3 which has been used to prevent back-flow. Tennessee also states that Tomball will reimburse Tennessee for Tennessee's share of the project costs which are approximately $27,000.

Tennessee states that the total quantities to be delivered to Tomball after the construction of the delivery point is completed will not exceed the total quantities authorized prior to this request, and that its construction of the delivery point is not prohibited by its tariff. Tennessee also states that it has sufficient capacity to accomplish deliveries at the delivery point without detriment or disadvantage to Tennessee's other customers. Further, Tennessee's states that construction of this delivery point for Tomball is not expected to have any significant impact upon Tennessee's peak day of annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34613 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–606–001]

Texas Eastern Transmission Corporation; Notice of Application

December 24, 1998.

Take notice that on December 18, 1998, Texas Eastern Transmission Company (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77251–1642, filed in Docket No. CP96–606–001, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, to amend the certificate of public convenience and necessity issued to Texas Eastern on July 21, 1997 in Docket Nos. CP96–606–001, *et al.*, by revising the amount of capacity leased to CNG Transmission Corporation (CNG), and the facilities needed to provide such capacity to CNG, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Texas Eastern proposes to revise the Capacity Lease Agreement (dated June 25, 1996) between Texas Eastern and CNG to change the Maximum Lease Quantity to 19,500 Dth per day. Texas Eastern also proposes to construct, install, own, operate and maintain certain loop facilities on Texas Eastern's existing Penn-Jersey System in lieu of constructing the facilities on Texas Eastern's CRP System which were authorized in the Commission's July 21, 1997 Order. The proposed new facilities are 3.98 miles of 36-inch diameter pipeline loop from milepost (M.P.) 2.90 to M.P. 6.88 in Westmoreland County, Pennsylvania; certain station piping modifications at the Perulack Compressor Station; and certain aboveground facilities to connect the proposed pipeline loop to adjacent existing facilities.

Texas Eastern states that the proposed facilities will provide up to 50,000 Dth per day of capacity on Texas Eastern's Penn-Jersey System. Texas Eastern further states that it will be ''at risk'' for the recovery of costs in excess of CNG's firm capacity entitlement.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 14, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules or 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 taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the

Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34597 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–121–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

December 24, 1998.

Take notice that on December 17, 1998, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP99–121–000 a request pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to convert an existing receipt point interconnection with Comstock Oil and Gas, Inc. (Comstock) to a point of delivery on its existing 20-inch Line No. 2 in Bienville Parish, Louisiana, to make deliveries to Willamette Industries (Willamette) an end user and customer, under the blanket certificate issued in Docket No. CP82–535–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Texas Eastern seeks authorization to modify an existing 6-inch check valve to allow deliveries of gas from Texas Eastern to Willamette. The existing hot tap, owned by Texas Eastern, consists of a 6-inch tap valve and 6-inch check valve (Tap) on Texas Eastern's Line No. 2 in Bienville Parish, Louisiana. According to Texas Eastern, the existing meter station is currently owned by Comstock, but such facilities will be transferred to Willamette prior to January 31, 1999. The meter station facilities consist of a 6-inch meter run and associated piping (Meter Station) and approximately 50 feet of a 2-inch pipeline which extends from the Meter Station to the connecting flange of Tap (Connecting Pipe). Texas Eastern states that it in order to convert the existing receipt point to a delivery point it will modify the check valve to reverse the direction of flow.

Texas Eastern will continue to own the Tap and EGM. According to Texas Eastern, after the transfer from Comstock to Willamette, Willamette will own the connecting pipe and meter station. Texas Eastern will operate the tap, EGM, meter station, and connecting pipe. Texas Eastern will maintain the tap and EGM. Willamette will maintain the meter station and connecting pipe.

Texas Eastern estimates the cost to reverse the flow of the existing 6-inch check valve will be de minimis and will be borne by Willamette. Texas Eastern will deliver up to 1 MMCF/d to Willamette pursuant to an interruptible Part 284 transportation service agreement.

Texas Eastern states that the receipt point being converted into a delivery point is not a firm point on any Texas Eastern agreement and there are no specific entitlements at this point. Texas Eastern has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers. Additionally, Texas Eastern contends that its existing tariff does not prohibit the addition of new delivery points.

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 authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34598 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 24, 1998.

Take notice that on December 18, 1998 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourteenth Revised Sheet No. 28, to be effective December 1, 1998.

Transco states that the purpose of the instant filing is to track rate and fuel changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. The tracking filing is being made pursuant to Section 26 of the General Terms and Conditions of Transco's Volume No. 1 Tariff.

Included in Appendix B attached to the filing is the explanation of the rate and fuel changes and details regarding the computation of the revised Rate Schedule S–2 rates.

Transco states that copies of the filing are being mailed to each of its S–2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections

385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34595 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–112–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

December 23, 1998.

Take notice that on December 11, 1998, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251–1396, filed in Docket No. CP99–112–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon an existing individually certificated transportation agreement between Transco and Florida Gas Transmission Corporation (FGT) under Transco's Rate Schedule X–245, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that the Commission issued an order dated September 9, 1998, in Docket No. CP98–241–000, authorizing the abandonment of FGT's Rate Schedule X–21. According to Transco, Rate Schedule X–245 is the corresponding rate schedule to FGT's Rate Schedule X–21 and is no longer required. Further, Transco contends that gas has not flowed under this agreement since 1991.

Pursuant to a transportation agreement dated February 1, 1982, Transco transported natural gas on an interruptible basis on behalf of FGT up to the dekatherm equivalent of 300 Mcf per day. The transportation agreement provided for a primary term of July 13, 1996 and year to year thereafter until terminated by either party with six months written notice. The Commission authorized Transco's Rate Schedule X–245 in an order issued November 19, 1982, in Docket No. CP82–226. Under Rate Schedule X–245, Transco transported the quantities of gas from the inlet flange connecting the Energy Minerals 8–7 Well in the Black Creek Field, Stone County, Mississippi, and redelivered an equivalent quantity of gas to FGT at the interconnection between FGT's existing facilities in Stone County, Mississippi.

Transco states that the proposed abandonment will not impact either the certificate holder's peak day or its annual deliveries. Additionally, Transco's tariff does not prohibit the proposed elimination of Rate Schedule X–245. Transco does not propose to abandon any facilities nor will any service to any of its other customers be affected by the abandonment authorization requested in the instant application.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 13, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34608 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–123–000]

Union Pacific Highlands and Gathering Company; Notice of Petition for Declaratory Order

December 23, 1998.

Take notice that on December 17, 1998, Union Pacific Highlands and Gathering Company (UPH) filed in the above docket, a petition for a Declaratory Order requesting the Commission to declare that certain facilities being acquired by UPH from Transwestern Pipeline Company (Transwestern) will be gathering facilities as defined by section 1(b) of the Natural Gas Act (NGA), and as such, will be exempt from the Commission's NGA jurisdiction.

The Transwestern facilities that are the subject of the petition are located in Eddy and Lea Counties, New Mexico and consist of:

1. The 8-inch diameter Crawford Lateral, approximately 27.2 miles in length,
2. A portion of the 16-inch diameter Crawford Loop Lateral segment approximately 5.6 miles in length,
3. The 12-inch diameter Burton Flats Lateral approximately 15.7 miles in length,
4. The 8-inch diameter Avalon Lateral approximately 2.08 miles in length,
5. The 10-inch diameter Yates Federal #1 Lateral approximately 4.9 miles in length,
6. The 8-inch diameter TX O&G Williamson Federal #1 Lateral approximately 0.9 miles in length,
7. The 6-inch TX O&G Williamson Federal #1 Lateral extension approximately 0.5 miles in length, and
8. All delivery and receipt points located on these facilities.

Transwestern has filed an application in Docket No. CP98–795–000 seeking authorization to abandon the above-mentioned facilities by sale to UPH.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 13, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the

requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (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 proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this petition if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the petition is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for UPH to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34614 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ99–1–000]

Western Area Power Administration; Notice of Filing

December 23, 1998.

Take notice that on December 10, 1998, Western Area Power Administration (WAPA), a non-jurisdictional utility, filed standards of conduct under Order No. 889 *et seq.*[1]

[1] Open Access Same-Time Information System (formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶31,035 (April 24, 1996); Order No. 889–A, *order on rehearing*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶31,049 (March 4, 1997); Order No. 889–B, *rehearing denied*, 62 FR 64715 (December 9, 1997), 81 FERC ¶61,253 (November 25, 1997).

Any person desiring to be heard or to protest the 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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before January 6, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34619 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–174–002]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 24, 1998.

Take notice that on December 18, 1998, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of January 1, 1999:

Substitute Second Revised Sheet No. 38
Substitute First Revised Sheet No. 39

Williams states that on December 1, 1998, as revised December 11, 1998, it made a filing to recover through an alternate mechanism any GSR costs not recovered through the mechanism set forth in Article 14.2 of its tariff. The interest calculation on Schedule 3 of that filing had interest compounded monthly. The instant filing is being made to correct this interest calculation to reflect quarterly compounding. Revised Schedule 3, Pages 1 and 2, and Revised Schedule 4, Pages 1–4 are attached. This correction results in a reduction of approximately $11,000 in the amount proposed to be recovered.

Williams states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34605 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–136–010]

Williams Gas Pipelines Central, Inc.; Notice of Filing

December 23, 1998.

Take notice that on December 16, 1998, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing revised Schedules 1 and 2 to correct its December 10, 1998 filing in this docket.

Williams states that it made a filing on December 10, 1998, in compliance with order issued November 25, 1998, in this docket. On Schedules 1 and 2 included in that filing, the ITS Summer and Winter rates were reversed for both the production area and the market area. The instant filing is being made to correct this inadvertent error.

Williams states that a copy of its filing was served on all parties on the official service list in this proceeding and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34606 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–119–000]

Williams Gas Pipelines Central, Inc., Notice of Request Under Blanket Authorization

December 23, 1998.

Take notice that on December 16, 1998, Williams Gas Pipelines Central, Inc. (Applicant), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–119–000 a request pursuant to Sections 157.205, 157.212 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for approval to (1) replace and relocate the Kansas Public Service (KPS) Lawrence 19th Street town border meter setting and appurtenant facilities to the site of the existing high pressure regulator setting, (2) replace and relocate the Greeley Gas Company (Greeley) Eudora town border meter setting sound appurtenant facilities to the site of the existing high pressure regulation settling; and (3) reclaim the meter setting and appurtenant facilities installed to deliver natural gas to Farmland Industries, Inc, all located in Douglas County, Kansas, under Applicant's blanket certificate issued in Docket Nos. CP82–479–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant states that the most recent annual volumes delivered to the Edora town border was 306,451 Dekatherms with a peak day volume of 2,528 Dekatherms. Applicant further states that the most recent annual volumes delivered to the KPS Lawrence 19th Street town border was 377,395 Dekatherms with a peak day volume of 3,210 Dekatherms. Applicant asserts that it does not anticipate a change in delivered volumes as a result of these replacements. Applicant also asserts that the volumes of gas to be delivered after the installation of the facilities proposed herein will not exceed the volumes of gas authorized prior to this request. It is indicated that applicant will be reimbursed 100 percent for the construction cost to replace the two settings, which is estimated to be $84,058, and the cost to reclaim the old facilities.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an applicant for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34612 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–681–000, et al.]

ERI Enterprises, L.L.C., et al. Electric Rate and Corporate Regulation Filings

December 21, 1998.

Take notice that the following filings have been made with the Commission:

1. ERI Enterprises, L.L.C.

[Docket No. ER99–681–000]

Take notice that on December 15, 1998, ERI Enterprises, L.L.C. (ERI Enterprises), tendered for filing notice of Withdrawal of its request to cancel Rate Schedule No. 1, filed with the Federal Energy Regulatory Commission on November 23, 1998, in the above-referenced docket.

Comment date: January 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Strategic Energy, Ltd. SE Holding, L.L.C.

[Docket No. EC99–15–000]

Take notice that on December 16, 1998, Strategic Energy, Ltd. and SE Holdings, L.L.C. filed pursuant to Section 203(a) of the Federal Power Act a Notice of Corporate Reorganization and Application to Convey Jurisdictional Facilities. SE Holdings, L.L.C, a Delaware limited liability company located in Pittsburgh, Pennsylvania, proposes to enter into a series of corporate restructuring transactions which will result in the conveyance of all the assets of SE Holdings, L.L.C., including its market based rate schedule and certain outstanding power sale contracts, to a newly formed entity in which an indirect subsidiary of Kansas City Power & Light Company will have a significant ownership interest.

Comment date: January 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Vitol Gas & Electric L.L.C.

[Docket Nos. EC99–16–000 and EL99–18–000]

Take Notice that on December 18, 1998, Vitol Gas & Electric L.L.C. (VG&E) tendered for filing a request that the Commission issue either an order disclaiming jurisdiction over the forthcoming disposition of assets of VG&E or, in the alternative, an order approving proposed transactions under Section 203 of the Federal Power Act and/or grant any other authorization the Commission may deem to be needed. Under the proposed transactions, VG&E will transfer certain assets (other than contracts, books and records) to Vitol S.A. in exchange for redemption of Vitol S.A.'s interest in VG&E, and Vitol S.A. will sell those assets to Avista Energy, Inc. In addition, the parties have entered into certain financial and services agreements described in the application. VG&E states that the transactions will have no effect on the jurisdictional facilities, rates or services of VG&E and, in any event, will be consistent with the standards of Section 203. VG&E states that Avista Energy supports its application.

VG&E request expeditious action on the application in order that there be no delay in the proposed transaction.

Comment date: January 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. First Power, L.L.C.

[Docket No. ER97–3580–005]

Take notice that on December 15, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

5. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company)

[Docket No. ER92–595–004, Docket No. ER92–596–003, and Docket No. ER92–626–004]

Take notice that on December 16, 1998, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (the Companies), tendered for filing their compliance filing in accordance with Opinion No. 389–A.

Comment date: January 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. MEG Marketing, LLC

[Docket No. ER98–2284–001]

Take notice that on December 14, 1998, MEG Marketing, LLC (MEG), tendered for filing notification that MEG effective immediately is 100% owned by Jeanne Simkins Hollis.

Comment date: January 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Oklahoma Gas and Electric Company

[Docket No. ER99–918–000]

Take notice that on December 15, 1998, Oklahoma Gas and Electric Company (OG&E), tendered for filing a service agreement for Western Farmers Electric Cooperative to take service under its Network Integration Transmission Service tariff and a revised listing of all parties taking service under OG&E's Network Integration Transmission Service Tariff.

Copies of this filing have been served on each of the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: January 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER99–919–000]

Take notice that on December 15, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP Companies), tendered for filing restated or revised Exhibits VII, VIII and IX (Exhibits) to the Agreement to Coordinate Planning and Operations and Interchange Power and Energy Between Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) dated September 17, 1984, as amended (Interchange Agreement). The Interchange Agreement and settlements in prior dockets require the NSP Companies to make an annual filing to restate or revise the Exhibits.

The NSP Companies propose the restated or revised Exhibits be effective January 1, 1999.

The NSP Companies state they have served a copy of the filing on the utility commissions in Minnesota, Michigan, North Dakota, South Dakota and Wisconsin.

Comment date: January 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corp.

[Docket No. ER99–920–000]

Take notice that on December 15, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing notification that effective December 25, 1998, Rate Schedule FERC No. 234, effective date December 15, 1995, and any supplements thereto, filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation have been served upon Montaup Electric Company.

Comment date: January 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Alfalfa Electric Cooperative, Inc.

[Docket No. ER99–922–000]

Take notice that on December 15, 1998, Alfalfa Electric Cooperative, Inc. (Alfalfa Electric), tendered for filing an agreement between Alfalfa Electric and the City of Burlington, Oklahoma (Burlington), providing for all-requirements service to Burlington.

Alfalfa Electric requests an effective date for the agreement as of the date that Alfalfa Electric fully prepays its Rural Utilities Service debt.

A copy of the filing was served upon Burlington.

Comment date: January 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Alfalfa Electric Cooperative, Inc.

[Docket No. ER99–923–000]

Take notice that on December 15, 1998, Alfalfa Electric Cooperative, Inc. (Alfalfa Electric), tendered for filing an agreement between Alfalfa Electric and the City of Kiowa, Kansas (Kiowa), providing for all-requirements service to Kiowa. Alfalfa Electric requests an effective date for the agreement as of the date that Alfalfa Electric fully prepays its Rural Utilities Service debt.

A copy of the filing was served upon Kiowa.

Comment date: January 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Alfalfa Electric Cooperative, Inc.

[Docket No. ER99–924–000]

Take notice that on December 15, 1998, Alfalfa Electric Cooperative, Inc. (Alfalfa Electric), tendered for filing an interchange agreement and transmission service agreement between Alfalfa Electric, Western Farmers Electric Cooperative (WFEC) and the City of Anthony, Kansas (Anthony), and a related letter agreement between Alfalfa Electric and WFEC. Under the agreements, Alfalfa Electric wheels power from WFEC to Anthony.

Alfalfa Electric requests an effective date for the agreement as of the date that Alfalfa Electric fully prepays its Rural Utilities Service debt.

A copy of the filing was served upon WFEC and Anthony.

Comment date: January 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Company

[Docket No. ER99–925–000]

Take notice that on December 16, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing: a) proposed changes in rates for Sacramento Municipal Utility District (SMUD), to be effective July 1, 1998, developed using a rate adjustment mechanism previously agreed by PG&E and SMUD for PG&E Rate Schedule FERC Nos. 88, 91, 138 and 176; b) a request for termination of PG&E Rate Schedule FERC No. 176; and c) an amended Appendix E to the Interconnection Agreement between the Parties, PG&E Rate Schedule FERC No. 136.

Copies of this filing have been served upon SMUD and the California Public Utilities Commission.

Comment date: January 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Washington Water Power Company

[Docket No. ER99–926–000]

Take notice that on December 16, 1998, Washington Water Power Company (WWP), tendered for filing, with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a executed Mutual Netting Agreement allowing for arrangements of amounts which become due and owing to one Party to be set off against amounts which are due and owing to the other Party with Southern Company Energy Marketing, L.P.

WWP requests waiver of the prior notice requirement and requests an effective date of December 1, 1998.

Comment date: January 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Carolina Power & Light Company

[Docket No. ER99–927–000]

Take notice that on December 16, 1998, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Tenaska Power Services Co., under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: January 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Old Dominion Electric Cooperative

[Docket No. ER99–928–000]

Take notice that on December 16, 1998, Old Dominion Electric Cooperative (Applicant), tendered for filing an Application Submitting Service Agreement Pursuant to Market-Based Rate Authority And Request For Waivers, and a Service Agreement between the Applicant and Prince George Electric Cooperative for service to a single, new delivery point pursuant to the Applicant's previously granted authority to make sales at market-based rates.

Old Dominion Electric Cooperative requests an effective date of November 1, 1998.

Comment date: January 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. MidAmerican Energy Company

[Docket No. ER99–929–000]

Take notice that on December 16, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309 tendered for filing a proposed rate schedule change consisting of a Fourth Amendment dated November 9, 1998 to the Electric Transmission Interconnection Agreement dated March 1, 1991 with Corn Belt Power Cooperative (Corn Belt). MidAmerican states that the purpose of the Fourth Amendment is to reflect a new Point of Interconnection with Corn Belt.

MidAmerican proposes an effective date of February 15, 1999, for the rate schedule.

Copies of the filing were served on Corn Belt, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: January 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Select Energy, Inc.

[Docket No. ER99–931–000]

Take notice that on December 16, 1998, Select Energy, Inc. (Select), tendered for filing a Service Agreement with the Connecticut Municipal Electric Energy Cooperative under the Select Energy, Inc., Market-Based Rates Tariff No. 1.

Select Energy, Inc., requests that the Service Agreement become effective December 1, 1998.

Select Energy, Inc., states that a copy of this filing has been mailed to the Connecticut Municipal Electric Energy Cooperative.

Comment date: January 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Select Energy, Inc.

[Docket No. ER99–932–000]

Take notice that on December 16, 1998, Select Energy, Inc. (Select), tendered for filing a Service Agreement with PP&L, Inc., under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select Energy, Inc., requests that the Service Agreement become effective December 1, 1998.

Select Energy, Inc., states that a copy of this filing has been mailed to the PP&L, Inc.

Comment date: January 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. California Power Exchange Corporation

[Docket No. ER99–933–000]

Take notice that on December 16, 1998, the California Power Exchange Corporation (PX), tendered for filing Amendment No. 6, to its Operating Agreement and Tariff, including the related PX Settlement and Billing Protocol, PX Communications Protocol and PX Scheduling and Control Protocol, to better accommodate the flow-through and billing of charges from the California Independent System Operator, to provide for the issuance of settlement statements via secure electronic interface with the PX's worldwide website, and to effectuate the implementation of additional computer software enhancements. The PX also proposes several clarifying or clean-up changes.

The PX states that it has served copies of its submittal on each of the PX participants and on the California Public Utilities Commission. The filing is also being posted on the PX's website at http://www.calpx.com.

Comment date: January 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. American Electric Power Service Corporation

[Docket No. ER99–944–000]

Take notice that on December 15, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing a request that the Commission amend the effective dates for two service agreements previously filed in Dockets ER98–3103–000 and ER98–3170–000 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 Companies' FERC Electric Tariff Original Volume No. 5.

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: January 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Ameren Services Company; Central Illinois Public Service Company; Union Electric Company; Southern Company Services; Alabama Power Company; Georgia Power Company; Mississippi Power Company; Savannah Electric & Power Co.

[Docket Nos. OA97–270–001, OA97–510–002, and OA97–398–002

Take notice that on November 16, 1998, the above-named companies submitted revised standards of conduct in response to the Commission's October 16, 1998, Order on Standards of Conduct, 85 FERC ¶ 61,068 (1998).

Comment date: January 5, 1999, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34588 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8118–021]

Mr. Jerry B. Buckley, Ms. Brooke Buckley (Executrix); Notice of Availability of Draft Environmental Assessment

December 23, 1998.

The staff of the Office of Hydropower Licensing (OHL), Division of Licensing and Compliance, has prepared a draft environmental assessment (EA) which is available for public review. The EA was prepared to analyze impacts associated with the Commission's proposal to revoke the license for the Jerry B. Buckley Hydroelectric Project, FERC No. 8118. The EA reviews four action-alternatives for the project license and the no-action alternative. The EA finds that approval of the Commission's proposed revocation of license, with staff recommendations, would not constitute a major federal action significantly affecting the quality of the human environment. The Project is located in the Platte River Basin on Clear Creek, near the Town of Georgetown in Clear Creek County, Colorado.

Copies of the EA are available for review in the Public Reference Branch, Room 2A of the Commission's Offices at 888 First Street, NE., Washington, D.C. 20426, or by calling the Commission's Public Reference Room at (202) 208–1371. Please submit any written comments within 30 days from the date of this public notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be address to Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix the caption ''Jerry B. Buckley Project, FERC No. 8118–021'' to all comments. For further information, please contact the environmental coordinator, CarLisa Linton at (202) 219–2802 or the project manager, Tom Papsidero at (202) 219–2715.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34623 Filed 12–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Notice of Cases Filed; Week of September 7 through September 11, 1998

Office of Hearings and Appeals

During the Week of September 7 through September 11, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Date: December 22, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 7 through September 11, 1998]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 8, 1998	Baker, Donelson, Bearman & Caldwell, Washington, D.C.	VFA–0443	Appeal of an Information Request Denial. If granted: The August 27, 1998 Freedom of Information Request Denial issued by the Golden Field Office would be rescinded, and Baker, Donelson, Bearman & Caldwell would receive access to certain DOE information.
Sept. 9, 1998	Missouri River Energy Services, Washington, D.C.	VFA–0444	Appeal of an Information Request Denial. If granted: The August 10, 1998 Freedom of Information Request Denial issued by the Western Area Power Administration would be rescinded, and Missouri River Energy Services would receive access to certain DOE information.

[FR Doc. 98–34681 Filed 12–30–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed; Week of November 2 through November 6, 1998

During the Week of November 2 through November 6, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: December 22, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of November 2 through November 6, 1998]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 3, 1998 ..	Personnel Security Hearing	VSO–0247	Request for Hearing under 10 CFR Part 710. If granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
Nov. 2, 1998 ..	Personnel Security Review	VSA–0205	Request for Review of Opinion under 10 CFR Part 710. If granted: The October 1, 1998 Opinion of the Office of Hearings and Appeals, Case No. VSO–0205, would be reviewed at the request of an individual employed by a contractor of the Department of Energy.
Nov. 6, 1998 ..	Louella Benson, Alexandria, Virginia	VFA–0456	Appeal of an Information Request Denial. If granted: The October 2, 1998 Freedom of Information Request Denial issued by the DOE Germantown Accounting Division would be rescinded, and Louella Benson would receive access to certain DOE information.
Nov. 6, 1998 ..	Personnel Security Review	VSA–0214	Request for Review of Opinion under 10 CFR Part 710. If granted: The October 15, 1998 Opinion of the Office of Hearings and Appeals, Case No. VSO–0214, would be reviewed at the request of an individual employed by a contractor of the Department of Energy.

[FR Doc. 98–34682 Filed 12–30–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of August 31 through September 4, 1998

During the week of August 31 through September 4, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, DC, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: December 22, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Office of Hearings and Appeals

Washington, D.C. 20585–0107

Decision List No. 101, Week of August 31 through September 4, 1998

Appeals

Heart of America Northwest, 9/2/98, VFA–0435

Heart of America Northwest filed an Appeal from July 1, 1998 and July 7, 1998 determinations of the Director of the Office of External Affairs (Director) of the Department of Energy's (DOE) Richland Operations Office requesting copies of documents regarding various types of waste at the Hanford Site. In considering the Appeal, the DOE determined that the Director should not have withheld the name of a commercially available chemical product, but that the Director properly withheld other responsive information pursuant to Exemption 4. Accordingly, the DOE partially granted the Heart of America Northwest Appeal.

Scripps Institute of Oceanography, 9/2/98, VFA–0434

The Department of Energy (DOE) issued a Decision and Order (D&O) denying a Freedom of Information Act (FOIA) Appeal that was filed by Scripps Institute of Oceanography. In its Appeal, Scripps requested that we review a determination issued by the Federal Energy Technology Center that certain documents relating to the relationship between a DOE contractor and one of its subcontractors were exempt in their entirety from mandatory disclosure pursuant to Exemptions 4 and 7(A). In the Decision, the OHA found that the documents were voluntarily submitted for purposes of Exemption 4 and were thus confidential under the *Critical Mass* decision because they were customarily treated as confidential by the contractor. The documents were therefore properly withheld under Exemption 4. However, the OHA found that Exemption 7(A) was inapplicable because the documents were not compiled for law enforcement purposes, as that term is used in the Exemption.

William Payne, 9/3/98, VFA–0436

William Payne (Payne) filed an Appeal from a determination of the Department of Energy's (DOE) Albuquerque Operations Office requesting copies of documents related to contracts between a private company and Sandia National Laboratories, Los Alamos National Laboratories or DOE. DOE stated that the type of procurement files requested are not ''agency records'' and thus not subject to release under the FOIA. In considering the Appeal, the Office of Hearings and Appeals (OHA) determined that the records requested were the property of the contractor and were not covered by the FOIA. Accordingly, the DOE denied Payne's Appeal.

Personnel Security

Personnel Security Hearing, 8/31/98, VSO–0203

An Office of Hearings and Appeals Hearing Officer recommended that the Personnel Security Division of the Department of Energy/Albuquerque Operations Office restore an

individual's access authorization. After carefully examining the record of the proceeding, the Hearing Officer determined that the individual had demonstrated that he is sufficiently rehabilitated and reformed from his past alcohol dependence problem.

Refund Application

Oasis Petroleum Corporation/Kash N' Karry Food Stores, Inc., 9/2/98, RF348–1

The DOE issued a Decision and Order granting an Application for Refund filed by Kash n' Karry Food Stores, Inc., in the Oasis special refund proceeding. The DOE found that the Applicant made a reasonable demonstration that its predecesor, Lucky Stores, Inc., was injured by Oasis' violation of federal petroleum allocation regulations. The total refund amount granted to the applicant in this Decision is $537,869 (comprised of $394,724 in principal and $143,145 in interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Ainsworth Van Lines, Inc. et al	RF272–85019	8/31/98
Atchison Casting Corp	RK272–01565	9/2/98
Barton Brands, Ltd	RK272–04299	9/2/98
Nordis A. Lindholm	RK272–04828	9/2/98
Wal-Mac, Inc	RK272–03957	9/2/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Hydro Conduit Corp	RK272–04379
Ineel Research Bureau	VFA–0352
Kathy Cagle	VFA–0437
L.G. Shartzer	RK272–01551
Personnel Security Hearing	VSO–0225
Sarah L. Wicklund	RK272–04200
Wrenn Lumber Corp	RK272–01552
Vapor Corp	RK272–04776

[FR Doc. 98–34680 Filed 12–30–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of September 7 through September 11, 1998

During the week of September 7 through September 11, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C., Monday through Friday, except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: December 22, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Office of Hearings and Appeals

Washington, D.C. 20585–0107

Decision List No. 102, Week of September 7 through September 11, 1998

Appeal

William H. Payne, 9/10/98, VFA–0438

The DOE's Office of Hearings and Appeals (OHA) issued a decision granting in part a Freedom of Information Act (FOIA) Appeal filed by William H. Payne. Payne sought the release of names withheld from investigative files released to him by the DOE's Office of Inspector General (IG). In its decision, OHA found that the IG's withholding of one of the names was appropriate under FOIA Exemptions 6 and 7(C). Accordingly, the Appeal was denied.

Personnel Security

Personnel Security Hearing, 9/10/98, VSO–208

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain access authorization under the provisions of 10 C.F.R. Part 710. After considering the testimony presented at the hearing and the record, the Hearing Officer found that individual had used marijuana and violated a DOE Drug Certification. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Barri E. Lewis & Molly Guy	RG272–00125	9/10/98
Edna M Schonthaler Livng Trust	RK272–04850	9/11/98

Henna Chevrolet, Inc. et al	RF272–94116	9/11/98
McFarland School Dist. et al	RF272–80761	9/10/98
Towner County Memorial Hosp. et al	RK272–01784	9/10/98

Dismissals

The following submissions were dismissed.

Name	Case No.
City of Dallas	RF272–96152
City of Inverness	RG272–00159
Hernando Cnty Dist. Schl Brd.	RF272–98979
The Sanctuary Foundation	VFA–0439

[FR Doc. 98–34683 Filed 12–30–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

NOTICE OF ISSUANCE OF DECISIONS AND ORDERS

Office of Hearings and Appeals; Week of September 14 through September 18, 1998

During the week of September 14 through September 18, 1998, the decisions and orders listed below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C., Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: December 22, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Office of Hearings and Appeals

Washington, D.C. 20585–0107

Decision List No. *103,* Week of September 14 through September 18, 1998

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Cincinnati Paperboard Corp.	RF272–98969	9/17/98
Supplemental Crude Refunds	RB272–00143	9/17/98
Thomas v. Foresee	RK272–04849	9/17/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Buckeye Gas Products Co., Inc	RF304–15414
Personnel Security Hearing	VSO–0218
Personnel Security Hearing	VSO–0217
Roberson Lumber Co	RG272–00129
Tamper Corp	RK272–03895

[FR Doc. 98–34684 Filed 12–30–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of September 21 through September 25, 1998

During the week of September 21 through September 25, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C., Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: December 22, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Office of Hearings and Appeals

Washington, D.C. 20585–0107

Decision List No. 104, Week of September 21 through September 25, 1998

Appeal

The National Security Archive, 9/25/98, VFA–0189

The National Security Archive filed an Appeal from a denial by the Office of Energy Intelligence of a request for information that it filed under the Freedom of Information Act (FOIA). Energy Intelligence withheld most of one responsive document under Exemption 1. In considering the information that was withheld, the DOE determined on Appeal that the information was not DOE classified information and did not fall within the scope of Exemption 1. However, because it related to intelligence activities, the DOE referred the document to the CIA for review. The CIA determined that some of the information previously withheld must continue to be withheld under Exemptions 1 and 3. Accordingly, the Appeal was granted in part and denied in part.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Carrollton School Dist. et al	RF272–96302	9/23/98
Circle V Farms	RK272–01791	9/25/98
Sarah L. Wicklund	RK272–04851	
Crude Oil Supplemental Refunds	RB272–00146	9/25/98
Yeager Trucking, Inc	RK272–04844	9/21/98
Dakota Sand & Gravel Co	RK272–04845	

Dismissals

The following submissions were dismissed.

Name	Case No.
Jackie Hair Moldenhauer	VWA–0020
Skymark International, Inc	VEE–0049
State of Indiana, Dept/Commerce	VEG–0005

[FR Doc. 98–34685 Filed 12–30–98; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5498–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 14, 1998 Through December 18, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (62 FR 17856).

Final EISs

ERP No. F–AFS–J65265–WY, Tie Camp Timber Sale, Harvesting Timber and Road Construction, Medicine Bow-Routt National Forest, Brush Creek/Hayden Ranger District, Carbon County, WY and Jackson County, CO.

Summary: EPA concerns were addressed in the Final EIS.

ERP No. F–AFS–J65283–CO, North Fork Salvage Timber Analysis Area, Implementation, Medicine Bow-Routt National Forest, Routt County, CO.

Summary: EPA concerns were addressed in the preferred alternative.

ERP No. F–AFS–K61143–CA, Emigrant Wilderness Management Direction, Implementation, Stanislaus National Forest, Tuolume County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L61216–WA, White Pass Ski Area Expansion, Special-Use-Permit, Pigtail Basin and Hogback Basin, Wenatchee and Gifford, Pinchot National Forests, Yakima and Lewis Counties, WA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–COE–K32050–CA, Oakland Harbor Inner and Outer Deep Navigation (-50 Foot) Improvement Project, Implementation, Feasibility Study, Port of Oakland, Alameda and San Francisco Counties, CA.

Summary: EPA continued to have specific comments and concerns on several issues, although the FEIS generally responded to many issues raised by EPA on the DEIS. EPA provided comments on mitigation for air quality impacts, the need for a new general air quality conformity applicability analysis should dredged material be transported to different locations, the projected volumes of dredged material in future years from maintenance dredging of channel and berth areas, and adverse noise impacts in the City of Alameda.

ERP No. F–COE–K36122–CA, Upper Guadalupe River Feasibility Study, Flood Control Protection, Construction, National Economic Development Plan (NED), Santa Clara Valley Water District, City of San Jose, Santa Clara County, CA.

Summary: EPA expressed environmental concerns that the Corps' two separate EIS's for the project (one EIS for Federal funding, a second EIS on issuance of a Clean Water Act Section 404 permit) should have been addressed in a single consolidated FEIS.

ERP No. F–COE–K39046–AZ, Rio Salado Environmental Restoration of two Sites along the Salt River; (1) Phoenix Reach and (2) Tempe Reach, Feasibility Report, in the Cities of Phoenix and Tempe, Maricopa County, AZ.

Summary: EPA provided comments regarding the Clean Water Act Section 402 (NPDES) permits that would be required for the project's construction and operation, the location of groundwater production wells required by the project in connection with the 19th Avenue Landfill Federal Superfund site, and monitoring of groundwater derived from these production wells.

ERP No. F–USN–K11086–CA, US Pacific Fleet F/A 18 E/F Aircraft for Development of Facilities to Support

Basing on the West Coast of the United States, Possible Installations are (1) Lemoore Naval Air Station and (2) El Centro Naval Air Facility, Fresno, King and Imperial Counties, CA.

Summary: EPA concerns were not addressed in the Navy's response to comments on the DEIS or in the FEIS text. EPA recommended that an addendum to the document be created to answer the comments that were overlooked, that the comments and the Navy's response be circulated to all interested parties, and the public comment be invited by means of extending the review period.

Dated: December 28, 1998.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 98–34714 Filed 12–30–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5498–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed December 21, 1998 Through December 24, 1998

Pursuant to 40 CFR 1506.9

EIS No. 980520, DRAFT EIS, DOA, AR, Departee Creek Watershed Plan Flood Prevention, Implementation, COE Section 404 Permit, Independence and Jackson Counties, AR, Due: February 16, 1999, Contact: Kalven L. Trice (501) 301–3110.

EIS No. 980521, FINAL EIS, USA, IN, Newport Chemical Depot, Construction and Operation, Pilot Testing of Neutralization/ Supercritical Water Oxidation of VX Agent, Vermillion County, IN, Due: February 01, 1999, Contact: Matthew Hurlburt (410) 436–7027.

EIS No. 980522, DRAFT EIS, AFS, MT, Bull Lake Estates Road Access Project, Implementation, Easement Grant Permit, Kootenai National Forest, Three Rivers Rangers District, Lincoln County, MT, Due: February 16, 1999, Contact: Mark Natale (406) 295–4693.

Amended Notices EIS

EIS No. 980423, DRAFT EIS, FHW, VT, VT 9/100 Transportation Improvement Study (NH–010–1(33), In the Towns of Wilmington and West Dover, Federal Permits and Approvals, NPDES Permit and COE Section 10 and 404 Permits. Windham County, VT, Due: January 29, 1999, Contact: Kenneth R. Sikora, Jr (802) 828–4423. Published FR 10–23–98 Review Period Extended.

EIS No. 980459, DRAFT EIS, USA, ND, Maple River Dam and Reservoir, Construction and Operation, Flood Control, Cass County Joint Water Resource District, Cass County, ND, Due: February 16, 1999, Contact: Dwight Olson (402) 221–4628. Published FR 11–13–98—Review Period extended.

Dated: December 28, 1998.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 98–34713 Filed 12–30–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6213–7]

Preliminary Draft Pesticides, Alkyl-Lead, and Octachlorostyrene Reports Published in Response to the United States' Challenge Goals in ''The Great Lakes Binational Toxics Strategy; Canada— United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Preliminary Draft Pesticides, Alkyl-Lead, and Octachlorostyrene Reports published in response to the United States' challenge goals in ''The Great Lakes Binational Toxics Strategy; Canada—United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes,'' and opportunity to comment.

SUMMARY: ''The Great Lakes Binational Toxics Strategy; Canada— United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes (the Strategy),'' was signed on April 7, 1997. The Strategy set forth a number of challenges to be met on the path toward virtual elimination of the Level I Strategy substances. Two of these challenges required USEPA to report by the end of 1998, indicating whether the respective challenges had been met. These challenges are as follows:

U.S. Challenge: Confirm by 1998 that there is no longer use or release from sources that enter the Great Lakes Basin of five bioaccumulative pesticides (chlordane, aldrin/dieldrin, DDT, mirex, and toxaphene), and of the industrial byproduct/contaminant octachlorostyrene. If ongoing, long-range sources of these substances from outside of the U.S. are confirmed, work within international frameworks to reduce or phase out releases of these substances.

U.S. Challenge: Confirm by 1998, that there is no longer use of alkyl-lead in automotive gasoline. Support and encourage stakeholder efforts to reduce alkyl-lead releases from other sources.

Two preliminary draft reports have been prepared in response to the first challenge, one regarding the five bioaccumulative pesticides (chlordane, aldrin/dieldrin, DDT, mirex, and toxaphene), and one regarding the industrial byproduct/contaminant octachlorostyrene. A third preliminary draft report was prepared to respond to the alkyl-lead challenge.

All three of these reports can be found on the internet at the following address: http://www.epa.gov/bns/. Commenters may transmit their comments electronically by following the directions provided on the website, or may send written comments to Elizabeth LaPlante at the following address: U.S. EPA, Great Lakes National Program Office, 77 West Jackson Boulevard, G–17J, Chicago, Illinois, 60604. Comments may also be sent to Ms. LaPlante via facsimile at (312) 353–2018.

DATES: The preliminary draft reports will be made available to the public by December 31, 1998. Comments on the reports must be submitted no later than March 1, 1999.

SUPPLEMENTARY INFORMATION: Additional information on the Great Lakes Binational Toxics Strategy, or the draft reports, may be obtained by contacting Elizabeth LaPlante by phone at (312) 353–2694, via E–mail at the address ''laPlante.elizabeth@epa.gov'' or at the address or fax number listed above.

Dated: December 23, 1998.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 98–34697 Filed 12–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6213–8]

Proposed CERCLA Administrative Cost Recovery Settlement; Standard Scrap Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Standard Scrap site (a/k/a Standard Scrap Metal/Chicago International Exporting Site) in Chicago, Cook County, Illinois with the following settling parties: Acme Refining Scrap Iron & Metal, Inc.; Alma Iron & Metal Company, Inc.; American Iron & Supply Co.; Assad Iron & Metals Inc./ Heidelberg; Bay Side Recycling Corporation (West End Iron & Metal); Belson Scrap & Steel, Inc.; Capitol City Metals, L.L.C.; CFF Pro-Metal Processing Co. (see Oklahoma); Chamberlain Manufacturing Company; Clark Iron & Metal Co. Inc.; Cohen Brothers Inc.; Cohen and Green Salvage Co. Inc.; Coleman Metals/Coleman Iron & Metal Inc.; Dart Electric Motor & Supply Inc.; DeKalb Iron & Metal Co.; Dobrow Industries, Inc.; Dudek, Inc.; Dudek Industries, Inc.; Dumes, Inc.; Elgin Salvage and Supply Co., Inc.; Emilian Trading Co.; F. Perlman & Co. Inc.; Fisher Steel and Supply Company; Fusselman Salvage Company; Garden Street Iron & Metal Inc.; Goldsboro Iron & Metal Company; Grossman Iron & Steel Company; H. Hirschfield Sons Co.; Hummelstein Iron & Metal, Inc.; Indianapolis Shredding Company, LLC; Industrial Scrap Corporation; International Recycling Corporation; J. Solotken & Company, Inc.; K&F Industries, Inc.; Khaled Habayeb/DBA Secondary Metal Processing, Inc.; Lewis Salvage Corporation; Loeb Metal Recycling Co.; Lorman Iron & Metal Co. Inc.; Louisville Scrap Material Co., Inc.; M. Gervich & Sons, Inc.; M. Katch & Co., Inc.; M. Weingold & Co.; McKinley Iron, Inc.; Mervis Industries, Inc./Mervis Supply Co., Inc.; Midwest Metallics, L.P (f/k/a Pielet Bros. Scrap Iron & Metal); Miller Compressing Company; Miller Recycling Company; Milwaukee Scrap Metal Company; Morris Tick Company, Inc.; Mose Cohen and Sons, Inc.; Newman/Allen Enterprises, Inc.; OmniSource Corporation; Onstate Recycling Inc.; Oscar Winski Company, Inc.; Otis Oakley Iron & Supply Co. Inc.; Philip L. Sebulsky/Camco Recycling Inc.; Phillips Industries, Inc.; Public Iron & Metal Co.; QRS Inc. DBA Riverside Recycling; Reserve Iron & Metal; Robert Bosch Corporation; S & B Consulting, Inc. f/k/a Klempner Bros., Inc./Klempner Bros., Inc.; Safran Metals; Sam Allen—New; Sam Winer & Co., Inc.; Samuels Hide & Metal Co., Inc.; Schlafer Iron & Steel Co.; Schneider's Iron & Metal Inc.; Schuster Metals Inc.; Serlin Iron & Metal Co. Inc.; Standard Iron & Metal Co., Inc.; Sturgis Iron & Metal Co., Inc.; The Kroot Corporation; United Metal Recyclers; Wallach Iron & Metal Inc.; William Lans Sons Company; Willoughby Iron & Waste Materials Company; and Winston Brothers Iron & Metal Co. Inc. The settlement requires the settling parties to pay $651,350.22 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before February 1, 1999.

ADDRESSES: The proposed settlement is available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951. Comments should reference the Standard Scrap Site, Chicago, Cook County, Illinois and EPA Docket No. V–W–'99–C–521 and should be addressed to Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Maile Cod C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951.

FOR FURTHER INFORMATION CONTACT: Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951.

Dated: December 17, 1998.

Thomas W. Mateer,

Acting Director, Superfund Division, Region 5.

[FR Doc. 98–34696 Filed 12–30–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

December 23, 1998.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 1, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0862.

Title: Handling Confidential Information.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents: 600.

Estimated Time Per Response: 1 hr./log; 3 hrs./confidentiality submission.

Frequency of Response: Recordkeeping; On occasion reporting requirement.

Total Annual Burden: 800 hours.

Total Annual Costs: $23,000.

Needs and Uses: The Commission adopted a Model Protective Order (MPO) which can be used when it is appropriate to grant limited access to information that the Commission determines should not be routinely available for public inspection. The MPO requires that the party granted access to the confidential materials keep a written record of all copies made and to provide this record to the submitter of the confidential materials on request. Order ¶ 27. This approach was adopted to facilitate the use of confidential materials under an MPO, instead of restricting access to the materials. The copy log under the MPO will be used to help assure the party submitting the confidential materials that there is limited access to the materials. Without the copy log for MPOs, the submitter of confidential information would not be assured that there is limited distribution of sensitive information. The Commission also amended 47 C.F.R. 0.459(b) to set forth the type of information that should be included when a party submits information to the Commission for which it seeks confidential treatment. Order ¶ 13. This listing of the types of information to be submitted was adopted to provide guidance to the public for confidentiality requests. The information provided under amended Section 0.459(b) will help the Commission determine whether a request for confidential treatment should be granted. Without the guidelines for submissions requesting confidential treatment of materials, the Commission would not have the information it requires to make an informed decision concerning such requests.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–34628 Filed 12–30–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 98–2630]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On December 28, 1998, the Commission released a public notice announcing the January 19 and January 20, 1999, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Linda Simms, Administrative Assistant of the NANC, at (202) 418–2330 or via the Internet at lsimms@fcc.gov or Jeannie Grimes at (202) 418–2313 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: December 28, 1998.

The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, January 19, from 8:30 a.m., until 5:00 p.m., and on Wednesday, January 20, from 8:30 a.m., until 12 noon. This meeting will be held at the Federal Communications Commission, 1919 M Street, NW, Room 856, Washington, DC.

This meeting will be open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Tuesday, January 19, 1999

1. Approval of meeting minutes.
2. Local Number Portability Administration (LNPA) Working Group Report.
3. Industry Numbering Committee (INC) Report.
4. Lockheed Martin, North American Numbering Plan Administration (NANPA) report on audit work plan which will include the methods, procedures, scope and frequency of service provider audits.
5. Cost Recovery Working Group Report.
6. North American Numbering Plan Billing and Collection Agent (NBANC) Report.
7. Numbering Resource Optimization (NRO) Working Group Report. Update on work plan for revised Central Office Code Utilization Survey or other proposed data collection model.

Wednesday, January 20, 1999

8. North American Numbering Plan Administration (NANPA) Oversight Working Group Report. Discussion of performance matrix for purposes of the NANPA annual review. Discussion of Lockheed Martin filing of December 21, 1998, regarding divestiture of its Communications Information Systems (CIS) unit.
9. Steering Group Report. Discussion regarding proposed methods to improve NANC meeting efficiencies.
10. Further discussion regarding numbering issues in which ''consumer preference'' information would be desirable. Contribution statements by NANC members will identify two or three issues and if possible, contain a data source for the information.
11. Other Business.

Federal Communications Commission.

Blaise A. Scinto,

Deputy Chief, Network Services Division Common Carrier Bureau.

[FR Doc. 98–34695 Filed 12–30–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2310]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

December 23, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street,

N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by January 15, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: Federal-State Joint Board on University Service Forward-Looking Mechanism for High Cost Support for Non-Rural LECs (CC Docket No. 96–45).

NUMBER OF PETITIONS FILED: 4.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–34629 Filed 12–30–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below

Type of review: Renewal of a currently approved collection.

Title: Flood Insurance.

OMB Number: 3064–0120.

Annual Burden:

Estimated annual number of respondents—6,000

Estimated time per response—25.9 hours

Total annual burden hours—155,625 hours.

Expiration Date of OMB Clearance: January 31, 1999.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before February 1, 1999 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Each supervised lending institution is currently required to provide a notice of special flood hazards to a borrower acquiring a loan secured by a building on real property located in an area identified by the Director of the Federal Emergency Management Administration as being subject to special flood hazards. Subtitle B of Title V of the Riegle Community Development and Regulatory Improvement Act of 1994 requires that each institution must also provide a copy of the notice to the servicer of the loan (if different from the originating lender).

Dated: December 21, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–34556 Filed 12–30–98; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**

Agreement No.: 202–000050–067.

Title: United States/Australia New Zealand Association.

Parties: Australia-New Zealand Direct Line, P&O Nedlloyd Limited, Columbus Line.

Synopsis: The proposed agreement amendment provides that new agreement members, with pre-existing service contracts within the agreement scope in which agreement members are not permitted to participate, will not be permitted to participate in existing agreement contracts at the time of their admission.

Agreement No.: 202–009648–106.

Title: Inter-American Freight Conference.

Parties: Crowley American Transport, Inc., Ivaran Lines Limited, Libra Navegacao SA, Alianca Transportes Maritimos S.A., Columbus Line, Mexican Line Limited, APL Co. Pte Ltd., P&O Nedlloyd B.V.

Synopsis: The proposed agreement amendment restates the agreement; authorizes the use of a trade name, East Coast of South America Agreement; eliminates the port of Manaus from the geographic scope of the conference; eliminates the sections of the conference; eliminates the restriction on chartering space from non-members; authorizes individual or multi-carrier service contracts; reduces the notice period for independent action to 24 hours, and provides for assignment of existing conference contracts to the Agreement. The parties request expedited review.

Agreement No.: 203–011517–004.

Title: APL/Crowley/Ivaran Space Charter and Sailing Agreement.

Parties: American President Lines, Ltd., APL Co. PTE Ltd., Crowley American Transport, Inc., Ivaran Lines, Limited.

Synopsis: The proposed agreement amendment adds Ivaran Lines as a party, revises the number and capacity of vessels and amount of space to be used under the agreement, clarifies the parties' understanding regarding conference membership, extends the term of the agreement, revises the agreement's termination provisions, and makes other changes consistent with the addition of Ivaran.

Agreement No.: 232–011646.

Title: CSAV/NYK Space Charter Agreement.

Parties: Compania Sud Americana de Vapores, Nippon Yusen Kaisha.

Synopsis: The proposed agreement authorizes the parties to cross charter space and coordinate sailings in the trade between U.S. West Coast ports and ports in Asia, West Coasts of Central and South America, and Mexico.

Agreement No.: 217–011467.

Title: AMPAC/Lauritzen Space Charter Agreement.

Parties: Mexican Line limited, Transportacion Maritima Grancolombiana, S.A., Columbus Line, Maruba S.C.A., Lauritzen Reefers A/S dba Lauritzen Pacific Line.

Synopsis: The proposed agreement authorizes Mexican Line, TMG, Columbus Line, and Maruba, collectively operating under FMC Agreement No. 232–011637, to charter space on their vessels to Lauritzen in the trade between U.S. Pacific Coast ports and ports on Pacific Coasts of Central and South America, Mexico and Canada.

By Order of the Federal Maritime Commission.

Dated: December 28, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–34723 Filed 12–30–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 28, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. First Business Bancshares, Inc., Madison, Wisconsin; to acquire 50.05 percent of the voting shares of Fox River Valley Bancorp, Inc., Appleton, Wisconsin, and thereby indirectly acquire First Business Bank of Fox River Valley, Appleton, Wisconsin, a *de novo* bank.

2. First DuPage Bancorp, Inc., Westmont, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First DuPage Bank, Westmont, Illinois.

3. Fox River Valley Bancorp, Inc., Appleton, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares First Business Bank of Fox River Valley, Appleton, Wisconsin, a *de novo* bank.

4. First Merchants Corporation, Muncie, Indiana; to merge with Jay Financial Corporation, Portland, Indiana, and thereby indirectly acquire First National Bank of Portland, Portland, Indiana.

5. Standard Bancshares, Inc., Evergreen Park, Illinois; to acquire 100 percent of the voting shares of Norton Capital Corporation, Morris, Illinois, and thereby indirectly acquire Exchange Bank, Gardner, Illinois.

Board of Governors of the Federal Reserve System, December 28, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–34724 Filed 12–30–98; 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 January 19, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa; and Norwest Ventures, LLC, Des Moines, Iowa; to engage *de novo* through their subsidiary, MidAmerican Home Services Mortgage, LLC, West Des Moines, Iowa, in residential mortgage lending, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 28, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–34725 Filed 12–30–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will address (1) research involving human embryonic stem cells and (2) the use of human biological materials in research. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on January 19, 1999 from 11:45 am to 12:15 pm.

Dates/Times, and Location

January 19, 1999, 8:30 am-5:00 pm; The New Hampshire Ballroom, Sheraton City Centre Hotel, 1143 New Hampshire Avenue, NW, Washington, DC.

January 20, 1999, 8:00 am-5:00 pm; Same Location as Above.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the

availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below and as soon as possible at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: December 23, 1998.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 98–34630 Filed 12–30–98; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Ethics Subcommittee of the Advisory Committee to the Director, Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: Ethics Subcommittee of the Advisory Committee to the Director, CDC.

Time and date: 9 a.m.–3 p.m., January 21, 1999.

Place: Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Building 16, Room 5126, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 25 people.

Purpose: This subcommittee will anticipate, identify, and propose solutions to strategic and broad ethical issues facing CDC.

Matters to be discussed: Agenda items will include updates from the Associate Director for Science, Dixie E. Snider, M.D., M.P.H.; a discussion on ethics around mandatory vaccination programs; and developing ethical guidelines for public health practice.

Agenda items are subject to change as priorities dictate.

For Further information: Linda Kay McGowan, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE., M/S D–24, Atlanta, Georgia 30333. Telephone 404/639–7080.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 23, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–34584 Filed 12–30–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Time and Date: 8 a.m.–4:30 p.m., February 3, 1999.

Place: CDC, Koger Center, Williams Building, Conference Rooms 1802 and 1805, 2877 Brandywine Road, Atlanta, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting rooms accommodate approximately 85 people.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters to be discussed: The agenda will include an update on CLIA implementation; HCFA validation inspections of accredited laboratories; update on research for CLIA Cytology requirements; and information on HCFA inspections of cytology laboratories.

Agenda items are subject to change as priorities dictate.

For further information contact: John C. Ridderhof, Dr.P.H., Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE., Mailstop G–25, Atlanta, Georgia 30341–3724. Telephone 770/488–8076, FAX 770/488–8282.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 23, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–34586 Filed 12–30–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health; Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: A Public Health Response to Asthma.

Times and Dates: 1 p.m.–8 p.m., February 9, 1999; 8:30 a.m.–5 p.m., February 10, 1999; 8:30 a.m.–12 p.m., February 11, 1999.

Place: Sheraton Colony Square, 188 14th Street, NE Atlanta, Georgia 30361. Telephone, 404/892–6000.

Status: Open to the public, limited only by space available. The meeting space accommodates approximately 200 people.

Purpose: The purpose of this conference is to provide a forum for increasing knowledge regarding asthma prevention and control and an update of current asthma surveillance and intervention activities in State and local health agencies. It will also provide a forum for interaction with colleagues from across the country.

Matters To Be Discussed: Agenda items include a discussion of the epidemiology and cost of asthma; community interventions; legislation; coalitions; and lessons learned from ongoing programs. Concurrent workgroups, round tables, and topic tables will be held to further detailed discussions on asthma related topics.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Leslie Boss, Ph.D., Air Pollution and Respiratory Health Branch, Division of Environmental

Hazards and Health Effects, NCEH, CDC, Mailstop F–39, 4770 Buford Highway, NE, Atlanta, Georgia 30341–3724. Telephone 770/488–7320, e-mail LPB1@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 22, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–34585 Filed 12–30–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Time and date: 9 a.m.–4 p.m., January 21, 1999.

Place: The Washington Court, 525 New Jersey Avenue, NW, Washington, DC 20001–1527.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The BSC, NIOSH is charged with providing advice to the Director, NIOSH on NIOSH research programs.

Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings, and disseminating results.

Matters to be discussed: Agenda items include a report from the Director of NIOSH; National Occupational Research Agenda (NORA) update; NORA Allergic and Irritant Dermatitis Team Report; Institute of Medicine (IOM) Report and NIOSH Child Labor Activities, Medical Surveillance Report; Health Communications Research and Evaluation Introduction; Fatality Assessment and Control Evaluation (FACE) Program Video; NIOSH Web Site Evaluation; Latex Alert Evaluation; Extramural Program Update (NORA RFA, Grant Program and ERC (Education and Research Centers) Enhancements); and future activities of the Board.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Dr. Bryan D. Hardin, Executive Secretary, BSC, NIOSH, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333. Telephone 404/639–3773, fax 404/639–2170, e-mail bdh1@cdc.gov.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 23, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–34583 Filed 12–30–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–10 & HCFA–1513]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

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.

(1) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Information Collection Requirements Contained in BDP–718: Advanced Directives (Medicare and Medicaid) and Supporting Regulations in 42 CFR Sections 417.436, .801, 430.12, .20, 431.107, 434.28, 483.10, 484.10, 489.102;

Form No.: HCFA-R–10 (OMB# 0938–0610);

Use: Certain Medicare and Medicaid organizations are responsible for collecting and documenting, in medical records, whether or not an individual has executed an advanced directive. This document indicates the individual's preference if he/she is incapacitated;

Frequency: On occasion;

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government;

Number of Respondents: 35,607;

Total Annual Responses: 35,607;

Total Annual Hours: 908,250.

(2) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Medicare/Medicaid Disclosure of Ownership and Control Interest Statement and Supporting Regulations in 42 CFR Sections 420.200-.206, 455.100-.106;

Form No.: HCFA–1513 (OMB# 0938–0086);

Use: The Medicare/Medicaid Disclosure of Ownership and Control Interest Statement must be used by State agencies and HCFA regional offices to determine whether providers meet the eligibility requirements for Titles 18 and 19 (Medicare and Medicaid) and for grants under Titles V and XX. Review of ownership and control is particularly necessary to prohibit ownership and control for individuals excluded under Federal fraud statutes.;

Frequency: Other (every 1 to 3 years);

Affected Public: Business or other for-profit, and Not-for-profit institutions;

Number of Respondents: 125,000;

Total Annual Responses: 125,000;

Total Annual Hours: 62,500.

To obtain copies of the supporting statement and any related forms 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, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division

of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 21, 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. 98–34665 Filed 12–30–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–2786]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, H.H.S.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; Title of Information Collection: Fire Safety Survey Report Forms and Supporting Regulations in 42 CFR 416.44, 418.100, 482.41, 483.70, 483.470; *Form No.:* HCFA–2786 A–D, F, G, H, J, K, L, M, P and Q (OMB # 0938–0242); *Use:* The information from these forms will be used to make Medicare/Medicaid certification decisions. We request information in accordance with the Life Safety Code of the National Fire Protection Association. HCFA then surveys all facilities based upon prior compliance history; that is, the ''good'' facilities will be surveyed less frequently. Either the short or long fire safety form will be utilized each time a health survey is performed, depending on the circumstances.; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 53; *Total Annual Responses:* 30,000; *Total Annual Hours:* 25,000.

To obtain copies of the supporting statement and any related forms 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, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 15, 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. 98–34722 Filed 12–30–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following teleconference meeting of the SAMHSA Special Emphasis Panel II in December 1998.

A summary of the meeting and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. The discussion could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II (SEP II)

Meeting Dates: December 29, 1998, 12:00 p.m.–2:00 p.m.

Place: Parklawn Building, Room 17–89—Telephone Conference, 5600 Fishers Lane, Rockville, Maryland 20852.

Closed: December 29, 1998, 12:00 p.m.–2:00 p.m.

Panel: FEMA—Project New Hope—Crisis Counseling And Assistance.

Contact: Michael Koscinski, Review Administrator, Room 17–89, Parklawn Building, Telephone: 301-443–6094 and FAX: 301–443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: December 24, 1998.

Jeri Lipov,

Committee Management Officer. Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–34567 Filed 12–30–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) National Advisory Council in January 1999.

The meeting will include presentations of CSAP programs, CSAP FY99 Budget and Year 2000 planning, reports on SAMHSA Subcommittees by the CSAP National Advisory Council, discussions of administrative matters and announcements, and an overview of FY99 Program Plans for the Center for Substance Abuse Treatment. If anyone needs special accommodations for persons with disabilities, please notify the contact listed below.

A summary of this meeting and roster of committee members may be obtained from Yuth Nimit, Ph.D., Executive Secretary, Rockwall II building, Suite 910, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8455.

Substantive program information may be obtained from the person listed above.

Committee Name: Center for Substance Abuse Prevention National Advisory Council.

Meeting Dates: January 11–12, 1999.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, Maryland 20841.

Contact: Yuth Nimit, Ph.D., 5515 Security Lane, Rockwall II Building, Suite 901, Rockville, Maryland 20852, Telephone: (301) 443–8455.

Dated: December 23, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–34568 Filed 12–30–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–42]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 23, 1998.

Fred Karnas, Jr.

Deputy Assistant Secretary for Economic Development.

[FR Doc. 98–34517 Filed 12–30–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4280–N–04]

Real Estate Assessment Center; Notice of Issuance of Advisory Scores Under the Public Housing Assessment System

AGENCY: Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This notice advises public housing agencies, as well as members of the public, that HUD's Real Estate Assessment Center intends to issue advisory scores to public housing agencies under the new Public Housing Assessment System, established by final rule published on September 1, 1998. The schedule for issuance of advisory scores by the Real Estate Assessment Center accompanies this notice.

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center, Attention William Hill, Department of Housing and Urban Development, Suite 800, 1280 Maryland Ave, SW, Washington, DC 20024–2135; telephone (202) 708–4932 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD developed the new Public Housing Assessment System (PHAS) to replace the existing Public Housing Management Assessment Program (PHMAP) and provide for a more comprehensive monitoring system of public housing operations. The PHAS final rule was published on September 1, 1998, and is codified at 24 CFR part 902. The PHAS uses four (4) indicators to assess a PHA's housing operations and determine a PHA's performance in delivering HUD programs and services. These indicators are: (1) the physical condition of the PHA's properties; (2) the financial condition of the PHA; (3) the management operations of the PHA; and (4) the resident services provided by the PHA and the residents' satisfaction with these services. On the basis of these four indicators, HUD's Real Estate Assessment Center (REAC) calculates a composite PHAS score for each PHA.

The PHAS composite score represents a single score or grade for a PHA's entire operation. The PHAS score is derived from the scores calculated for each of the four indicators. Each of the four indicators is assigned a maximum value as follows:

(1) Physical condition—maximum 30 points;

(2) Financial condition—maximum 30 points;

(3) Management operations—maximum 30 points; and

(4) Resident service and satisfaction—maximum 10 points.

The PHAS composite score will determine whether a PHA is performing well or is not performing well. Under the PHAS, a PHA that receives an official composite PHAS score below 60 points, or achieves a score of less than 60 percent of the points available under PHAS Indicators 1, 2, or 3, will be designated as troubled and will be referred to HUD's Office of Troubled Agency Recovery for oversight and remedial action.

In the PHAS final rule, HUD stated that it may issue advisory scores to PHAs before the PHAS becomes fully operational (see 63 FR 46601). The advisory score will provide a PHA with a reasonable facsimile of the score that the PHA would receive if the PHAS was fully operational now. The advisory score also will provide a PHA with the opportunity to evaluate its standing in comparison to the present day PHMAP process and to prepare for full implementation of the new PHAS. The PHAS becomes effective for all PHAs with fiscal years ending on and after September 30, 1999.

The REAC intends to provide every PHA with an advisory score before the PHA receives its official PHAS score. The REAC, however, will issue advisory PHAS scores only after it has a complete set of data for all four indicators. With respect to Indicator 1 (Physical Condition), the REAC is responsible for assessing the physical condition of PHA properties and therefore receives this indicator information firsthand. Information regarding the other indicators is provided to the REAC by the PHAs (as for example, the PHA annual financial reports). If the PHA fails to timely submit this information to the REAC, then issuance of the PHAS advisory score will be delayed until the REAC receives the necessary information. A significant delay by the PHA in submitting the necessary information may result in the REAC being unable to issue any advisory score.

To assure an accurate official PHAS score, the REAC will continue to confirm and corroborate the results of the advisory scores. Toward this end, the REAC welcomes feedback from PHAs as they receive and review their advisory scores. Since the advisory scores, however, are based on data that

is similar but not identical to the official PHAS data, there will be variances that cannot be removed from the calculations. For example, the PHAS advisory score will be based on financial information that was not prepared in accordance with generally accepted accounting principles (GAAP). The official PHAS score will be based on financial information prepared in accordance with GAAP, as required by the new PHAS.

During the period in which the REAC is calculating and issuing PHAS advisory scores, the REAC will solicit comments and recommendations from PHAs that will assist HUD and the REAC in identifying any necessary technical adjustments that may need to be made to the new PHAS before it becomes fully operational in Federal fiscal year 2000. REAC plans to distribute additional information and details about PHAS advisory scores to PHAs within the next several weeks.

Dated: December 24, 1998.

Barbara L. Burkhalter,

Deputy Director, Real Estate Assessment Center

PUBLIC HOUSING ASSESSMENT SYSTEM ADVISORY SCORE SCHEDULE

	PHA regular submission dates to field office	Field office regular process date	Field office submission date to REAC [3]	REAC advisory scpre date [4]	REAC unaudited official score date	REAC audited official score date
FIRST QUARTER (9–30–98 YEAR ENDS):						
PHYSICAL [1]	N/A	N/A	N/A	12/31/98	12/31/99	7/31/2000
FINANCIAL [5]	11–15–98	1/31/99	11/30/98	12/31/98	12/31/99	7/31/2000
MANAGEMENT	11–30–98	1/31/99	12/7/98	12/31/98	12/31/99	7/31/2000
RESIDENT [2]	11–30–98	1/31/99	12/7/98	12/31/98	12/31/99	7/31/2000
SECOND QUARTER (12–31–98 YEAR ENDS):						
PHYSICAL [1]	N/A	N/A	N/A	3–31–99	3–31–2000	10–31–2000
FINANCIAL [5]	2–15–99	4–30–99	2–28–99	3–31–99	3–31–2000	10–31–2000
MANAGEMENT	3–1–99	4–30–99	3–15–99	3–31–99	3–31–2000	10–31–2000
RESIDENT [2]	3–1–99	4–30–99	3–15–99	3–31–99	3–31–2000	10–31–2000
THIRD QUARTER (3–31–99 YEAR ENDS):						
PHYSICAL [1]	N/A	N/A	N/A	6–30–99	6–30–2000	1–31–2001
FINANCIAL [5]	5–15–99	7–31–99	5–30–99	6–30–99	6–30–2000	1–31–2001
MANAGEMENT	5–31–99	7–31–99	6–14–99	6–30–99	6–30–2000	1–31–2001
RESIDENT [2]	5–31–99	7–31–99	6–14–99	6–30–99	6–30–2000	1–31–2001
FOURTH QUARTER (6–30–99 YEAR ENDS):						
PHYSICAL [1]	N/A	N/A	N/A	9–30–99	9–30–2000	4–31–2001
FINANCIAL [5]	8–14–99	10–31–99	8–30–99	9–30–99	9–30–2000	4–31–2001
MANAGEMENT	8–29–99	10–31–99	9–13–99	9–30–99	9–30–2000	4–31–2001
RESIDENT [2]	8–29–99	10–31–99	9–13–99	9–30–99	9–30–2000	4–31–2001

Notes:

[1] Physical inspections are performed by the REAC; no PHA or field office submissions are required. Weather conditions in the second quarter could delay inspections.

[2] Resident satisfaction advisory scores are based on the resident indicator in PHMAP. Official scores will be based on resident surveys.

[3] Field office processing dates have been accelerated in order to meet the requirement to produce advisory score due dates.

[4] REAC will produce advisory scores by these due dates to the extent data is received from the PHAs and forwarded to the REAC by the due dates in note 3 above. To the extent data is received after the due date, REAC will produce advisory scores periodically thereafter (generally in two week increments after the original advisory score due dates).

[5] Financial advisory scores will be based on the current HUD accounting standards; whereas the official scores will be based on GAAP accounting standards because PHAs do not report GAAP based information to HUD until 9–30–99 fiscal year ends. Financial advisory scores will be based on the low rent program only; whereas the official scores will be based on a PHA entity-wide financial assessment because PHAs do not submit entity-wide financial reports to HUD. Financial advisory scores will be based on unaudited data because audits are not due until 13 months (9 months beginning with June 30, 1999 year-end) after year end.

[FR Doc. 98–34667 Filed 12–30–98; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants: Notice of Availability and Opening of Comment Period for an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Delmarva Fox Squirrel in Association with Home Port on Winchester Creek Development Project, Queen Anne's County, Maryland

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that Waterman Realty Company, Winchester Creek Limited Partnership has applied to the U.S. Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The application has been assigned permit number TE006310–0. The proposed permit would authorize the incidental take of a Federally endangered species, the Delmarva fox squirrel (*Sciurus niger cinereus*) known to occur on property owned by the Applicant in Grasonville, Queen Anne's County, Maryland. The proposed taking is incidental to the planned housing and road construction and subsequent occupancy activities of Home Port on Winchester Creek Housing Development on approximately 56 acres owned by WCLP. The permit would be in effect for 50 years.

The Service announces the receipt of the WCLP ITP application and the availability of the proposed Home Port on Winchester Creek Housing Development Habitat Conservation Plan and draft Implementing Agreement which accompanies the ITP application, for public comment. In addition, the Service also announces the availability of a draft Environmental Assessment for the proposed issuance of the incidental take application and signing of the agreement. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act of 1969 regulations (40 CFR 1506.6).

The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the DFS. The final NEPA and permit determinations will not be completed until after the end of the comment period and will fully consider all public comments received during the comment period.

The Service specifically requests comments on the appropriateness of the ''No Surprises'' assurance contained in this application, should the Service determine that an ITP will be granted and based upon the submitted HCP. Although not explicitly stated in the HCP, the Service has, since August 1994, announced its intention to honor a ''No Surprises'' Policy for applicants seeking ITPs. Copies of the Service's ''No Surprises'' policy may be obtained by making a written request to the Regional Office (see **ADDRESSES**). In the event of unforeseen or extraordinary circumstances affecting the DFS. WCLP will not be required to provide additional mitigation measures. If the Service makes a finding of extraordinary circumstances, which warrants requiring additional mitigation or compensation, the primary responsibility rests with the Federal government. The Service is soliciting public comments and review of the applicability of the ''No Surprises'' Policy to this application and HCP. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application, HCP, IA and EA should be sent to the Chesapeake Bay Field Office (see **ADDRESSES**) and should be received on or before February 1, 1999.

ADDRESSES: Persons wishing to review the permit application, HCP, EA, and IA may obtain a copy by writing the Service's Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, MD 21401. Requests for the documentation must be in writing to be processed. Written data or comments concerning the permit application, EA, HCP, and/or IA should also be addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, Annapolis, Maryland. Please refer to permit #TE006310–0 when submitting comments. Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30). Requests for the documentation of the ''No Surprises'' policy should be addressed to the U.S. Fish and Wildlife Service, Region 5, 300 Westgate Center Drive, Hadley, Massachusetts, 01035–9589, ATTN: Endangered Species Program.

FOR FURTHER INFORMATION CONTACT: Mr. John Wolflin or Ms. Keren Giovengo, Chesapeake Bay Field Office (see Addresses above), 410–573–/4574/4538.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal regulation prohibits the ''taking'' of a species listed as endangered or threatened. Under the Act, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to ''incidentally take'' listed species, if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

The DFS is a southeastern subspecies of Sciurus niger, a species found naturally throughout the eastern United States. Historically, DFS were distributed throughout the Delmarva peninsula and into southeastern Pennsylvania and southern New Jersey, but these squirrels now persist naturally in only four Maryland counties: Queen Anne's, Talbot, Dorchester, and Kent (historic transplant). Although quantitative population data are scant, DFS may be locally abundant in mature pine and mixed hardwood forest in these counties: however, this species is typically observed in low densities, and populations may be adversely affected by reductions in numbers of only a few individuals.

In addition to remnant natural populations. DFS translations have figured prominently in the recovery program, and DFS have been reintroduced to 17 sites within their historical range. Although it appears that squirrel colonies have been successfully established at 11 of these sites, more assessment and investigation is needed to verify their status.

Owing to he disappearance of the DFS from 90% of its former range, the DFS was listed as Federally endangered on March 11, 1967 (32 FR 4001). Although exact causes are unknown, the dramatic decline is attributed to habitat destruction primarily through forest management practices and urbanization (residential and commercial development) throughout its range. Historically, overhunting of DFS may have been an additional cause.

Two DFS sightings has been documented on the Home Port on Winchester Creek Housing Development

site. In addition, DFS sightings have been documented directly adjacent to the site on adjacent property. Additional documented occurrences of DFS in the nearby area are approximately 1–3 miles away on private land within Gransonville and adjacent Queenstown, Maryland.

The WCLP has applied to the Service for an incidental take permit pursuant to Section 10(a) of the Act. The Applicant proposes to implement an HCP for the DFS that will allow the home and road construction and subsequent occupancy activities in DFS habitat. The Applicant's proposed development may result in take, as defined in the Act and its implementing regulations, of listed species. Authorized take would only affect DFS; take of other federally-listed species is specifically excluded from the proposed action. This permit would authorize the incidental take of DFS at Home Port on Winchester Creek Housing Development trough otherwise lawful activities, specifically the planned home and road construction and subsequent occupancy activities, occurring in DFS habitat. The HCP and permit would be in effect for 50 years upon issuance. Included in the application is an HCP detailing the activities that would result in incidental take and describing measures that mitigate, minimize and monitor the amount of take. The application also includes an IA and EA. Homeowners that undertake such actions will be included under the WCLP's proposed permit that will authorize the incidental take.

The Applicant proposes the construction and subsequent occupancy of Home Port on Winchester Creek Housing Development in Grasonville, Maryland, for economic proposes. The design of the development project consists of 16 residential homes on approximately 56 acres of mixed forested/agricultural habitat. Approximately 25 acres of the site is forested, with approximately 27 acres of the site in agricultural habitat. The project site is bordered on the shoreline by a forested buffer with the majority of acreage in the interior of the property consisting of agricultural fields. A large stand of mature forest lies in the southern corner of the property and includes both upland and nontidal wetlands.

The anticipated incidental take will be limited to the permanent loss of habitat on 0.50 acres, and the degraded/disturbed habitat on 9.6 acres, with species present, being harmed or harassed. In addition, anticipated incidental take will be limited to harm of up to 15 DFS within the 50-year ITP period, that may be associated with vehicular strikes associated with any construction and subsequent residential occupancy activities within the subject property.

The WCLP has agreed to implement the following measures to minimize, mitigate and monitor impacts that may result from incidental take of the DFS: (a) implement an education and public awareness program for construction workers, contractors, and homeowners: (2) implement a maximum speed limit of 15 mph for vehicles and equipment (includes construction workers, contractors, and homeowners: (3) request the installation of DFS road sings, three-way stop signs, and two-way stop signs in order to minimize potential vehicles strikes of DFS: (4) maintain specified areas adjacent to road sides/edges and forest edges as an open area for purpose of providing visibility and deterrence to DFS movement to minimize vehicle strike: (5) record Deeds of Open Space and Environmental Easements, a Declaration of Covenants. Conditions and Restrictions, 1A and the Record Plat in the land records of Queen Anne's County that establishes specific limits of disturbances and sets buffers for forested habitat for each lot to protect DFS from human disturbances: (6) implement, enforce, and obey regulations pertaining to restraint and control of domestic pets to minimize harassment or mortality of DFS: (7) have a contact representative on site during construction activities and an additional contact representative with the Homeowner's Association. In addition fencing (temporary during construction activities, permanent for home occupancy activities) will be erected in order to establish specific limits of disturbance and buffers: (8) report dead and/or injured DFS to USFWS: (9) if necessary, relocate any DFS found in construction area: (10) prohibit trash dumping except into containers, igniting open-air fires, discharge of firearms on site during construction, and unleashed pets on site during construction activities: (11) prohibit unleashed domestic pets outside of residences or fences: and (12 prohibit small game hunting (excluding waterfowl). In addition, WCLP proposes to fund the maintenance and restoration or enhancement of approximately 5 acres of suitable DFS habitat in the HCP area, contribute to a trust fund and other long-term mechanism to ensure successful implementation of restoration activities, and to place under conservation restrictions approximately 31 areas of off-site habitat as identified in the HCP.

The EA considers the environmental consequences of three alternatives, including the proposed action, a no-action alternative, and a no-take determination alternative. The proposed action alternative is the issuance of a permit under Section 10(a) of the Act that would authorize incidental take of the DFS that may occur in the habitats of Home on Winchester Creek Development, and implementation of the HCP and IA as submitted by the Applicant. The proposed action would require the Applicant to implement their HCP. The HCP provides mitigation measures for the proposed incidental taking including habitat enhancement, permanent protection of an off-site parcel, and contribution to a trust fund. The HCP provides a funding mechanism for these mitigation measures. Under the no-action alternative, the Applicant would not develop the proposed development site in Queen Anne's County and thus avoid the take of DFS. No ITP would be deemed necessary or issued. The no-take determination alternative would entail impacts as those described for the proposed action, however, ''taking'' of DFS would occur without minimization or mitigation of take. Thus, the number of DFS taken would be unrestricted and eventual reduction in the local population would be likely.

The Service provides this notice pursuant to section 10(c) of the Act. The Service will evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the evaluation of the permit application, the NCP, EA, IA and comments submitted thereon, will be used in the final analysis to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, the Service will issue a permit to the WCLP for the incidental take of DFS during the proposed construction and subsequent occupancy of Home Port on Winchester Creek Housing Development. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: December 28, 1998.

Ronald E. Lambertson,

Regional Director, Region 5.

[FR Doc. 98–34673 Filed 12–30–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1220–00; GP9–0053]

Notice of Planning Update for the John Day River Management Plan and Potential Related Amendments to the Two Rivers and John Day Resource Management Plans

AGENCY: Prineville District, Central Oregon Resource Area.

ACTION: Notice of Present Status regarding development of a Revised Draft Environmental Impact Statement and Management Plan for the Wild and Scenic John Day River and related Resource Management Plans.

SUMMARY: The Bureau of Land Management (BLM) in the State of Oregon, Prineville District, Central Oregon Resource Area, is revising the Draft Environmental Impact Statement and Management Plan for the Wild and Scenic John Day River Plan which will further amend sections of the Two Rivers and John Day Resource Management Plan. Reference may be made to the original Notice of Intent, **Federal Register**, Vol. 56, No. 234, December 5, 1991, page 63742.

The original Plan completion schedule is revised as a result of a litigated settlement concerning a suit against the BLM.

DATES: The previously announced public scoping period was concluded on October 30, 1997. The revised draft river management plan and environmental impact statement (EIS) was previously scheduled for a 90 day public review period in the early summer of 1998; however, this date has been changed to April of 1999. The proposed river plan, related RMP amendments, and final EIS are now expected to be available for public review during November of 1999. Any additional opportunities for public review and comment will be announced through the **Federal Register**, direct mailings to known interested parties, and announcements in Prineville's newspaper, the Central Oregonian, John Day's newspaper, the Blue Mountain Eagle, and Condon's newspaper, the Condon Times.

FOR FURTHER INFORMATION OR RELATED DOCUMENTS CONTACT: Dan Wood, Project Manager, Prineville District BLM, PO Box 550, Prineville, Oregon 97754 (Telephone 541–416–6751, FAX 541–416–6798). Anyone interested in participating during the public review process of this planning effort may request to be added to the mailing list. Individuals should specify if they wish to have their names and addresses withheld from public access under the privacy provisions of the Freedom of Information Act. Copies of the two existing approved plans (as amended) are available, upon request at this location.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management is developing a Revised Draft Management Plan and Environmental Impact Statement (EIS) for public lands along the John Day River system in Oregon. The John Day River watershed encompasses all or portions of eleven counties, six of which would be directly affected by the proposed plan. The development of the Plan is accomplished through a partnership consisting of the BLM, the State of Oregon, The Confederated Tribes of the Warm Springs and the John Day River Coalition of Counties which consist of Gilliam, Grant, Jefferson, Sherman, Wasco and Wheeler Counties. Progress of the Plan is reviewed monthly by a Resource Advisory Council (RAC) Sub-Group, created expressly for this purpose, which comments back to the BLM and Partners developing the Plan.

The planning and analysis process will comply with the procedural requirements of the National Environmental Policy Act, the Wild and Scenic River Act (as amended) and the Federal Land Policy and Management Act. The resulting decisions are expected to satisfy the requirements of the 1989 Omnibus Oregon Wild and Scenic Rivers Act, amend relevant portions of the Two Rivers and John Day Resource Management Plans (both within and outside the river corridors) and address relevant issues from ongoing litigation concerning the John Day River Plan. The federally designated Wild and Scenic segments of the John Day River managed by the Bureau include 147 miles of the John Day River mainstem from Service Creek to Tumwater Falls and 47 miles of the South Fork of the John Day River from the Malheur National Forest boundary to Smokey Creek. The 54 mile federally designated Wild and Scenic segment of the North Fork of the John Day River is managed by the Umatilla National Forest under a previously prepared and approved plan.

The revised draft plan and EIS will analyze public lands managed by the Bureau along the John Day River segments which are federally designated as Wild and Scenic and segments which are not so designated, some of which may be potentially suitable for designation as additional components of the National Wild and Scenic River System. Special emphasis will be given to management strategies that protect and enhance the outstandingly remarkable values for which the Bureau managed segments were designated. These outstandingly remarkable values are scenic, recreational, geologic, fish, wildlife, historic and cultural. Other values identified as significant are botanical, ecological, paleontological,, and archeological resources. Planning and analysis issues will include management, protection and enhancement of the identified river related values, plus any related Bureau authorized activities or resource uses such as, but not limited to, livestock grazing, irrigated agriculture, road and facility construction and maintenance, noxious weed control, streambank stability and stabilization, acquisition and management of additional lands within the river corridor and attainment of State of Oregon approved water quality standards.

Preliminary future management strategies (alternatives0 to be addressed are (1) Baseline/ Current Use, Development and Management (No Action), (2) Maximum Enhancement of Natural Values With Minimal Development, (3) Required Protection and System Restoration and Moderate Use and Development, (4) Increased Use and Development to Enhance Local Economic Activity and Developed recreation Consistent with River Resource Protection and (5) A Preferred Alternative (to be developed from elements of the other alternatives with public input). Any decisions which are inconsistent with the current Two Rivers or John Day RMPs would result in amendments to the applicable plans as a result of the Oregon State Director approval of the Record of Decision. A team of interdisciplinary specialists, whose backgrounds are in the resources to be affected, will be involved in the review and development of the description of the affected environment, development of alternatives and impact analysis. Disciplines to be represented on the team preparing the plan amendment and EIS include, but are not limited to: archeology, anthropology, economics, lands and minerals, recreation, forestry, fisheries, hydrology, botanical, soils wildlife, geology and hazardous materials.

The Prineville District's Two Rivers (1986) and John Day (1985, 1995) Resource Management Plans (RMPs) currently provide general management for the river corridors and known river related values as well as overall land resource use allocations and resource protection or enhancement. Although it is anticipated that the final decisions for

river management considered through this analysis could be in full conformance with the applicable RMPs, it is possible that portions of some actions under some alternatives may not be in full conformance with the approved RMPs, as required by 43 Code of Federal Regulations (CFR), Sub-part 1610.5–3, ''Conformity and Implementation''. The environmental analysis and public and interagency review process anticipated for this analysis are expected to fully comply with the Bureaus regulations for land use planning, including land use plan amendments, public involvement and coordination with other Federal agencies, State and local governments and Indian tribes, (43 CFR 1610.2, 1610.3 and 1610.5–5). This will allow the analysis to consider river corridor and value strategies which are inconsistent with the current direction or substantially affect other resource uses and allocations in one or more of the subject approved RMPs. Any approved decisions which amend the applicable plans will be incorporated into the plans and become part of the permanent planning record. Any refinements or clarifications of management direction, priority of river resource allocations and use of final river corridor boundaries will be incorporated into the applicable plans and documented through published plan maintenance reports, as provided under 43 CFR 1610.5–4. Copies of the two existing approved plans (as amended) will be available in the same locations as the other elements of the supporting record, as noted elsewhere in this notice.

The decisions made through this analysis are expected to be implemented in a series of actions over a period of several years. Although the intent is to implement the final river plan within approximately two years of the approval of the decision(s), some residual actions or independent resource use actions which are in conformance with the analysis and decisions and associated approved RMPs may occur over a period of ten or more years. In effect, this analysis will serve both to facilitate the immediate need for a comprehensive river plan and some immediate changes in resource use or resource allocations or vegetation remediation or recreational facility projects and it will also provide for future long-term actions that fall under the programmatic nature of this analysis dealing with ''desired future conditions''. Future site developments, land use allocation changes and projects would be subject to appropriate environmental analyses, public and interagency reviews and will be reported in the applicable District periodic planning update reports which are distributed to known interested parties.

Dated: December 18, 1998.

James L. Hancock,

District Manager.

[FR Doc. 98–34711 Filed 12–30–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–09–1430–01; AZA–29339]

Notice of Realty Action: Modified Competitive Sale of Public Lands in Maricopa County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Modified Competitive Sale.

SUMMARY: The following public lands in Maricopa County, Arizona have been found suitable for a modified competitive sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at not less than the estimated fair market value of $36,400. The land will not be offered for sale for at least 60 days after the date of this notice.

Gila and Salt River Meridian, Arizona

T. 6 N., R. 4 W.,
Sec. 14, lot 1.
Consisting of 16.52 acres.

The land described above is hereby segregated from appropriation under the public land laws including the mining laws, pending disposition of this action 270 days from the date of publication of this notice, whichever occurs first.

This land will be offered by sealed bid only to the adjacent private landowners due to the lack of legal access. All bids must be submitted to the Phoenix Field Office, U.S. Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027, by no later than 4:00 p.m. MST. March 1, 1999. Sealed bid forms and envelopes will be provided to all prospective bidders prior to the sale. Bids must be for not less than the appraised value specified above. Each bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the USDI, Bureau of Land Management, for not less than 10 percent of the amount bid.

A successful bid for a parcel will qualify the prospective purchaser to make application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2757; 43 U.S.C. 1719). A nonrefundable fee of $50 will be required from the prospective purchaser for purchase of the mineral interests. Those mineral interests to be conveyed simultaneously with the sale of the land have been determined to have no known mineral value.

Federal law requires that bidders must be U.S. citizens and 18 years of age or older. Proof of citizenship shall accompany the bid. If two or more valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental oral bidding. The remainder of the full price bid shall be paid within 180 days of the date of the sale. Failure to pay the full price within the 180 days shall disqualify the apparent high bidder and cause the bid deposit to be forfeited to the U.S. Bureau of Land Management.

The conveyance document, when issued, will contain certain reservations to the United States and will be subject to any existing rights-of-way and any other valid existing rights. Detailed information concerning this sale is available for review at the Phoenix Field Office, U.S. Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 580–5500.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Phoenix Field Office, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: December 22, 1998.

Michael A. Taylor,

Field Office Manager.

[FR Doc. 98–34579 Filed 12–30–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–00; IDI–32648]

Application Relinquished Opening of Land in a Proposed Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of

32,380.60 acres of public lands for the Bureau of Land Management's Withdrawal for the Department of Air Force's Mountain Home Air Force Base Enhanced Training in Idaho (ETI) site in aid of potential legislation for an Engle Act withdrawal application made by the United States Air Force expires April 7, 2000. The Bureau of Land Management relinquished their withdrawal application since Public Law 105–261 dated October 17, 1998, withdrew the United States Air Force Withdrawal (IDI–31741). Of the 32,380.60 acre withdrawal application 19,623.96 acres will be opened to surface entry, mining and mineral leasing and the remaining Alternative Site D, Juniper Butte, containing 12,756.64 acres will remain closed due to the enactment of Public Law 105–261 which withdrew the lands for the Air Force.

EFFECTIVE DATE: December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Jon Foster, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3813.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register** (61 FR 68, April 8, 1998), which segregated the lands described therein for up to 2 years from the land, mining and mineral leasing laws, subject to valid existing rights. The 2-year segregation expires April 7, 2000, but the Bureau of Land Management relinquished their withdrawal application. The lands are described as follows:

Boise Meridian

Alternative B—Clover Butte

T. 12 S., R. 8 E.,
sec. 10, SE¼SE¼;
sec. 11, S½S½;
sec. 12, S½S½;
sec. 13;
sec. 14;
sec. 15, E½E½;
sec. 22, E½E½;
secs. 23 to 26 inclusive;
sec. 27, E½E½;
sec. 34, E½E½;
sec. 35.
T. 12 S., R. 9 E.,
sec. 7, lot 4, SE¼SW¼ and S½SE¼;
sec. 8, S½S½;
secs. 17 to 20 inclusive;
secs. 29 to 32 inclusive.

Alternative Site C—Grasmere

T. 11 S., R. 4 E.,
secs. 25 to 27 inclusive;
secs. 34, N½, SE¼ and E½SW¼;
sec. 35.
T. 11 S., R. 5 E.,
sec. 30, lots 1 to 4 inclusive;
sec. 31, lots 1 to 4 inclusive.
T. 12 S., R. 4 E.,
secs. 1 to 4 inclusive;
sec. 9;
sec. 10, NW¼, S½, W½NE¼ and SE¼NE¼;
sec. 11, S½, N½NE¼, SE¼NE¼ and NE¼NW¼;
sec. 12;
sec. 13, N½NW¼, N½S½NW¼, NW¼NE¼, and N½SW¼NE¼;
sec. 14, N½N½ and N½S½N½;
sec. 15, N½N½ and N½S½N½.

Alternative Site D—Juniper Butte

T. 12 S., R. 9 E.,
sec. 35, E½SW¼SE¼ and SE¼.
T. 12 S., R. 10 E.,
sec. 31, lots 3 and 4, E½SW¼ and SE¼;
sec. 32, S½.
T. 13 S., R. 9 E.,
sec. 1;
sec. 2, lot 1, SE¼NE¼ and E½SE¼;
sec. 11, E½E½;
sec. 12;
sec. 13;
sec. 14, E½E½E½;
sec. 23, E½E½E½;
sec. 24.
T. 13 S., R. 10 E.,
sec. 4, lots 3 and 4, S½NW¼ and S½;
secs. 5 to 9 inclusive;
secs. 17 to 21 inclusive.

No Drop Zones

ND–1—T. 9 S., R. 6 E., sec. 21.
ND–4—T. 12 S., R. 4 E., sec. 15, S½SE¼SE¼NE¼.
ND–5—T. 11 S., R. 4 E., sec. 23, W½SW¼NE¼SE¼.
ND–6—T. 13 S., R. 9 E., sec. 17, N½NE¼SE¼SE¼.
ND–7—T. 12 S., R. 9 E., sec. 19, W½SW¼ of lot 4.
ND–8—T. 13 S., R. 4 E., sec. 13, a portion of the W½SW¼, further described as, beginning at the southwest corner of said sec. 13, thence north 0°09′13″ east along the west line of said sec. 13 a distance of 1,948.85 feet; thence east, 866.61 feet to the TRUE POINT OF BEGINNING; thence south 0°07′39″ west, 1,700 feet; thence south, 89°52′21″ east, 150 feet, thence north, 0°07′39″ east, 1,700 feet; thence north, 89°52′21″ west, 150 feet to the TRUE POINT OF BEGINNING.

Emitters

BA—T. 9 S., R. 8 E., sec. 26, NW¼NW¼SE¼NW¼.
BB—T. 8 S., R. 9 E., sec. 34, SW¼NE¼NW¼SW¼.
BC—T. 12 S., R. 8 E., sec. 2, NE¼SW¼SE¼NW¼.
BD—T. 15 S., R. 6 E., sec. 21, SE¼SE¼NE¼NW¼.
BE—T. 14 S., R. 10 E., sec. 29, NW¼NE¼SW¼SW¼.
BF—T. 9 S., R. 6 E., sec. 15, SE¼SW¼NW¼SE¼.
BG—T. 11 S., R. 5 E., sec. 32, NW¼NW¼NE¼NE¼.
BI—T. 11 S., R. 4 E., sec. 23, SW¼NE¼SE¼SW¼.
BK—T. 8 S., R. 13 E., sec. 7, a portion of lots 2 and 3, further described as, beginning at the northwest corner of sec. 7; thence south 89°46′57″ east along the south line of said sec. 7, a distance of 559.60 feet; thence north 1,332.48 feet to the TRUE POINT OF BEGINNING; thence south 89°28′50″ west, 100 feet; thence north 0°31′10″ west, 1,700 feet; thence north 89°28′50″ east 200 feet; thence south 0°31′10″ east, 1,700 feet; thence south 89°28′50″ west 100 feet to the TRUE POINT OF BEGINNING.

The areas described aggregate 32,376.70 acres more or less in Owyhee County, and 3.90 acres in Twin Falls County.

At 9 a.m. on December 31, 1998, the lands described above except for the lands described below will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 31, 1998, shall be considered as simultaneously filed at that time. Those thereafter shall be considered in the order of filing.

At 9 a.m. on December 31, 1998, the lands described above except for the lands described below will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Act required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The following described lands remain closed to surface entry, mining and mineral leasing due to an overlapping withdrawal by Public Law 105–261 for the United States Air Force for the Enhance Training in Idaho (ETI) site:

Boise Meridian

T. 8 S., R. 9 E.
section 34, lot 1, containing 1.00 acre.
T. 8 S., R. 13 E.
section 7, lot 6, containing 1.00 acre.
T. 9 S., R. 6 E.
section 15, lot 1, containing 1.00 acre.

section 21, containing 640 acres.
T. 9 S., R. 8 E.
section 22, lot 1, containing 1.00 acre.
T. 11 S., R. 4 E.
section 23, lot 14 and lot 16, containing 1.00 acre and 5.00 acres, respectively.
T. 12 S., R. 4 E.
section 14, lot 1, containing 5.00 acres.
T. 12 S., R. 5 E.
section 5, lot 6, containing 1.00 acre.
T. 12 S., R. 8 E.
section 2, lot 6, containing 1.00 acre.
T. 12 S., R. 9 E.
section 19, lot 6, containing 5.00 acres.
section 35, lot 1, lot 4, E½SW¼, and SE¼, containing 16.20 acres, 13.15 acres, 80 acres, and 160 acres respectively.
section 36, S½, containing 320 acres.
T. 12 S., R. 10 E.
section 31, lot 3, lot 4, E½SW¼, and SE¼, containing 40.02 acres, 40.00 acres, 80 acres, and 160 acres.
section 32, S½, containing 320 acres.
section 33, lot 2 and lot 3, containing 9.51 acres and 28.53 acres, respectively.
T. 13 S., R. 4 E.
section 13, lot 1, containing 5.00 acres.
T. 13 S., R. 9 E.
section 1, containing 595.08 acres.
section 2, lot 1, lot 5, lot 8, lot 9, lot 12, SE¼NE¼ and E½SE¼, containing 29.21 acres, 22.55 acres, 28.27 acres, 25.26 acres, 22.26 acres, 40 acres, and 80 acres, respectively.
section 11, lot 1, lot 4, lot 5, lot 8, E½NE¼, and E½SE¼, containing 19.21 acres, 16.19 acres, 13.16 acres, 10.14 acres, 80 acres, and 80 acres, respectively.
section 12, containing 640 acres.
section 13, containing 640 acres.
section 14, lot 1, lot 4, lot 5, lot 6, lot 9, and E½NE¼, containing 7.05 acres, 3.96 acres, 39.85 acres, 0.96 acres, 37.75 acres, and 80 acres, respectively.
section 23, lot 1, lot 4, lot 5, and lot 8, containing 34.70 acres, 31.66 acres, 28.62 acres, and 25.59 acres.
section 24, containing 640 acres.
T. 13 S., R. 10 E.
section 4, lot 3, lot 4, lot 6, lot 7, lot 11, lot 12, lot 13, lot 14, S½NW¼, and SW¼, containing 29.01 acres, 28.87 acres, 11.74 acres, 32.56 acres, 11.53 acres, 40.05 acres, 40.05 acres, 30.54 acres, 80 acres, and 160 acres, respectively.
section 5, containing 594.80 acres.
section 6, containing 625.29 acres.
section 7, containing 674.08 acres.
section 8, containing 640 acres.
section 9, containing 640 acres.
section 16, containing 640 acres.
section 17, containing 640 acres.
section 18, containing 674.72 acres.
section 19, containing 675.52 acres.
section 20, containing 640 acres.
section 21, containing 640 acres.
T. 14 S., R. 10 E.
section 29, lot 1, containing 1.00 acre.
T. 15 S., R. 6 E.
section 21, lot 1, containing 1.00 acre.

The areas described aggregate 12,756.64 acres in Owyhee County.

Dated: December 21, 1998.

Jimmie Buxton,

Chief, Branch of Lands and Minerals.

[FR Doc. 98–34664 Filed 12–30–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–930–1920–00–4373; IDI–31741]

Legal Description of Juniper Butte Range Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice provides official publication of the legal description of Juniper Butte Range withdrawal as required by section 2903(a)(1) of Public Law 105–261 enacted October 17, 1998.

EFFECTIVE DATE: December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Jon Foster, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3813.

SUPPLEMENTARY INFORMATION: The legal description of the public land withdrawal for the Juniper Butte Range effected by Public Law 105–261 is as follows:

Boise Meridian

T. 8 S., R. 9 E.,
Section 34, lot 1, containing 1.00 acre.
T. 8 S., R. 13 E.,
Section 7, lot 6, containing 1.00 acre.
T. 9 S., R. 6 E.,
Section 15, lot 1, containing 1.00 acre.
Section 21, containing 640 acres.
T. 9 S., R. 8 E.,
Section 22, lot 1, containing 1.00 acre.
T. 11 S., R. 4 E.,
Section 23, lot 14 and lot 16, containing 1.00 acre and 5.00 acres, respectively.
T. 12 S., R. 4 E.,
Section 14, lot 1, containing 5.00 acres.
T. 12 S., R. 5 E.,
Section 5, lot 6, containing 1.00 acre.
T. 12 S., R. 8 E.,
Section 2, lot 6, containing 1.00 acre.
T. 12 S., R. 9 E.,
Section 19, lot 6, containing 5.00 acres.
Section 35, lot 1, lot 4, E½ SW¼, and SE¼, containing 16.20 acres, 13.15 acres, 80 acres, and 160 acres respectively.
Section 36, S½, containing 320 acres.
T. 12 S., R. 10 E.,
Section 31, lot 3, lot 4, E½SW¼, and SE¼, containing 40.02 acres, 40.00 acres, 80 acres, and 160 acres.
Section 32, S½, containing 320 acres.
Section 33, lot 2 and lot 3, containing 9.51 acres and 28.53 acres, respectively.
T. 13 S., R. 4 E.,
Section 13, lot 1, containing 5.00 acres.
T. 13 S., R. 9 E.,
Section 1, containing 595.08 acres.
Section 2, lot 1, lot 5, lot 8, lot 9, lot 12, SE¼NE¼ and E½SE¼, containing 29.21 acres, 22.55 acres, 28.27 acres, 25.26 acres, 22.26 acres, 40 acres, and 80 acres, respectively.
Section 11, lot 1, lot 4, lot 5, lot 8, E½NE¼, and E½SE¼, containing 19.21 acres, 16.19 acres, 13.16 acres, 10.14 acres, 80 acres, and 80 acres, respectively.
Section 12, containing 640 acres.
Section 13, containing 640 acres.
Section 14, lot 1, lot 4, lot 5, lot 6, lot 9, and E½NE¼, containing 7.05 acres, 3.96 acres, 39.85 acres, 0.96 acres, 37.75 acres, and 80 acres, respectively.
Section 23, lot 1, lot 4, lot 5, and lot 8, containing 34.70 acres, 31.66 acres, 28.62 acres, and 25.59 acres.
Section 24, containing 640 acres.
T. 13 S., R. 10 E.,
Section 4, lot 3, lot 4, lot 6, lot 7, lot 11, lot 12, lot 13, lot 14, S½NW¼, and SW¼, containing 29.01 acres, 28.87 acres, 11.74 acres, 32.56 acres, 11.53 acres, 40.05 acres, 40.05 acres, 30.54 acres, 80 acres, and 160 acres, respectively.
Section 5, containing 594.80 acres.
Section 6, containing 625.29 acres.
Section 7, containing 674.08 acres.
Section 8, containing 640 acres.
Section 9, containing 640 acres.
Section 16, containing 640 acres.
Section 17, containing 640 acres.
Section 18, containing 674.72 acres.
Section 19, containing 675.52 acres.
Section 20, containing 640 acres.
Section 21, containing 640 acres.
T. 14 S., R. 10 E.,
Section 29, lot 1, containing 1.00 acre.
T. 15 S., R. 6 E.,
Section 21, lot 1, containing 1.00 acre.

The areas described aggregate approximately 32,380.60 acres in Owyhee County.

A copy of the legal description and map depicting the involved lands are on file for public inspection in the following offices:

State Director, Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709–1657.

District Manager, Lower Snake River District, 3948 Development Avenue, Boise, Idaho 83705–5389.

Area Manager, Jarbidge Resource Area Office, 2620 Kimberly Road, Twin Falls, Idaho 83301–7975.

Real Estate Office, Mtn. Home Air Force Base, 1030 Liberator, Building 1300, Mtn. Home AFB, Idaho 83648–5442

Dated: December 22, 1998.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 98–34720 Filed 12–30–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Revision of Form MMS–2005, Oil and Gas Lease of Submerged Lands Under the Outer Continental Shelf Lands Act

ACTION: Notice of extension of comment period and announcement of public workshop.

SUMMARY: This notice extends the period that MMS will accept comments on the revision of Form MMS–2005, Oil and Gas Lease of Submerged Lands Under the Outer Continental Shelf Lands Act to February 8, 1999. The document was published in the **Federal Register** on November 9, 1998 (63 FR 60380). In response to requests received at the December 10, 1998 workshop, MMS will hold an additional workshop to further discuss the document in January 1999. The date and location will be announced in a subsequent **Federal Register** notice.

FOR ADDITIONAL INFORMATION CONTACT: Terry Holman, 202–208–3822 or e-mail to Terry.Holman@mms.gov. Comments may be sent to Terry Holman, Minerals Management Service, Mail Stop 4230, 1849 C Street, NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: MMS has determined that Form MMS–2005, the lease document, needs revision due to changes in regulations since it was last reviewed in 1986. MMS has revised the form to reflect plain English and has rewritten it for clarity and organization. To reduce the need for future revisions to the document due to changes in regulations, MMS refers the Lessee to applicable laws, and rules and regulations of the Department. Much of the wording of existing Form MMS–2005 that specifically cites, incorporates by reference, or restates statutory and regulatory requirements is therefore deleted from the proposed revision.

Dated: December 22, 1998.

Cynthia Quarterman,

Director, Minerals Management Service.

[FR Doc. 98–34674 Filed 12–30–98; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

Certain Organic Photo-Conductor Drums and Products Containing the Same; Notice of Decision to Extend the Deadline for Determining Whether to Review an Initial Determination Terminating the Investigation

[Inv. No. 337–TA–411]

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by twenty (20) days, or until January 27, 1999, the deadline for determining whether to review an initial determination (ID) (Order No. 12) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3104. 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).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 4, 1998, based on a complaint filed by Mitsubishi Chemical Corporation of Japan and Mitsubishi Chemical Corporation America of White Plains, New York (collectively, Mitsubishi). 58 FR 30513. Twelve firms were named as respondents. Only respondents Dainippon Ink & Chemicals, Inc. and DIC Trading (USA) Inc. remain active in the investigation. The other respondents have either been terminated from the investigation or have sought termination based on consent orders or withdrawal of the complaint as to them. On December 7, 1998, the ALJ issued an ID terminating the investigation based on withdrawal of Mitsubishi's complaint.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and section 210.42(h)(3) of the Commission of Practice and Procedure, 19 C.F.R. § 210.42(h)(3).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202–205–1810.

Issued: December 23, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–34672 Filed 12–30–98; 8:45 am]

BILLING CODE 7020–02–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–115 (Review)]

Synthetic Methionine From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on synthetic methionine from Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on synthetic methionine [1] from Japan would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of this review 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, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: December 22, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Elizabeth Sweet (202–205–3455), 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–

[1] The merchandise subject to the antidumping duty order is synthetic methionine other than synthetic L methionine.

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.—On November 5, 1998, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (63 F.R. 63748, November 16, 1998). A record of the Commissioners' votes and a statement by Chairman Lynn M. Bragg are available from the Office of the Secretary and at the Commission's web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

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 this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on April 28, 1999, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on May 18, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 11, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 13, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 7, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 27, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before May 27, 1999. On June 18, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 22, 1999, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also 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 Commission's rules, each document filed by a party to the review must be served on all other parties to the review (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: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: December 23, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–34671 Filed 12–30–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act, Clean Water Act and the Emergency Planning and Community Right To Know Act

Notice is hereby given that on November 30, 1998, a proposed consent degree in *United States* v. *Pfizer Inc.*, Civil Action No. 398–CV–2317–CLG, was lodged with the United States District Court for the District of Connecticut.

This action alleges violations of the Resource Conservation and Recovery Act, the Clean Water Act, and the Emergency Planning and Community Right to Know Act against defendant Pfizer Inc. (''Pfizer'') at its facility located in Groton, Connecticut. The violations involve the improper management of hazardous waste, discharges of pollutants into the Thames River in excess of Pfizer's National Pollutant Discharge Elimination System (''NPDES'') permits limits, discharges and spills not authorized by Pfizer's NPDES permit, and failure to comply with reporting and recordkeeping requirements relating to the emitting of toxic chemicals from the Groton facility.

The consent decree provides that Pfizer will pay a civil penalty of $625,000 and implement injunctive relief to ensure future compliance with the relevant statutory and regulatory provisions at issue. In addition, Pfizer will implement a supplemental environmental project (''SEP'') at a present value cost of not less than $150,000. The SEP involves the assessment of hazardous waste management practices at a New England university, development of tools to

improve hazardous waste management at the university, and implementation of those tools. The SEP also involves training for other universities based on what is learned in connection with the primary facility and making available to other universities the software and guidance tools that are developed. In addition to the SEP, Pfizer will conduct seven training sessions for Connecticut high school, vocational school and junior college teachers relating to hazardous waste management issues.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Pfizer, Inc.*, Civil Action No. 398–CV–2317–CLG, D.J. Ref. 90–7–1–795, 90–7–1–795Z.

The proposed consent decree may be examined at the Region I Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts, 02203 (contact Andrea Simpson, 617–918–1738) and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $22.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–34716 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The ATM Forum

Notice is hereby given that, on July 21, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''). The ATM Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Compaq Computer Corp., Norwood, MA; DGT, MOTC, Taiwan, R.O.C., Taipei, TAIWAN; and U.S. Army CECOM S&TCD, Fort Monmouth, NJ have been added as parties to this venture. The following members of ATM have changed their name: Litton-Fibercom to Litton Network Access Systems, Roanoke, VA; SGS-Thomson Microelectronics to STMicroelectronics, St. Genis Pouilly, FRANCE; and Telecom Finland to Sonera Corporation, Tempere, FINLAND. First Virtual Corporation downgraded from a principal to an auditing member. Sphere Communications, Inc., Lake Bluff, IL and Certicom Corp., Mississauga, Ontario, CANADA have upgraded from auditing members to principal members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The ATM Forum intends to file additional written notification disclosing all changes in membership.

On April 19, 1993, The ATM Forum file its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on April 22, 1998. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34656 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Commercenet Consortium

Notice is hereby given that, on October 2, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), CommerceNet Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Junglee, Sunnyvale, CA and Information Management Associates, Inc., Irvine, CA have joined the Consortium as Portfolio members. CSC Consulting Group, Waltham, MA has joined the Consortium as an Executive Sponsor Member. Compucom Systems, Dallas, TX; Fort Point Partners, San Francisco, CA; Differential, Cupertino, CA; eGain, San Jose, CA; Quantum Communications, Hamilton, BERMUDA and Peapod, Inc., Skokie, IL have joined the Consortium as Core members. Truste, Palo Alto, CA has joined the Consortium as a Membership Swap member. Also, Cisco Systems, San Jose, CA; Netbot, Inc., Seattle, WA; The New England, Boston, MA; and Microsystem Software, Inc., Framingham, MA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CommerceNet Consortium intends to file additional written notification disclosing all changes in membership.

On June 13, 1994, CommerceNet Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on August 21, 1998. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34658 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on December 30, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''Act''), Financial Services Technology Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual

damages under specified circumstances. Specifically, Suntrust Services, Atlanta, GA and Fleet Bank, Hartford, CT were admitted as principal members of the Consortium. TRW, Fairfax, VA; Wachovia, Winston-Salem, NC; Comdisco, Rosemont, IL; US Web-Pittsburgh, Pittsburgh, PA and I A Corporation, Emeryville, CA were admitted as associate members of the Consortium. Object Management Group, Framingham, MA has been admitted as an advisory member of the Consortium. Also, Banc One Services, Corp., Columbus, OH; and GC Tech, New York, NY have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Financial Services Technology Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On October 21, 1993, Financial Services Technology Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on June 25, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 12, 1997 (62 FR 43184).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34650 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Finanical Services Technology Consortium, Inc.

Notice is hereby given that, on April 30, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Financial Services Technology Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Novell, Orem, UT; GlobeID Software, Paris, FRANCE; InteliData Technologies, Herndon, VA; Tumbleweed Software, Redwood City, CA; and Check Solutions, Memphis, TN have been admitted as associate members of the Consortium. Food Marketing Institute, Washington, DC; and General Services Administration, Washington, DC have been admitted as advisory members of the Consortium. Also, Copyright Clearance Center, Danvers, MA; Export-Import Bank of the U.S., Washington, DC; Royal Bank of Canada, Toronto, Ontario, CANADA; and Agorics, Los Altos, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Financial Services Technology Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On October 21, 1993, Financial Services Technology consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on December 30, 1997. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34651 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on July 31, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Financial Services Technology Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Entrust Technologies, Ottawa, Ontario, CANADA has been added as an associate member of the Consortium. Also, Mitretek, McLean, VA has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Financial Services Technology Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On October 21, 1993, Financial Services Technology Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on April 30, 1997. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34652 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on September 30, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Financial Services Technology Consortium, Inc. (''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, City Holding Company, Cross Lanes, WV has joined the Consortium as a principal member; Diversinet, McLean, VA; Differential, Inc., Cupertino, CA; Ford Motor Credit, Dearborn, MI; Siliware, Inc., New York, NY; and Husky Labs, Shepherdstown, WV have joined the Consortium as associate members. Also, First Virtual, San Diego, CA; Oki Advanced Products, Tokyo, Japan; Verisign, Mountain View, CA; Digital Equipment Corp., New York,

NY; Premenos, Concord, CA; and Kinzai Institute, Tokyo, Japan have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Financial Services Technology Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On October 21, 1993, Financial Services Technology Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on July 31, 1998. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34660 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Frame Relay Forum

Notice is hereby given that, on July 2, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), The Frame Relay Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ACADIA, Saint Peray, FRANCE; Case Technology, Watford, ENGLAND; Copper Mountain Networks, San Diego, CA; CoSine, Belmont, CA; Distributed Networking, Greensboro, NC; Netcom Systems, Chatsworth, CA; NRTC, Herndon, VA; PMC-Sierra, Inc., Burnaby, British Columbia, CANADA; Seabridge, Tel-Aviv, ISRAEL; Tiara Networks, Fremont, CA; Timeplex Group, Woodcliff Lake, NJ have joined as worldwide members. American Research Group, Inc., Cary, NC; Current Analysis, Sterling, VA; ENAV, Rome, ITALY; IMS, Inc., Atlanta, GA; and Net Reality, Rishon Lezion, ISRAEL have joined as auditing members. Also, AccessLan Communications, San Jose, CA; Alphanet Telecom, Toronto, Ontario, CANADA; Andrew Corporation, Orland Park, IL; Ardent Communications, San Jose, CA; Chair for Computer Networks, Dresden, GERMANY; Compaq Computer, Houston, TX; Concert, Reston, VA; Conklin Instrument Corporation, Norcross, GA; Datacraft Asia Ltd., Taikoo Shing, HONG KONG; DHL Worldwide Express, Burlingame, CA; Digital Equipment Corporation, Reading, Berkshire, ENGLAND; FORE Systems, Andover, MA; GTE Labs, Taunton, MA; Herkimian Laboratories Inc., Rockville, MD; Interphase Corporation, Dallas, TX; Jupiter Technology Inc., Waltham, MA; Kaspia Systems, Inc., Beaverton, OR; Mantis Technology, Ltd., New York, NY; MobileComm, Irving, TX; Natural Micro Systems, Framingham, MA; Netopia, Alameda, CA; Network General Corp., Menlo Park, CA; Nokia Telecommunications, FINLAND; OKI America, Inc., New York, NY; OLICOM, Gdansk, POLAND; Polish Telecom, Warsaw, POLAND; RD6, Inc., Montreal, CANADA; Sourcecom Corporation, Westlake Village, CA; Telenetworks, Petaluma, CA; Tellabs, Ltd., Shannon, County Clare, IRELAND; TRA, St. Marys, KS; Trend Communications, High Wycombe Bucks, ENGLAND; Txport Transport, Madison, WI; and Wandel & Goltermann, Research Triangle Park, NC have been dropped as parties to this venture. ACSI has changed its name to e.Spire.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Frame Relay Forum intends to file additional written notification disclosing all changes in membership.

On April 10, 1992, The Frame Relay Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on December 29, 1997. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34653 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Utilization Research Forum (''GURF'')

Notice is hereby given that, on May 19, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq*, (''the Act''), Gas Utilization Research Forum (''GURF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Syntroleum Corporation, Tulsa, OK, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Gas Utilization Research Forum (''GURF'') intends to file additional written notification disclosing all changes in membership.

On December 19, 1990, Gas Utilization Research Forum (''GURF'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 16, 1991 (56 FR 1655).

The last notification was filed with the Department on March 4, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 24, 1998 (63 FR 39901).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34661 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Utilization Research Forum (''GURF'')

Notice is hereby given that, on July 6, 1998 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Gas Utilization Research Forum (''GURF'')

has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Anadarko Petroleum Corporation, Houston, TX has been added as a party to this venture. In addition, a current member, formerly Eniricerche S.p.A. of Milan, Italy, has changed its company name to EniTechnologie S.p.A.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Gas Utilization Research Forum (''GURF'') intends to file additional written notification disclosing all changes in membership.

On December 19, 1990, Gas Utilization Research Forum (''GURF'') field its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 16, 1991 (56 FR 1655).

The last notification was filed with the Department on May 19, 1998. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34662 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on April 3, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Network Management Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, INRIA LORRAINE, Botanique, Villers-Les-Nancy, FRANCE and ITRI/CCL, Taiwan, REPUBLIC OF CHINA have been added as Affiliate Members to this venture. Cnet, Inc. has changed its name to CNET/Glenayre. Swiss Telecom PTT has changed its name to Swisscom, and O2 Technology has changed its name to O2 Technology/ Unidata. Also, CSC Intelicom, Inc., Rochester, NY has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Network Management Forum intends to file additional written notification disclosing all changes in membership.

On October 21, 1988, Network Management Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on November 19, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 31, 1998 (63 FR 15437).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34657 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OBI Consortium, Inc.

Notice is hereby given that, on August 31, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), OBI Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Stream International Holdings, Inc. (Corporate Software & Technology), Norwood, MA; and Eastman Chemical Company, Longview, TX have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OBI Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On September 10, 1997, OBI Consortium, Inc. has filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 19, 1997 (62 FR 60531).

The last notification was filed with the Department on May 29, 1998. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34654 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Phase Change Brake Team (''PCBT'')

Notice is hereby given that, on September 15, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), The Phase Change Brake Team (''PCBT'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Ohio Aerospace Institute, Cleveland, OH; Aircraft Braking Systems Corporation, Akron, OH; and Applied Sciences, Inc., Cedarville, OH. The nature and objectives of the venture are research and development relating to the application of phase change materials to aircraft braking systems. The participants are joining together to engage in activities related to the sub-scale and full-scale development and testing of phase change composite brake disks for aircraft braking applications.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34659 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Wireless Application Protocol Forum, LTD.

Notice is hereby given that, on March 18, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Wireless Application Protocol Forum, Ltd. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of involving the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Motorola, Inc., Schaumberg, IL; Unwired Planet, Inc., Redwood Shores, CA; Nokia Mobile Phones LTD, Tampere, FINLAND; and Ericsson Mobile Communications AB, Lund, SWEDEN. The nature and objectives of the venture are the WAP (Wireless Application Protocol) Forum develops specifications for wireless networks that enable manufacturers, networks operators, content providers, and application developers to offer compatible products and services for Internet access, advanced services, and mobile communications applications.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34663 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Xerox PARC

Notice is hereby given that, on September 28, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Xerox PARC has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Xerox Corporation, Palo Alto, CA; Georgia Tech Research Corporation, Atlanta, GA; and MicroModule Systems, Cupertino, CA. The nature and objectives of the venture are to develop micro-spring interconnect technology for high density probing and packaging.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34655 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection Under Review; Application to Extend/ Change Nonimmigrant Status.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until March 1, 1999.

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:* Reinstatement without change of previously approved collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–539, 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 by a nonimmigrant to apply for an extension of stay or change of nonimmigrant status. The INS will use the dataon this to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 256,210 responses at 45 minutes (.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 192,158 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S.Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: December 24, 1998.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 98–34557 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection Under Review: Arrival/Departure Record.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until March 1, 1999.

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:* Reinstatement without change of previously approved collection which has expired.

(2) *Title of the Form/Collection:* Arrival-Departure Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–94. Office of Inspections, 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. Documentation of alien arrival and departure to and from the United States is a part of the manifest requirements of Sections 231 and 235 of the Immigration and Nationality Act (INA) and may be evidence of registration when issued as provided by Section 264 of the INA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 13,924,380 responses at 4 minutes (.066) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 919.009 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 items(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: December 23, 1998.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 98–34558 Filed 12–30–98; 8:45 am]

BILLING CODE 4410–18–M

NUCLEAR REGULATORY COMMISSION

[IA 98–045]

William H. Clark; Order Prohibiting Involvement in NRC-Licensed Activities

I

William H. Clark was formerly employed by the Power Authority of the State of New York (New York Power Authority) as a contract employee who had been granted unescorted access to the Indian Point Unit 3 Nuclear Power Plant (Indian Point 3 Plant). The New York Power Authority is the holder of Facility Operating License No. DPR–64, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on April 5, 1976. The license authorizes the operation of the Indian Point 3 Plant in accordance with conditions specified therein. The facility is located in Buchanan, New York.

Mr. Clark was also formerly employed by the Centerior Service Corporation (Centerior) as a contract employee who had been granted unescorted access to the Perry Nuclear Power Plant (Perry Plant). Centerior is the holder of Facility Operating License No. NPF–58, issued by the NRC pursuant to 10 CFR Part 50 on November 18, 1987. The license authorizes the operation of the Perry Plant in accordance with conditions specified therein. The facility is located in Perry, Ohio.

II

On October 30 and 31, 1997, the NRC received information from Centerior and the New York Power Authority, in accordance with 10 CFR 73.71(b)(1), that Mr. Clark had been granted unescorted access to the Perry Plant during the period September 11 through September 25, 1997, and the Indian Point 3 Plant during the period May 13 through August 14, 1997, and that Mr. Clark was previously denied unescorted access to the Philadelphia Electric Company's (PECo) Peach Bottom Nuclear Plant (Peach Bottom Plant) based on a positive test for illegal drug use (marijuana). On October 30, 1997, the New York Power Authority submitted Licensee Event Report (LER) No. 97–026–00 to the NRC which concluded that Mr. Clark had been granted unescorted access to the Indian Point 3 Plant based, in part, on false information that Mr. Clark provided to the New York Power Authority during pre-access screening regarding: (1) a prior positive test for illegal drug use (marijuana), which was administered to him by PECo on September 4, 1996; and (2) a prior denial of unescorted access to PECo's Peach Bottom Plant based on a positive test for illegal drug use. Centerior submitted a similar LER (No. 97-S01-000) to the NRC on October 31, 1997. Both Centerior and the New York Power Authority informed the NRC that had the information regarding Mr. Clark's previous positive test for illegal drug use and his denial of unescorted access to the Peach Bottom Plant been known, Mr. Clark would not have been granted unescorted access to their nuclear facilities.

In response to the information reported by Centerior and the New York Power Authority to the NRC, the NRC initiated an investigation of facts and circumstances surrounding the allegedly false information that Mr. Clark

provided to Centerior and the New York Power Authority in order to gain unescorted access to the Perry Plant and the Indian Point 3 Plant. The investigation established:

1. On September 4, 1996, Mr. Clark submitted to pre-access drug and alcohol testing in order to gain unescorted access to PECo's Peach Bottom Plant and the immunoassay screen performed by PECo at its on-site lab identified the presence of cannabinoids (marijuana).

2. The specimen Mr. Clark submitted to PECo on September 4, 1996, was tested by the company DrugScan on September 5, 1996, and DrugScan reported to PECo that the specimen tested positive for marijuana metabolites.

3. On September 19, 1996, PECo sent Mr. Clark a certified letter which stated that PECo had received the results of his pre-access drug test and that if he did not contact the medical review officer within five days of receiving the letter, his pre-access drug test would be declared positive. On October 1, 1996, the medical review officer declared Mr. Clark's pre-access drug test positive based upon a positive drug test report and no response from Mr. Clark. The unopened, unclaimed certified letter was returned to PECo by the post office on November 4, 1996.

4. By letter dated October 25, 1996, PECo informed Mr. Clark that he was being denied unescorted access to PECo's Peach Bottom Plant for failing to meet PECo's fitness for duty requirements. The letter was mailed to Mr. Clark on October 28, 1996, by certified mail, return receipt requested, and Mr. Clark signed the certified mail receipt on or about November 13, 1996, thereby acknowledging his receipt of the letter.

5. On April 28, 1997, Mr. Clark applied for unescorted access to the Indian Point 3 Plant and answered ''No'' to two questions in order to gain unescorted access to the Indian Point 3 Plant: (a) whether he had ever been denied unescorted access to a nuclear power plant or employment due to a fitness for duty policy, and (b) whether he had ever been denied unescorted access to a nuclear power plant for any reason.

6. Based, in part, on Mr. Clark's answer of ''No'' to the two questions listed above in item five, Mr. Clark was granted unescorted access to the Indian Point 3 Plant from May 13 to August 14, 1997.

7. On September 10, 1997, Mr. Clark applied for unescorted access to the Perry Plant and answered ''No'' to two questions in order to gain unescorted access to the Perry Plant: (a) whether he had at any time in the past five years tested positive for illegal drug use, and (b) whether he had at any time in the past five years been removed from activities or denied unescorted access at any nuclear power plant, or other employment as a result of a fitness for duty policy.

8. Based, in part, on Mr. Clark's answer of ''No'' to the two questions listed above in item seven, Mr. Clark was granted unescorted access to the Perry Plant from September 11 to September 25, 1997.

9. On August 26, 1998, a Demand for Information (DFI) was sent to Mr. Clark. The DFI requested Mr. Clark to respond to a series of questions about his applications for unescorted access to the Indian Point 3 and Perry plants. Because Mr. Clark had not responded to the first DFI, a second copy of the DFI was sent to Mr. Clark on or about the fourth week in September 1998. As of the date of this Order, Mr. Clark has not responded with the information requested by the DFI, and the post office has not returned the two copies of the DFI that were mailed to Mr. Clark.

10. On October 11 and October 22, 1998, telephone calls were placed to Mr. Clark's residence and messages were left on an answering machine asking Mr. Clark to contact the NRC Region III Office to discuss the DFI. As of the date of this Order, Mr. Clark has not contacted the NRC Region III Office in response to the telephone calls.

Based on the above, it appears that Mr. Clark, a former contract employee of both New York Power Authority and Centerior, has engaged in deliberate misconduct by providing false information to both NRC licensees, and it raises serious doubt as to whether Mr. Clark can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees.

III

The NRC must be able to rely on a facility licensee and its employees to comply with the provisions of all NRC regulations. Based on its investigation, the NRC has concluded that Mr. Clark violated the NRC's regulations prohibiting deliberate misconduct at nuclear power facilities. Specifically, 10 CFR 50.5(a)(2), ''Deliberate Misconduct,'' prohibits any employee of an NRC licensee, or any employee of a contractor or subcontractor of an NRC licensee, from deliberately submitting information to an NRC licensee that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The false answers and the information that Mr. Clark failed to provide about his prior use of marijuana and his failed FFD test at, and his revoked unescorted access to, the Peach Bottom plant are material to the NRC because licensees are required to consider such information in making determinations for unescorted access in accordance with the requirements of 10 CFR 73.56. Therefore, the NRC has concluded that Mr. Clark's actions were a deliberate violation.

Mr. Clark's deliberate actions have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to refrain from deliberately violating those regulations. Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Clark were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety, and interest require that Mr. Clark be prohibited from any involvement in NRC-licensed activities for a period of one year from the effective date of this Order, and if he is currently involved with another licensee in NRC-licensed activities at this time, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, for a period of one year following the one-year probation period, Mr. Clark is required to notify the NRC of any employment in NRC-licensed activities.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, 10 CFR 73.56, and 10 CFR 150.20, it is hereby ordered that:

1. William H. Clark is prohibited for one year from the effective date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. For a period of one year after the period of prohibition has expired, William H. Clark shall, within 20 days of his acceptance of any employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in

Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the initial notification, Mr. Clark shall include a statement of his commitment to comply with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Clark of good cause.

V

In accordance with 10 CFR 2.202, William H. Clark must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Clark or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Assistant for Rulemakings and Adjudications, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406–1415, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351, and to Mr. Clark, if the answer or hearing request is by a person other than Mr. Clark. If a person other than Mr. Clark requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Clark or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland this 21st day of December 1998.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 98–34578 Filed 12–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–313 and 50–368]

Entergy Operations, Inc.; Arkansas Nuclear One, Unit Nos. 1 and 2, Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee) to withdraw its May 2, 1996, application for proposed amendment to Facility Operating License Nos. DRP–51 and NPF–6 for Arkansas Nuclear One, Units 1 and 2, located in Pope County, Arkansas.

The proposed amendment would have extended the allowed outage time (AOT) for the emergency diesel generators at Arkansas Nuclear One, Units 1 and 2 to 7 days with an additional, once per refueling cycle, extension of 7 more days for each machine.

The Commission had previously issued a proposed no significant hazards consideration determination published in the **Federal Register** on May 22, 1996 (61 FR 25703). However, by letter dated December 11, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 2, 1996, as supplemented by letter dated November 7, 1996, and the licensee's letter dated December 11, 1998, which withdrew the application for the license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Tomlinson Library, Arkansas Tech University, Russelville, AR 72801.

Dated at Rockville, Maryland, December 23, 1998.

For the Nuclear Regulatory Commission.

M. Christopher Nolan,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–34572 Filed 12–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 50–389]

Florida Power and Light Company, et al.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Florida Power and Light Company (the licensee) to withdraw its June 21, 1995 application for proposed amendments to Facility Operating Licenses Nos. 50–335 and 50–389 for the St. Lucie Plant, Unit Nos. 1 and 2, located in St. Lucie County, Florida.

The proposed amendment would have revised the facility technical specifications pertaining to the time allowed for the Low Pressure Safety Injection Systems to be returned to operable status.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 27, 1995 (60FR49936). However, by letter dated December 15, 1998, the licensee withdrew the proposed changes.

For further details with respect to this action, see the application for amendments dated June 21, 1995, and the licensee's letter dated December 15, 1998, which withdrew the application for these license amendments. The above documents 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 located at the Indian River Junior College Library, 3209

Virginia Avenue, Fort Pierce, Florida 34954–9003.

Dated at Rockville, Maryland, this 22nd day of December 1998.

For the Nuclear Regulatory Commission.

William C. Gleaves,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–34573 Filed 12–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 50–389]

Florida Power and Light Company, et al.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Florida Power and Light Company (the licensee) to withdraw its June 21, 1995 application for proposed amendments to Facility Operating Licenses Nos. 50–335 and 50–389 for the St. Lucie Plant, Unit Nos. 1 and 2, located in St. Lucie County, Florida.

The proposed amendment would have revised the facility technical specifications pertaining to the time allowed for a single inoperable Emergency Diesel Generator to be returned to operable status.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 27, 1995 (60 FR 49936). However, by letter dated December 15, 1998, the licensee withdrew the proposed changes.

For further details with respect to this action, see the application for amendments dated June 21, 1995, and the licensee's letter dated December 15, 1998, which withdrew the application for these license amendments. The above documents 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 located at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Dated at Rockville, Maryland, this 22nd day of December 1998.

For the Nuclear Regulatory Commission.

William C. Gleaves,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–34624 Filed 12–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Indiana Michigan Power Company (the licensee) to withdraw its March 26, 1997, application for an amendment to Facility Operating License No. DPR–58 and Facility Operating License DPR–74 for the Donald C. Cook Nuclear Plant, Units 1 and 2, located in Berrien County, Michigan. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on May 21, 1997 (62 FR 27796).

The purpose of the licensee's amendment request was to modify the Technical Specifications (TS) to correct administrative errors.

Subsequently, the licensee informed the staff that the amendment is no longer required. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see the application for amendment dated March 26, 1997. This document is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located in Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Dated at Rockville, Maryland, this 22nd day of December 1998.

For the Nuclear Regulatory Commission.

John F. Stang,

Senior Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–34575 Filed 12–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–9]

Public Service Company of Colorado; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding Proposed Exemption From Requirements of 10 CFR PART 72

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption from certain requirements of its regulations to Public Service Company of Colorado (PSCo). The requested exemption would allow PSCo to defer for up to 6 months the performance of a biennial emergency response exercise for the Fort St. Vrain (FSV) independent spent fuel storage installation (ISFSI).

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated July 31, 1998, PSCo requested an exemption from the requirement in 10 CFR 72.32(b)(12)(i) which states, in part: ''Each application for an * * * ISFSI that is licensed under this part and that may process and/or repackage spent fuel, must be accompanied by an Emergency Plan that includes * * * provisions for conducting * * * biennial onsite exercises to test response to simulated emergencies.'' PSCo requested to postpone performance of the required biennial exercise for 6 months until June 1999.

Need for the Proposed Action: As described in the July 31, 1998, request, the exemption is needed for the reasons discussed below. The Department of Energy has submitted a request to transfer Materials License SNM–2504, for the FSV ISFSI, from PSCo to DOE. This request, submitted on December 17, 1998, is currently under NRC staff review. The completion of this review and transfer of the license is anticipated in early 1999. To prepare for license transfer, DOE performed an emergency exercise on September 23, 1998, for the FSV ISFSI. This exercise, which was developed and executed by DOE and its agents, demonstrated the response of DOE's emergency response organization, as well as the response of local emergency responders, including local law enforcement and local ambulance services.

As current holder of the FSV ISFSI license, PSCo is required, pursuant to 10 CFR 72.32(b)(12)(i), to hold an emergency response exercise biennially. The next scheduled emergency exercise for PSCo should be conducted in December 1998. PSCo, in its exemption

request, describes the coordination with local community responders who are required to perform an emergency exercise. The exemption is requested to relieve the burden imposed on the local community responders, as well as on PSCo support staff, by having to prepare for and perform two emergency exercises between September 1998 and December 1998.

Environmental Impacts of the Proposed Action: The Environmental Assessment (EA) for the license application for the FSV ISFSI (56 FR 5428, February 11, 1991) considered the potential environmental impacts of construction and operation of an ISFSI at the FSV site. In the EA, the NRC concluded that storage of spent fuel at the FSV ISFSI will not significantly affect the quality of the environment. The proposed actions now under consideration would not change the potential environmental effects assessed in the EA. Specifically, there are no environmental impacts associated with deferring an emergency exercise conducted by PSCo for the FSV ISFSI. As previously discussed, an emergency response exercise was run at the FSV ISFSI on September 23, 1998. This exercise, although conducted by DOE, used existing local responders whose response is not affected by the pending license transfer. In addition, the onsite facility staff will remain essentially unchanged during the transition from PSCo to DOE and their response to emergency situations is not expected to be changed appreciably by the license transfer. The proposed exemption does not involve any changes that increase the probability or consequences of accidents which would require activation of the emergency response organization. The proposed exemption does not change the types of effluents that may be released offsite or significantly increase the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed exemption will have no significant radiological or nonradiological environmental impacts.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption and, therefore, require PSCo to conduct an emergency exercise before December 31, 1998. This alternative would have no significant environmental impacts as well. However, denial of the requested exemption would result in an additional exercise of local community emergency response resources, which, because these resources were exercised as recently as September 1998, would not provide any benefit.

Agencies and Persons Consulted: The Director of the Laboratory and Radiation Services Division of the Colorado Department of Public Health and Environment was consulted about this EA for the proposed action and had no concerns.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.32(b)(12)(i) so that PSCo may defer conducting an emergency exercise for the FSV ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

This application was docketed under 10 CFR Part 72, Docket 72–9. For further details with respect to this action, see the application for an ISFSI license dated December 17, 1996, and the request for exemption dated July 31, 1998, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 23rd day of December 1998.

For the Nuclear Regulatory Commission.

Susan F. Shankman,

Deputy Director, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–34576 Filed 12–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–311]

Public Service Electric and Gas Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Public Service Electric and Gas Company (the licensee) to withdraw its May 1, 1997, application for proposed amendment to Facility Operating License No. DPR–75 for the Salem Nuclear Generating Station, Unit No. 2, located in Salem County, New Jersey.

The proposed amendment would have revised the facility technical specifications pertaining to auxiliary building exhaust air filtration system and the switchgear and penetration area ventilation system. In a letter dated August 14, 1997, the licensee retracted the portion of the amendment request regarding the auxiliary building exhaust air filtration system. The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 15, 1997 (62 FR 26526). However, by letter dated December 21, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 1, 1997, as supplemented on August 14, 1997, and the licensee's letter dated December 21, 1998, which withdrew the application for license amendment. The above documents 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 located at the Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Dated at Rockville, Maryland, this 23rd day of December 1998.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–34574 Filed 12–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–22]

CBS Corporation Acting Through Its Westinghouse Electric Company Division; Westinghouse Test Reactor Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility License No. TR–2, issued to the CBS Corporation acting through its Westinghouse Electric Company Division. The license authorizes possession only and decommissioning of the Westinghouse Test Reactor (WTR), located in Westmoreland County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would amend Facility License No. TR–2 for the WTR

to reflect the change in the legal name of the licensee from CBS Corporation acting through its Westinghouse Electric Company Division to simply the CBS Corporation once the change is accomplished.

The proposed action is in accordance with the licensee's application for amendment dated September 28, 1998, as supplemented on November 17, 1998.

Need for the Proposed Action

The proposed action is needed to accurately reflect the legal name of the licensee once the name is changed.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the action is administrative in nature and will not modify the WTR facility configuration, procedures or requirements, or affect licensed activities. The employees responsible for the licensed WTR facility will still be responsible, either directly through the CBS Corporation or through contractual arrangements for which CBS Corporation is ultimately responsible, notwithstanding the new name of the licensee. The proposed action will not affect the financial qualifications of the licensee to possess and decommission the facility.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impacts associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any resources not previously considered in the environmental report for the decommissioning of the WTR.

Agencies and Persons Contacted

In accordance with its stated policy, on November 20, 1998, the NRC staff consulted with the Pennsylvania State Official, James G. Yusko, of the Bureau of Radiation Protection, Pennsylvania Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Findings of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated September 28, 1998, as supplemented by submittal dated November 17, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 21st day of December 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. 98–34686 Filed 12–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–90 issued to the Tennessee Valley Authority (TVA or the licensee) for operation of the Watts Bar Nuclear Plant, Unit 1 (WBN), located in Rhea County, Tennessee.

The proposed amendment would change the Technical Requirement Manual (TRM) for WBN to prevent a potential shutdown of the unit. The change is in response to sporadic grounds which have been encountered on an annunciator circuit that is used to confirm operability of the ice condenser containment lower inlet door position monitoring system. The proposed license amendment would temporarily revise the TRM Bases for Technical Surveillance Requirement (TSR) 3.6.2.1 (Channel Check—Ice Condenser Lower Inlet Door Position Monitoring System) to provide a temporary, optional method of satisfying the requirements for the channel check. This method would be allowed until the next WBN plant entry into plant operating Mode 3, currently planned in late February 1999, for the next refueling outage.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The lower inlet doors have been verified to be closed by confirming the lights on the door position monitoring system panel in the control room. The annunciator circuit which is currently impacted by an identified cable ground is not in the required portion of the system. This annunciator provides no safety function. Further, the Inlet Door Position Monitoring System is not required for proper operation of the inlet doors. Therefore, by verifying the green lights are indicating and the red lights are not indicating on a 12-hour frequency provides reasonable assurance the door monitoring system is performing its required function and that the ice condenser system remains operable with no negative

effects from an opened door(s). Accordingly, the change does not increase 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 ice condenser lower inlet doors and ice bed are passive features and do not have the potential of creating an accident. This change retains a reasonable method of ensuring door position is known. Accordingly, there are no mechanisms that could create an accident of a different type.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

This TRM bases change provides a reasonable alternative method of ensuring the door position monitoring system is operable. The door position monitoring system itself is not assumed to actuate in any way during the course of postulated plant events. Any problems with door positions would be noted well before it could have any impact on ice bed performance. Accordingly, no Technical Specification is impacted and there is no 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.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative 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 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 1, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37042. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Tennessee Valley Authority, ET 10H, 400 East Summit Hill Drive, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 22 and revision dated December 23, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37042.

Dated at Rockville, Maryland, this 28th day of December 1998.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Project Manager, Project Directorate, Division of Reactor Projects—Office of Nuclear Reactor Regulation.

[FR Doc. 98–34787 Filed 12–30–98; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection: Representative Payee Parental Custody Monitoring.

Under Section 12(a) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) is authorized to select, make payments to, and to conduct transactions with, a beneficiary's relative or some other person willing to act on behalf of the beneficiary as a representative payee. The RRB is responsible for determining if direct payment to the beneficiary or payment to a representative payee would best serve the beneficiary's interest. Inherent in the RRB's authorization to select a representative payee is the responsibility to monitor the payee to assure that the beneficiary's interests are protected. Triennially, the RRB utilizes Form G–99d, Parental Custody Report, to obtain information needed to verify that a parent-for-child representative payee still has custody of the child. One response is required from each respondent. No changes are proposed to Form G–99d.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form #(s)	Annual responses	Time (Min)	Burden (Hrs)
G–99d	1,850	5	154

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–34721 Filed 12–30–98; 8:45 am]

BILLING CODE 7905–01–D

OFFICE OF SPECIAL COUNSEL

Agency Information Collection Activities Under OMB Review

AGENCY: U.S. Office of Special Counsel (OSC).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. §§ 3501, *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been sent to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of information collected and its expected cost and burden; it also includes the actual data collection instruments.

DATES: Comments must be submitted on or before February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Erin M. McDonnell, Associate Special Counsel for Planning and Advice, U.S. Office of Special Counsel, at (202) 653–8971 (or by e-mail at *emcdonnell@osc.gov*), and refer to OSC Forms 48a-c. Copies of the proposed survey forms will be provided upon request.

SUPPLEMENTARY INFORMATION:

Title: OCS Survey Program Forms. Following the expiration of a prior OMB approval, this is a request for approval of modified forms for use in carrying out an information collection required by law.

Abstract: Section 13 of Public Law 103–424 requires the OSC to conduct annual surveys of individuals seeking OSC assistance, and to report on survey results in its annual reports to Congress. The statute provides that the surveys

shall determine whether individuals seeking OSC assistance were: (1) fully apprised of their rights; (2) successful at the OSC or the Merit Systems Protection Board; and (3) satisfied, whether successful or not, with the treatment received from the OSC.

Pursuant to enactment of this requirement in 1994, the OSC developed three survey forms, corresponding to the principal categories of individuals seeking OSC assistance: (1) individuals whose cases alleging prohibited personnel practices, or other violations of law, rule or regulation within the agency's jurisdiction, have been closed by the OSC with or without corrective and/or disciplinary action (OSC Form 48a); (2) individuals who have received written advisory opinions about allowable and unallowable political activity under the Hatch Act (OSC Form 48b); and (3) individuals whose disclosures of possible wrongdoing by federal agencies have been processed by the OSC Disclosure Unit (OSC Form 48c).

Since the expiration of OMB's three-year approval of the initial version of survey forms, the OSC has modified the forms to focus more clearly on customer service issues, and to elicit information that would place responses to the questions enumerated in the statute in a more meaningful context. The three survey formats, as revised, are proposed for use in surveying persons whose matters were closed, or who received written Hatch Act advisory opinions, or whose disclosures were processed by the OSC, between fiscal years (FY) 1998–2000. As before, survey responses will be voluntary, will not solicit information required by law or regulation, and will be able to be submitted without personal identification if the respondent so chooses.

The information collected will be used by the OSC to: comply with the law; assess levels of satisfaction with services rendered; link results with management planning and other agency operations; identify areas where improvements can be made; enhance awareness of service issues at all levels of the agency; improve service to complainants and others seeking the agency's assistance; and report on the agency survey program (in statistical form) to Congress.

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. A Federal Register Notice soliciting comments on this collection of information, and providing a 60-day comment period, was published on September 8, 1998 (63 FR 47542–3). No comments were received pursuant to that notice.

Burden statement: The respondent burden for this collection is estimated to average 20 minutes per response to OSC Form 48a (by complainants whose allegations of prohibited personnel practices or other violations were resolved by the OSC); 12 minutes per response to OSC Form 48b (by recipients of written Hatch Act advisory opinions); and 15 minutes per response to OSC Form 48c (by submitters of whistleblower disclosures to the agency's Disclosure Unit). These estimates include the time needed to read and review introductory information and instructions; search existing data sources; complete and review the collection of information; and return the survey form to the OSC.

Respondents/affected entities. Current and former federal employees, applicants for federal employment, their representatives, and others whose allegations of prohibited personnel practices or other violations of law or regulation under the OSC's have been resolved by the OSC; current and former federal employees, applicants for federal employment, their representatives, and others who have received written Hatch Act advisory opinions; current and former federal employees, and applicants for federal employment, whose whistleblower disclosures have been acted upon by the OSC.

Estimated number of respondents: 2,063 in FY 1999; 2,270 in FY 2000; and 2,487 in FY 2001.

Estimated total annual burden on respondents: 755 hours in FY 1999; 884 hours in FY 2000; and 968 hours in FY 2001.

Frequency of collection: One time per matter closed or opinion received.

Any comments about the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, should be sent to the following addresses (please refer to the OSC Survey Forms Information Collection Request in any correspondence): (1) Erin M. McDonnell, Associate Special Counsel for Planning and Advice, U.S. Office of Special Counsel, 1730 M Street, NW., Suite 300, Washington, DC 20036–4505, fax: (202) 653–5151; and (2) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the U.S. Office of Special Counsel, 725 17th Street, NW. 20503.

Dated: December 23, 1998.

Elaine Kaplan,

Special Counsel.

[FR Doc. 98–34627 Filed 12–30–98; 8:45 am]

BILLING CODE 7405–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

Notice of Public Meeting

SUMMARY: This notice announces two public meetings. The purpose of these meetings is to brief interested parties regarding the proposed modification of the Tampa, FL, Class B airspace area.

DATES: *Meeting:* The public meetings will be held on Tuesday, January 12, 1999, starting at 7:00 p.m., and Wednesday, January 13, 1999, starting at 7:30 p.m. *Comments:* Comments must be received on or before January 19, 1999.

ADDRESSES: On January 12, 1999, the meeting will be held at the Tampa General Hospital, 2nd Floor Rehabilitation Wing, Tampa, FL. On January 13, 1999, the meeting will be held at the University of South Florida, Environmental Protection Agency Auditorium, St. Petersburg, FL.

COMMENTS: Send or deliver comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337.

FOR FURTHER INFORMATION CONTACT: Nancy Shelton, Air Traffic Division, ASO–500, FAA, Southern Regional Office, telephone (404) 305–5585.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

The following procedures will be used to facilitate the meetings:

(a) The meetings will be informal in nature and will be conducted by a representative of the FAA Southern Region. Representatives from the FAA will present a formal briefing on the proposed changes to the Class B airspace area. Each participant will be given an opportunity to deliver comments or make a presentation at the meetings.

(b) The meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter.

(d) The meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(e) Position papers or other handout material relating to the substance of the meetings will be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(f) The meetings will not be formally recorded. However, a summary of the comments made at the meetings will be filed in the docket.

AGENDA FOR THE MEETINGS:

Opening Remarks and Discussion of Meeting Procedures.

Briefing on Background for Proposal.

Public Presentations and Comments.

Closing Comments.

Issued in Washington, DC, on December 23, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–34688 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[RTCA; Special Committee 165]

Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services

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 Special Committee (SC)–165 meeting to be held January 15, 1999, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036. (This plenary meeting will follow a meeting of SC–165 Working Group (WG)–3, Minimum Aviation System Performance Standards, on January 12–14.)

The agenda will include: (1) Welcome and Introductions; (2) Review Summary of the Previous Meeting; (3) Chairman's Remarks; (4) Overview of Related Activities: a. Required Communication Performance; b. AEEC 741 and 761 Characteristics; c. EUROCAE Working Group-55; d. AMS(R)S Spectrum Issues; (e) AMCP WG–A on AMSS; (f) Industry, Users, Government; (5) Review of SC–165 Working Group Activities: a. WG–1, AMSS Avionics Equipment Minimum Operational Performance Standards; b. WG–3, AMSS System/Service Performance Criteria; c. WG–5, AMS(R)S Satcom Voice; (6) Other Business; (7) Date and Place of Next Meeting; (8) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 23, 1998.

Richard A. Cox,

Designated Official.

[FR Doc. 98–34692 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Joint RTCA Special Committee 181/ EUROCAE Working Group 13 Standards of Navigation Performance

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 181/EUROCAE Working Group 13 meeting to be held January 11–15, 1999, starting at 9:00 a.m. The meeting will be held at the Sheraton Denver Tech Center, 7007 South Clinton Street, Englewood, CO 80112 (phone 1–800–298–0188; use ID no. 30178 to obtain RTCA rate; fax 602–470–3083). The host, Mr. Jim Terpstra, Jeppesen, may be reached at (303) 784–4401 (phone), (303) 784–4111 (fax); or contact Ms. Marie Duncan at mduncanjeppesen.com (electronic mail).

The agenda will be as follows: Monday, January 11-Tuesday, January 12, 9:00 a.m.-5:00 p.m. (1) Working Groups 1 and 2 to meet separately; Wednesday, January 13, 9:00 a.m.-12:00 noon (2) Working Groups 1 and 2 to meet separately; 1:00-5:00 p.m. (3) Joint Meeting of Working Groups 1 and 2 to review DO–201A; Thursday, January 14, 9:00 a.m.-5:00 p.m. (4) Joint Meeting of Working Groups 1 and 2 to review DO–201A; Friday, January 15, 8:30–11:30 a.m. (5) Joint meeting of Working Groups 1 and 2 to continue review of DO–201A; 11:30 a.m.-12:30 p.m. Closing Plenary Session: (6) Reports from Working Groups 1, 2, and 4; (7) Chairman's Remarks; (8) Dates and Locations of Future Meetings; (9) New Business; (10) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting, Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 23,1998.

Richard A. Cox,

Designated Official.

[FR Doc. 98–34693 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Texas State Railroad

[Docket Number FRA–1998–4823]

The Texas State Railroad (TSRR) seeks a permanent waiver of compliance with the Safety Glazing Standards, 49 CFR Part 223.11(c), which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The TSRR seeks this waiver for locomotive number TSRR 22. The 70 ton switcher locomotive was built in the late 1940's by General Electric Locomotive Company and was never equipped with FRA certified glazing. The locomotive owner indicates that the locomotive is utilized in road and yard service between Rusk and Palestine, TX, a distance of about 25.5 miles. Also that the area where the locomotive operates is sparsely populated, wooded terrain.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in

connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1998–4823) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room Pl-401, Washington, DC. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room Pl–401 (Plaza Level), 400 Seventh Street S.W., Washington, D.C. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC. on December 21, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–34715 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4029; Notice 2]

Pipeline Safety: One-Call Systems Study

AGENCY: Research and Special Programs Administration (RSPA); Office of Pipeline Safety (OPS), DOT.

ACTION: Notice.

SUMMARY: This notice announces RSPA's current activities to collect information and solicit public participation in a study of prevention of damage to underground facilities. RSPA established the Damage Prevention Best Practices Study Team. The Study Team consists of representatives of government, public, and industries interested in identifying best practices preventing damage to underground facilities. RSPA has developed a Web-based information system to support communication among Study Team participants. The One Call Systems Study Information System (OCSS Information System) provides access to the public for documents prepared by the Study Team. It also allows public input on the issues addressed by the Team, or any other issues relevant to underground damage prevention. The system also provides information to the public on the various Study Team meetings being held around the country until the conclusion of the study in June, 1999. All Study Team meetings are open to the public. RSPA invites all interested individuals to access the OCSS Information System, review information regarding the Study Team, and provide the Study Team with comments and any additional issues of concern relating to damage prevention best practices. The OCSS Information System can be accessed through the OPS Homepage at http://ops.dot.gov, under the ''Damage Prevention'' option.

DATES: The following meetings have been scheduled:

Planning and Design Practices Task Team

January 19–20, 1999—Orlando, FL
February 8–9, 1999—Las Vegas, NV

One-Call Center Practices Task Team

January 5–6, 1999—Dallas, TX
February, 9–10, 1999—Las Vegas, NV

Locating and Marking Practices Task Team

January 7–8, 1999—Dallas, TX
February 9, 1999—Las Vegas, NV

Excavation Practices Task Team

January 6–7, 1999—Baltimore, MD
February 6, 1999—Las Vegas, NV

Compliance Practices Task Team

January 6–8, 1999—Baltimore, MD
February 2–3, 1999—Orlando, FL

Mapping Task Team

January 11–13, 1999—Phoenix, AZ
February 10, 1999—Las Vegas, NV
April 13–14, 1999—Houston, TX

Reporting and Evaluation Practices Task Team

February 9, 1999—Las Vegas, NV

Public Education and Awareness Task Team

January 6–7, 1999—Baltimore, MD
February 17–18, 1999—Houston, TX
March 22–23, 1999—Dallas, TX
April 29–30, 1999—Atlanta, GA

Emerging Technologies Task Team

January 20–21, 1999—Raleigh, NC
February 17–18, 1999—Raleigh, NC
March 17–18, 1999—Raleigh, NC
April 21, 1999—TBD

Specific details regarding times and meeting places can be found on the OCSS Information System. These meetings are subject to change.

ADDRESSES: Comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, or you can E-Mail your comments to ops.comments@rspa.dot.gov. Comments should identify the docket number RSPA–98–4029. Persons should submit the original comment document and one copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, or by e-mail (eben.wyman@rspa.dot.gov), regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION:

Background

RSPA's Office of Pipeline Safety established a national organizational framework and staffing plan to study underground facility damage prevention practices, consistent with federal pipeline safety laws. This study, scheduled to be completed in June, 1999, will identify and evaluate current practices related to one-call notification systems. It will identify those that are most effective in protecting the public, excavators, and the environment and in preventing disruptions and damage to public services and underground facilities. Study Team participants represent a broad range of utilities and distribution systems, highway departments, railroads, excavators, municipal governments, trade associations and academia. The Study Team is charged to meet, discuss, and develop a consensus report that identifies practices used by one-call centers, excavators, facility locators, and underground facility operators to prevent damage to buried facilities.

OPS held a public meeting in August, 1998, to solicit participation in this initiative. OPS met with the Study Team in Washington, DC on September 20–21, 1998, to begin the process of identifying other Study Team participants, and again on October 19–20, 1998, to confirm the Study Team's structure and develop protocols for exchanging information. Nine Task Teams have been established to provide input to the

report. The Task Team focus areas include: Emerging Technologies, Compliance Practices, Excavation Practices, Locating and Marking Practices, Mapping Practices, One-Call Center Practices, Planning and Design Practices, Public Education Practices, and Reporting and Evaluation Practices. These Task Teams are meeting frequently over the next few months to develop their content for the report.

All Task Teams have scheduled their respective meetings and have begun identifying the best practices in their respective focus areas. The Teams are coordinating information, receiving and disseminating comments, and drafting the introductory and concluding chapters of the report on damage prevention best practices. As mentioned before, all Study Team meetings are open to the public and OPS invites public attendance.

Information about team activities and specific meeting information is available through the OPS Information System (OPSIS). OPSIS and the OCSS Information System can be accessed through the OPS Homepage (ops.dot.gov). Select the ''Damage Prevention'' and then the ''OPS Damage Prevention Best Practices—Implementation of One-Call Systems Study'' options.

OCSS Information System provisions

After accessing the OCSS Information System, the user is provided with several options, including:

- The ability to submit issues and concerns for consideration by the Study Team;
- Contact information for all Study Team members;
- Information on scheduled meetings; and
- Access to applicable documents. These include the ''TEA–21'' one call provisions, protocols of the Study Team, meeting summaries, and the current damage prevention practices identified to-day by the Task Teams.

''Submit an Issue''

The OCSS Information System allows input concerning damage prevention from interested parties outside of the team participants. The ''submit an issue'' option provides the user the ability to submit a detailed description of the problem or issue of concern, and allows the user to suggest a solution or recommend a ''best practice'' to address the problem or issue. The user may also recommend which Task Team should address the issue further.

Individuals without access to the Internet may also submit an issue to the Study Team through OPS. OPS will forward written issues to the Team for consideration. These will subsequently be entered into the OCSS Information System. Issue submissions should include the contact information for the person submitting the issue. This includes the person's name, organization, job title, E-mail address, phone number (E-mail or phone required), mailing address, detailed description of problem or issue and, if applicable, a recommended solution or ''best practice''. Issues submitted outside of the OCSS Information System should be sent in writing to Eben M. Wyman, Office of Pipeline Safety, 400 7th St., SW, Room 7128, Washington, DC 20590.

In order for RSPA to manage the considerable number of ''issues'' that may be submitted, the submitter's contact information is required. Any information provided is for Study Team consideration and evaluation. The Study Team will record the disposition of each issue offered for consideration. Any information provided may appear in Government reports and/or other public documents. Proprietary information should not be provided.

Issued in Washington, DC on December 23, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–34634 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 131X)]

Union Pacific Railroad Company—Abandonment Exemption—in Cameron County, TX

On December 14, 1998, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its line of railroad known as the Brownsville Branch, extending from milepost 197.90 near Naranjo Road to milepost 205.04 near E. Van Buren St., a distance of 7.14 miles in Brownsville, Cameron County, TX. The line traverses U.S. Postal Service Zip Codes 78520 and 78521 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by April 2, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 20, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 131X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Joseph D. Anthofer, 1416 Dodge St., Room 830, Omaha, NE 68179–0830. Replies to the UP petition are due on or before January 20, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 18, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–34282 Filed 12–30–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Electronic Federal Tax Payment System in an Electronic Data Interchange Environment Survey

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection. By this notice, the Financial Management Service solicits comments concerning a voluntary survey to learn ways to help entities comply with electronic payment requirements using the Electronic Federal Tax Payment System in an Electronic Data Interchange Environment.

DATES: All comments should be received on or before March 1, 1999.

ADDRESSES: Direct all written comments to Financial Management Service, 3361–L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Elizabeth Oldenburn, Financial Program Specialist, Financial Management Service, Room 522B, 401 14th Street, S.W., Washington, D.C. 20227, (202) 874–6835.

SUPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 (c) (2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Electronic Federal Tax Payment System in an Electronic Data Interchange Environment Survey.

OMB Number: None.

Form Number: None.

Abstract: The Financial Management Service (FMS) and its contractor, Logistics Management Institute, plan to conduct a one-time survey which will obtain information about the potential Electronic Data Interchange (EDI) trading partners for the Electronic Federal Tax Payment System (EFTPS). An EDI payment application would allow taxpayers or tax payment service providers to send multiple tax payments, or single tax payments for multiple taxpayers, in one payment transaction.

Prior to developing an EDI payment application in EFTPS, FMS would like to determine if there is interest in using such an option within the tax payment community. If sufficient interest exists, FMS wants to design the EDI payment application to meet the needs and technical capabilities of the EFTPS trading partners. The survey will gauge interest in using EDI as an EFTPS payment option and will determine the trading partners' needs and expectations for EFTPS in an EDI environment.

The Internet is also being considered as an EFTPS payment and enrollment option. The survey will also gauge interest in using the Internet as a payment vehicle for EFTPS, as well as for enrolling in EFTPS by filling out an on-line application form.

The survey will provide quantitative research information from approximately 3,520 respondents in the tax payment community including businesses, payroll processors, tax preparers, state governments, and financial institutions. FMS and its contractor estimate that the survey will take an average of fifteen (15) minutes to complete. Respondent participation is voluntary. The results of the survey will be used to determine if sufficient interest exists to support development of an EFTPS EDI payment option. Also, the survey will help FMS to design the new payment options to meet the needs and technical requirements of EDI trading partners, as well as to develop a marketing (media) plan which will serve as the basis for a marketing campaign to encourage the use of a new EFTPS payment mechanism(s).

Current Actions: New collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 3,520.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 880 hours.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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 to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Bettsy H. Lane,

Assistant Commissioner, Federal Finance.

[FR Doc. 98–34480 Filed 12–30–98; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate; Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning January 1, 1999 and ending on June 30, 1999, the prompt payment interest rate is 5% (five) per centum per annum.

DATES: This notice announces the interest rate applicable for the January 1, 1999 to June 30, 1999 period.

ADDRESSES: Comments or inquiries may be mailed to Cynthia S. Winters, Team Leader, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328. A copy of this Notice will be made available for downloading from the http://www.publicdebt.treas.gov.

FOR FURTHER INFORMATION CONTACT: Stephanie E. Brown, Director, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328, (304) 480–5180, Cynthia S. Winters, Team Leader, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, (304) 480–5174, Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–3692, or Brenda L. Hoffman, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–3698.

SUPPLEMENTARY INFORMATION: Although the Renegotiation Board is no longer in

existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 Sec. 2, Pub. L. 92–41, 85 Stat. 97.

For example, the Contract Disputes Act of 1978 Sec. 12, Pub. L. 95–563, 92 Stat. 2389 and the Prompt Payment Act of 1982 Sec. 2, Pub. L. 97–177, 96 Stat. 85 provide for the calculation of interest due on claims at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. 3902(a).

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning January 1, 1999 and ending on June 30, 1999, is five per centum per annum.

Dated: December 22, 1998.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 98–34492 Filed 12–30–98; 8:45 am]

BILLING CODE 4810–39–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''From Botany to Bouquets: Flowers in Northern Art''

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit, ''From Botany to Bouquets: Flowers in Northern Art,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art in Washington, DC from January 31, 1999 to May 31, 1999. Is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or for further information, contact Nelia Sheahan, Assistant General Counsel, Office of the General Counsel, 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

Dated: December 23, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–34555 Filed 12–30–98; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension, parents' dependency and indemnity compensation (DIC), and spina bifida programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 1998. VA is also giving notice of the maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of Government-furnished headstone or markers in Fiscal Year 1999, which began on October 1, 1998.

DATES: These COLAs are effective December 1, 1998. The headstone or marker allowance rate is effective October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service (213B), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(d), VA may provide reimbursement for the cost of non-Government headstone or markers at a rate equal to the actual cost of the average actual cost of Government-furnished headstone or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

Section 8041 of Pub. L. 101–508 amended 38 U.S.C. 2306(d) to eliminate the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990. However, in a precedent opinion (O. G. C. Prec. 17–90), VA's General Counsel held that there is no limitation period applicable to claims for benefits under the provisions of 38 U.S.C. 2306(d).

The average actual cost of Government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA costs during that fiscal year for procurement, transportation, and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for Fiscal Year 1998 under the above computation method was $96. Therefore, effective October 1, 1998, the maximum rate of reimbursement for non-Government headstones or markers purchased during Fiscal Year 1999 is $96.

Cost of Living Adjustments

Under the provisions of 38 U.S.C. 5312 and section 306 of Pub. L. 95–588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 1.3 percent cost-of-living increase in Social Security benefits effective December 1, 1998. Therefore, applying the same percentage and rounding up in accordance with 38 CFR 3.29, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 1998:

TABLE 1.—IMPROVED PENSION

	Maximum annual rates
(1) Veterans permanently and totally disabled (38 U.S.C. 1521):	
Veteran with no dependents,	$8,778
Veteran with one dependent,	$11,497

TABLE 1.—IMPROVED PENSION—Continued

For each additional dependent, $1,496
(2) Veterans in need of aid and attendance (38 U.S.C. 1521):
Veteran with no dependents, $14,647
Veteran with one dependent, $17,365
For each additional dependent, $1,496
(3) Veterans who are housebound (38 U.S.C. 1521):
Veteran with no dependents, $10,729
Veteran with one dependent, $13,448
For each additional dependent, $1,496
(4) Two veterans married to one another, combined rates (38 U.S.C. 1521):
Neither veteran in need of aid and attendance or housebound, $11,497
Either veteran in need of aid and attendance, $17,365
Both veterans in need of aid and attendance, $22,625
Either veteran housebound, $13,448
Both veterans housebound, $15,400
One veteran housebound and one veteran in need of aid and attendance, $19,313
For each dependent child, $1,496
(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 1541):
Surviving spouse alone, $5,884
Surviving spouse and one child in his or her custody, $7,706
For each additional child in his or her custody, $1,496
(6) Surviving spouses in need of aid and attendance 38 U.S.C. 1541):
Surviving spouse alone, $9,409
Surviving spouse with one child in custody, $11,227
Surviving Spouse of Spanish-American War veteran alone, $10,017
Surviving Spouse of Spanish-American War veteran with one child in custody, $11,834
For each additional child in his or her custody, $1,496
(7) Surviving spouses who are housebound (38 U.S.C. 1541):
Surviving spouse alone, $7,194
Surviving spouse and one child in his or her custody, $9,011
For each additional child in his or her custody, $1,496
(8) Surviving child alone (38 U.S.C. 1542, $1,496.

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person (38 U.S.C. 1521, 1541, and 1542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $1,989. (38 U.S.C. 1521(g))

Parents' DIC

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 1315):

Table 2

One parent. If there is only one parent, the monthly rate of DIC paid to such parent shall be $418 reduced on the basis of the parent's annual income according to the following formula:

For each $1 of annual income		
The $418 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.08	$800	$9,986

No DIC is payable under this table if annual income exceeds $9,986.

One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $301 reduced on the basis of each parent's annual income, according to the following formula:

Table 3

For each $1 of annual income		
The $301 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.06	$800	$900
.07	$900	$1,100
.08	$1,100	$9,986

No DIC is payable under this table if annual income exceeds $9,986.

Two parents living together or remarried parents living with spouses. The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $282 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

TABLE 4

For each $1 of annual income		
The $282 monthly rate shall be reduced by	Which is more than	But not more than
$.00	0	$1,000
.03	$1,000	$1,500
.04	$1,500	$1,900
.05	$1,900	$2,400
.06	$2,400	$2,900
.07	$2,900	$3,200
.08	$3,200	$13,423

No DIC is payable under this table if combined annual income exceeds $13,423.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under Tables 2 through 4 shall be increased by $224

if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than $5.

Table 5.—Section 306 Pension Income Limitations

(1) Veteran or surviving spouse with no dependents, $9,986 (Pub. L. 95–588, section 306(a)).

(2) Veteran with no dependents in need of aid and attendance, $10,486 (38 U.S.C. 1521(d) as in effect on December 31, 1978).

(3) Veteran or surviving spouse with one or more dependents, $13,423 (Pub. L. 95–588, section 306(a)).

(4) Veteran with one or more dependents in need of aid and attendance, $13,923 (38 U.S.C. 1521(d) as in effect on December 31, 1978).

(5) Child (no entitled veteran or surviving spouse), $8,162 (Pub. L. 95–588, section 306(a)).

(6) Spouse income exclusion (38 CFR 3.262), $3,185 (Pub. L. 95–588, section 306(a)(2)(B)).

Table 6.—Old-Law Pension Income Limitations

(1) Veteran or surviving spouse without dependents or an entitled child, $8,741 (Pub. L. 95–588, section 306(b)).

(2) Veteran or surviving spouse with one or more dependents, $12,602 (Pub. L. 95–588, section 306(b)).

Spina Bifida Benefits

Section 421 of Public Law 104–204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits, including a monthly monetary allowance, to children born with spina bifida who are natural children of veterans who served in the Republic of Vietnam during the Vietnam era. Pursuant to 30 U.S.C. 1805(b)(3), spina bifida rates are subject to adjustment under the provisions of 38 U.S.C. 5312, which provides for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.). Effective December 1, 1998, spina bifida monthly rates are as follows: Level I $208, Level II $725, Level III $1,242.

Dated: December 15, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 98–34566 Filed 12–30–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 63, No. 251

Thursday, December 31, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Regional Offices; Jurisdictional Changes

Correction

In rule document 98–33863 beginning on page 70989, in the issue of Wednesday, December 23, 1998, make the following corrections:

Appendix A to 5 CFR Chapter XIV [Corrected]

On page 70990, in appendix A, in the table, under ''Regional office'' in the fourth column, the fifth entry ''Atlanta'' should read ''Boston''; the sixth entry ''Denver'' should read ''Atlanta''; the seventh entry ''Chicago'' should read ''Denver''. And in the blank entry, add ''Chicago''.

BILLING CODE 1505-01-D

FEDERAL TRADE COMMISSION

16 CFR Part 254

Guides for Private Vocational and Distance Education Schools

Correction

In rule document 98–21296 beginning on page 42570, in the issue of Monday, August 10, 1998, make the following corrections:

1. On page 42570, in the third column, in the second full paragraph, in the third line from the bottom, ''relating'' should read ''retaining''.

2. On page 42571, in the first column, under the heading **Amendments to the Guides**, in the first line ''Committee'' should read ''Commission''.

§ 254.4 [Corrected]

3. On page 42573, in the second column, in § 254.4(a), in the seventh line, ''of'' should read ''or''.

4. On page 42573, in the second column, in § 254.4(a)(2), in the second line, ''of'' should read ''or''.

§ 254.7 [Corrected]

5. On page 42574, in the second column, in § 254.7(c), in the fifth line, ''of'' should read ''or''.

BILLING CODE 1505-01-D

Federal Register

Thursday
December 31, 1998

Part II

Department of Agriculture

Food Safety and Inspection Service
Agricultural Marketing Service

7 CFR Part 59
9 CFR Ch. III
Agency Responsibilities, Organization, and Terminology; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

Agricultural Marketing Service

[Docket No. 97–045F]

7 CFR Part 59

9 CFR Chapter III

Agency Responsibilities, Organization, and Terminology

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule with an opportunity to comment.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its regulations to describe, in part 300, the Agency's responsibilities and current organization. This rule also redesignates regulations adopted under the Egg Products Inspection Act and transfers them to part 590 of FSIS's regulations. FSIS is providing an opportunity for members of the public to submit comments on the clarity and technical accuracy of the resultant regulations.

DATES: December 31, 1998. Submit comments by February 1, 1999.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket No. 97–045F, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. All comments submitted will be available for public inspection in the Docket Clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judith Neibrief, Regulations Development and Analysis Division, Food Safety and Inspection Service, Washington, DC 20250–3700; (202) 720–3886.

SUPPLEMENTARY INFORMATION:

The Food Safety and Inspection Service (FSIS) is responsible for carrying out various functions of the Department of Agriculture. Chief among these are the administration of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). Each of these statutes includes government inspection as part of a regulatory system to protect the health and welfare of consumers by preventing the distribution of livestock products, poultry products, and egg products that are unwholesome, otherwise adulterated, or misbranded.

The Agency's primary objective in this rulemaking is to amend chapter III of title 9 of the Code of Federal Regulations (9 CFR chapter III) so that it contains, in part 300, FSIS's current organizational structure. With the concurrence of the Agricultural Marketing Service (AMS), this rule also redesignates the EPIA regulations in part 59 of title 7 of the Code of Federal Regulations (7 CFR part 59) and transfers them to part 590 of 9 CFR chapter III. Several years ago, the Secretary of Agriculture delegated to the Administrator of FSIS all functions in the EPIA other than the shell egg surveillance program, voluntary laboratory analyses of egg products, and the voluntary grading program (7 CFR 2.53(a)(2)(iii)), which continue to be delegated to the Administrator of AMS (7 CFR 2.79(a)(8)(xxxiv)). In recognition of the current allocation of responsibilities within USDA, AMS recently issued a rule that duplicated, redesignated, and amended the EPIA regulations to include pertinent portions in 7 CFR part 57, for AMS, and in part 59, for FSIS (63 FR 69968, December 17, 1998). Except for several changes that reflect FSIS's assumption of responsibility for administering various provisions of the EPIA (see amendments to redesignated §§ 590.1 and 590.5), this rule does not amend provisions of the EPIA regulations.

Because the Agency's regulations address more than just the inspection provisions of the FMIA and the PPIA and, as a result of this rule, also include the EPIA regulations, FSIS is removing the phrase ''MEAT AND POULTRY INSPECTION'' from the heading of chapter III of 9 CFR. FSIS also is consolidating current subchapters A, B, and C of 9 CFR chapter III into one subchapter, subchapter A, and modifying the heading of current subchapter A to indicate its new scope: Agency organization and terminology, mandatory meat and poultry products inspection, and voluntary inspection and certification. To accommodate the EPIA regulations, FSIS is adding subchapter I—''Egg Products Inspection Act''.

Part 300 and Redesignated §§ 590.1 and 590.5

Part 300—''Agency Mission and Organization''—consists of a description of the part (§ 300.1), a statement about FSIS's responsibilities (§ 300.2), FSIS's organizational structure and terminology (§ 300.3), and access provisions (§ 300.6).

Paragraph (a) of § 300.2 references the Department's delegation of authority regulations (7 CFR 2.7, 2.18, and 2.53) for FSIS's responsibilities, replacing an obsolete reference in § 381.3(a) for the PPIA. In exercising its delegated functions, FSIS administers regulations that implement provisions of the statutes listed in paragraph (b) of § 300.2.

Section 300.3 includes a description of the Agency's headquarters and field structure. As reorganized, the Agency's field structure consists of 18 district offices [1] and a technical service center [2] (§ 300.3(c)). Each district office, under the direction of a District Manager, manages a farm-to-table food safety program of regulatory oversight and inspection in a district consisting of a State or several States and territories (as specified in paragraph (c)(1)). These offices administer domestic and import inspection activities. They replaced regional offices (which included inspection and compliance area offices) and import field offices (as specified in the appendix to this rule).

The Technical Service Center provides technical guidance, review, and training on regulatory requirements (as specified in paragraph (c)(2)). These activities previously were conducted at regional and headquarters offices.

Section 300.6 consolidates various access provisions of the FMIA and the PPIA. Paragraph (a) covers access by representatives of the Secretary. Paragraph (a)(1) replaces the last sentences of §§ 306.3 and 381.33 and provides for access to places of business

[1] The locations of the district offices are as follows: Alameda, CA (620 Central Avenue, Building 2C, Alameda, CA 94501); Albany, NY (230 Washington Avenue Extension, Albany, NY 12203); Atlanta, GA (100 Alabama Street, SW, Building 1924, Suite 3R90, Atlanta, GA 30303); Boston, MA (411 Waverley Oaks Road, Building 3, Suite 331, Waltham, MA 02452); Boulder, CO (665 South Broadway, Suite B, Boulder, CO 80303); Chicago, IL (1919 South Highland Avenue, Suite 115C, Lombard, IL 60148); Dallas, TX (1100 Commerce Street, Room 5F41, Dallas, TX 75242); Des Moines, IA (11338 Aurora Avenue, Des Moines, IA 50322); Beltsville, MD (5601 Sunnyside Avenue, Suite 1–2288B, Beltsville, MD 20705); Jackson, MS (715 South Pear Orchard Road, Suite 101, Ridgeland, MS 39157); Lawrence, KS (4920 West 15th Street, Lawrence, KS 66049); Madison, WI (2810 Crossroads Drive, Suite 3500, Madison, WI 53718); Minneapolis, MN (Butler Square West, Suite 989–C, 100 North 6th Street, Minneapolis, MN 55403); Philadelphia, PA (701 Market Street, 2–B South, Philadelphia, PA 19106); Pickerington, OH (155 East Columbus Street, Pickerington, OH 43147); Raleigh, NC (6020 Six Forks Road, Raleigh, NC 27609); Salem, OR (530 Center Street, NE, Mezzanine, Salem, OR 97301); Springdale, AR (Country Club Center, Building B, Suite 201, 4700 South Thompson, Springdale, AR 72764). FSIS expects to close the Boston office in 1999.

[2] The address of the FSIS Technical Service Center is 1299 Farnam Street, Suite 300 Landmark Center, Omaha, NE 68102.

regulated under the FMIA or the PPIA. Paragraph (a)(2) references part 590 for access to plants that process egg products and to other places of business subject to regulation under the EPIA.

Paragraph (b) of § 300.6 is limited to places of business regulated under the FMIA or the PPIA. (For access under the EPIA, see also redesignated §§ 590.132, 590.200, and 590.660.) Paragraph (b)(1) addresses access to establishments that prepare livestock products or process poultry products, replacing the first sentence of § 306.2 and § 381.32 and provisions of § 306.3 and § 381.33. Paragraph (b)(2) addresses access and examinations pursuant to section 202 of the FMIA or section 11(b) of the PPIA (21 U.S.C. 460(b) and 642). It replaces the first sentences of §§ 320.4 and 381.178 (Access to and inspection of records, facilities and inventory; copying and sampling). (For the convenience of the reader, FSIS is referencing § 300.6 in §§ 306.2, 320.4, 381.32, and 381.178.)

Final Rule With Opportunity for Comment

FSIS has determined that the notice and comment and delayed effective date requirements of the Administrative Procedure Act (5 U.S.C. 553(b) and (d)) do not apply to this rule. The amendments made by this rule reflect the Agency's current responsibilities, and the organization through which it carries out those responsibilities, and technical and minor changes in the organization of the Agency's regulations and terminology used in those regulations. Therefore, FSIS, has, for good cause, found that notice and public procedure thereon are unnecessary, and it is issuing these amendments as a final rule, effective upon publication.

Nevertheless, the Agency recognizes that attaining its objective has necessitated a large number of amendments. Therefore, FSIS is providing members of the public with an opportunity to provide comments on the clarity and the technical accuracy of the amended regulations. The Agency requests that those with comments submit them during the 30 days that follow publication of the rule.

Executive Order 12866

The changes in this rule are organizational and technical. Their adoption does not affect the costs to regulated establishments or to FSIS, except to the extent that improving the Agency's organization, providing the public with current information on how the Agency operates, and updating, consolidating, and clarifying Agency terminology should increase FSIS's efficiency and improve the delivery of inspection services to members of the regulated industries. FSIS has determined that this rule is not a significant regulatory action under the criteria set forth in Executive Order 12866.

Compliance With Regulatory Flexibility Act of 1996

The Administrator has determined that, for purposes of the Regulatory Flexibility Act (5 U.S.C. 601), this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In this rule: (1) all State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

List of Subjects in 7 CFR Part 59

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Reporting and recordkeeping requirements.

List of Subjects in 9 CFR Chapter III

Part 300

Meat and meat products, Poultry and poultry products.

Part 590

Eggs and egg products, Exports, Food labeling, Imports, Reporting and recordkeeping requirements.

For the reasons set forth above, the Food Safety and Inspection Service, with the concurrence of the Agricultural Marketing Service, is redesignating and transferring part 59 of 7 CFR chapter I, and it is amending 9 CFR chapter III as follows:

7 CFR CHAPTER I

9 CFR CHAPTER III

1. Part 59 of 7 CFR chapter I is redesignated as part 590 of 9 CFR and transferred to 9 CFR chapter III, as set out in the following table:

7 CFR Part 59	9 CFR Part 590
Definitions	
§ 59.1	§ 590.1
§ 59.5	§ 590.5
Administration	
§ 59.10	§ 590.10
§ 59.13	§ 590.13
§ 59.17	§ 590.17
§ 59.18	§ 590.18
Scope of Inspection	
§ 59.20	§ 590.20
§ 59.22	§ 590.22
§ 59.24	§ 590.24
§ 59.26	§ 590.26
§ 59.28	§ 590.28
Relation to Other Authorities	
§ 59.30	§ 590.30
§ 59.35	§ 590.35
Eggs and Egg Products Not Intended for Human Food	
§ 59.40	§ 590.40
§ 59.45	§ 590.45
Refrigeration of Shell Eggs	
§ 59.50	§ 590.50
Exemptions	
§ 59.100	§ 590.100
§ 59.105	§ 590.105
Performance of Service	
§ 59.110	§ 590.100
§ 59.112	§ 590.112
§ 59.114	§ 590.114
§ 59.116	§ 590.116
§ 59.118	§ 590.118
§ 59.119	§ 590.119
§ 59.120	§ 590.120
§ 59.122	§ 590.122
§ 59.124	§ 590.124
§ 59.126	§ 590.126
§ 59.128	§ 590.128
§ 59.130	§ 590.130
§ 59.132	§ 590.132
§ 59.134	§ 590.134
§ 59.136	§ 590.136
Application for Service	
§ 59.140	§ 590.140
§ 59.142	§ 590.142
§ 59.144	§ 590.144
§ 59.146	§ 590.146
§ 59.148	§ 590.148
Inauguration of Service	
§ 59.150	§ 590.150
§ 59.155	§ 590.155
Denial of Service	
§ 59.160	§ 590.160
§ 59.161	§ 590.161

7 CFR Part 59	9 CFR Part 590
Records and Related Requirements for Eggs and Egg Products Handlers and Related Industries	
§ 59.200	§ 590.200
§ 59.220	§ 590.220
Administrative Detention	
§ 59.240	§ 590.240
Appeal of an Inspection or Decision	
§ 59.300	§ 590.300
§ 59.310	§ 590.310
§ 59.320	§ 590.320
§ 59.330	§ 590.330
§ 59.340	§ 590.340
§ 59.350	§ 590.350
§ 59.360	§ 590.360
§ 59.370	§ 590.370
Certificates	
§ 59.400	§ 590.400
§ 59.402	§ 590.402
§ 59.404	§ 590.404
§ 59.406	§ 590.406
Identifying and Marking Product	
§ 59.410	§ 590.410
§ 59.411	§ 590.411
§ 59.412	§ 590.412
§ 59.414	§ 590.414
§ 59.415	§ 590.415
§ 59.417	§ 590.417
§ 59.418	§ 590.418
§ 59.419	§ 590.419
Inspection, Reinspection, Condemnation, and Retention	
§ 59.420	§ 590.420
§ 59.422	§ 590.422
§ 59.424	§ 590.424
§ 59.426	§ 590.426
Entry of Materials Into Official Egg Products Plants	
§ 59.430	§ 590.430
§ 59.435	§ 590.435
§ 59.440	§ 590.440
Sanitary, Processing, and Facility Requirements	
§ 59.500	§ 590.500
§ 59.502	§ 590.502
§ 59.504	§ 590.504
§ 59.506	§ 590.506
§ 59.508	§ 590.508
§ 59.510	§ 590.510
§ 59.515	§ 590.515
§ 59.516	§ 590.516
§ 59.520	§ 590.520
§ 59.522	§ 590.522
§ 59.530	§ 590.530
§ 59.532	§ 590.532
§ 59.534	§ 590.534
§ 59.536	§ 590.536
§ 59.538	§ 590.538
§ 59.539	§ 590.539
§ 59.540	§ 590.540
§ 59.542	§ 590.542
§ 59.544	§ 590.544
§ 59.546	§ 590.546
§ 59.547	§ 590.547
§ 59.548	§ 590.548
§ 59.549	§ 590.549
§ 59.550	§ 590.550
§ 59.552	§ 590.552
§ 59.560	§ 590.560
§ 59.570	§ 590.570
§ 59.575	§ 590.575
Laboratory	
§ 59.580	§ 590.580
Exempted Egg Products Plants	
§ 59.600	§ 590.600
§ 59.610	§ 590.610
§ 59.620	§ 590.620
§ 59.630	§ 590.630
§ 59.640	§ 590.640
§ 59.650	§ 590.650
§ 59.660	§ 590.660
§ 59.670	§ 590.670
§ 59.680	§ 590.680
Identification of Restricted Eggs or Egg Products Not Intended for Human Consumption	
§ 59.800	§ 590.800
§ 59.840	§ 590.840
§ 59.860	§ 590.860
Imports	
§ 59.900	§ 590.900
§ 59.905	§ 590.905
§ 59.910	§ 590.910
§ 59.915	§ 590.915
§ 59.920	§ 590.920
§ 59.925	§ 590.925
§ 59.930	§ 590.930
§ 59.935	§ 590.935
§ 59.940	§ 590.940
§ 59.945	§ 590.945
§ 59.950	§ 590.950
§ 59.955	§ 590.955
§ 59.956	§ 590.956
§ 59.960	§ 590.960
§ 59.965	§ 590.965
§ 59.970	§ 590.970
Authority: 21 U.S.C. 1031–1056.	Authority: 21 U.S.C. 1031–1056

2. In redesignated part 590, each internal reference to a section of part 59 is revised as set out in the preceding redesignation table.

3. The heading of 9 CFR chapter III is amended by removing ''MEAT AND POULTRY INSPECTION,''.

4. Parts 350 through 381 are transferred to subchapter A; the headings of subchapters B and C are removed and reserved; and the heading of subchapter A is revised to read as follows:

SUBCHAPTER A—AGENCY ORGANIZATION AND TERMINOLOGY; MANDATORY MEAT AND POULTRY PRODUCTS INSPECTION AND VOLUNTARY INSPECTION AND CERTIFICATION

5. Redesignated part 590 is designated as subchapter I, and a heading for subchapter I is added to read as follows:

SUBCHAPTER I—EGG PRODUCTS INSPECTION ACT

6. In subchapter A, part 300 is added to read as follows:

PART 300—AGENCY MISSION AND ORGANIZATION

Sec.

300.1 Purpose.
300.2 FSIS responsibilities.
300.3 FSIS organization.
300.6 Access to establishments and other places of business.

Authority: 21 U.S.C. 451–470, 601–695, 1031–1056; 7 U.S.C. 138–138i, 450, 1621–1627, 1901–1906; 7 CFR 2.7, 2.18, 2.53.

§ 300.1 Purpose.

This part describes the duties and organization of the Food Safety and Inspection Service (FSIS), an agency of the United States Department of Agriculture (USDA).

§ 300.2 FSIS responsibilities.

(a) [Reserved]

(b) *Implementing regulations.* This chapter of title 9 of the Code of Federal Regulations (9 CFR chapter III) includes, in addition to administrative rules, rules and regulations that implement provisions of the following statutes:

(1) The Federal Meat Inspection Act, as amended (FMIA) (21 U.S.C. 601 *et seq.*), except provisions pertaining to the inspection and certification of the condition of animals for export, and related legislation;

(2) The Poultry Products Inspection Act, as amended (PPIA) (21 U.S.C. 451 *et seq.*);

(3) The Egg Products Inspection Act, as amended (EPIA) (21 U.S.C. 1031 *et seq.*), except for the shell egg surveillance program, voluntary laboratory analyses of egg products, and the voluntary grading program;

(4) The Humane Slaughter Act (7 U.S.C. 1901–1906);

(5) The Talmadge-Aiken Act (7 U.S.C. 450), with respect to cooperation with States in the administration of the Federal Meat Inspection Act and the Poultry Products Inspection Act;

(6) The Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to voluntary inspection of poultry and edible products thereof; voluntary inspection and certification of technical animal fat; certified products

for dogs, cats, and other carnivora; voluntary inspection of rabbits and edible products thereof; and voluntary inspection and certification of edible meat and other products; and

(7) The National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited only for pesticide residue analysis in meat and poultry products.

§ 300.3 FSIS organization.

(a) *General.* The organization of FSIS reflects the agency's primary regulatory responsibilities: implementation of the FMIA, the PPIA, and the EPIA.

(b) *Headquarters.* FSIS has four principal components or offices, each of which is under the direction of a Deputy Administrator. The Deputy Administrators, along with their staffs, and the Administrator, along with the Office of the Administrator and three staff offices that report to the Administrator, are located at U.S. Department of Agriculture headquarters in Washington, DC.

(1) *Program offices.* FSIS's headquarters offices are the Office of Public Health and Science, which provides scientific analysis, advice, data, and recommendations on matters involving public health and science; the Office of Management, which provides centralized administrative and support services; the Office of Policy, Program Development and Evaluation, which develops and recommends domestic and international policy activities; and the Office of Field Operations, which manages regulatory oversight and inspection (see paragraph (c) of this section).

(2) *Staff offices.* The Administrator's staff offices are the Food Safety Executive Management and Coordination Staff, the Legislative Liaison Staff, and the Food Safety Education and Communications Staff.

(c) *Field.* FSIS's field structure consists of eighteen district offices and a technical center.

(1) *District offices.* Each district office, under the direction of a District Manager, manages a farm-to-table food safety program of regulatory oversight and inspection in a district consisting of a State or several States and territories.

The locations of the district offices and the districts' geographic boundaries are as follows:

Alameda, CA	California.
Salem, OR	Alaska, American Samoa, Guam, Hawaii, Idaho, Northern Mariana Islands, Oregon, and Washington.
Boulder, CO	Arizona, Colorado, Nevada, New Mexico, Utah.
Minneapolis, MN	Minnesota, Montana, North Dakota, South Dakota, and Wyoming.
Des Moines, IA	Iowa and Nebraska.
Lawrence, KS	Kansas and Missouri.
Springdale, AR	Arkansas, Louisiana, and Oklahoma.
Dallas, TX	Texas.
Madison, WI	Michigan and Wisconsin.
Chicago, IL	Illinois and Indiana.
Pickerington, OH	Kentucky, Ohio, and West Virginia.
Philadelphia, PA	Pennsylvania.
Albany, NY	New Jersey and New York.
Boston, MA	Connecticut, Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island, Vermont, and Virgin Islands.
Greenbelt, MD	Delaware, District of Columbia, Maryland, and Virginia.
Raleigh, NC	North Carolina and South Carolina.
Atlanta, GA	Florida and Georgia.
Jackson, MS	Alabama, Mississippi, and Tennessee.

(2) *Technical Service Center.* The Technical Service Center, which is located in Omaha, Nebraska, provides technical guidance, review, and training on the interpretation and application of regulatory requirements.

§ 300.6 Access to establishments and other places of business.

(a) *General.* Upon presentation of credentials—

(1) Persons subject to provisions of the FMIA or the PPIA must afford representatives of the Secretary access to establishments that slaughter or otherwise prepare livestock products or process poultry products and to other places of business subject to regulation thereunder; and

(2) Persons subject to provisions of the EPIA must afford representatives of the Secretary access as specified in part 590 of this chapter.

(b) [Reserved]

Done at Washington, DC, on December 22, 1998.

Thomas J. Billy,

Administrator, Food Safety and Inspection Service.

Concurrence in the transfer of 7 CFR part 59 on December 22, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

Appendix—Field Structure

Note: This appendix will not appear in the Code of Federal Regulations.

Under FSIS's current field structure, eighteen district offices have replaced regional offices and import field offices, as specified below.

Region	District
DOMESTIC PRODUCTS	
Northeastern:	
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont	Boston, MA
Delaware, District of Columbia, Maryland, and Virginia (except for Northwestern part)	Greenbelt, MD

Region	District
New Jersey and New York	Albany, NY
Pennsylvania	Philadelphia, PA
Southeastern	
Alabama, Mississippi, and Tennessee	Jackson, MS
Florida and Georgia	Atlanta, GA
Kentucky and West Virginia	Pickerington, OH
North Carolina and South Carolina	Raleigh, NC
Virginia (Northwestern)	Greenbelt, MD
Puerto Rico and Virgin Islands	Boston, MA
North Central:	
Illinois and Indiana	Chicago, IL
Iowa	Des Moines, IA
Michigan and Wisconsin	Madison, WI
Minnesota	Minneapolis, MN
Ohio	Pickerington, OH
Southwestern:	
Arkansas, Louisiana, and Oklahoma	Springdale, AR
Kansas and Missouri	Lawrence, KS
Nebraska	Des Moines, IA
New Mexico	Boulder, CO
Texas	Dallas, TX
Western:	
Alaska, American Samoa, Guam, Hawaii, Idaho, Oregon, Northern Mariana Islands, and Washington	Salem, OR
Arizona, Colorado, Nevada, and Utah	Boulder, CO
California	Alameda, CA
Montana, North Dakota, South Dakota, and Wyoming	Minneapolis, MN
IMPORTS	
IFO:	
New York, NY (#2)	Albany, NY
Philadelphia, PA (#3)	Philadelphia, PA
Miami, FL (#6)	Atlanta, GA
Long Beach, CA (#8)	Alameda, CA
Tacoma, WA (#9)	Salem, OR
Detroit, MI (#10)	Madison, WI

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Encryption items; published 12-31-98

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
National and Community Service Commission regulations; CFR Parts removed; published 12-1-98

FEDERAL COMMUNICATIONS COMMISSION
Radio and television broadcasting:
Media applications, rules, and processess streamlining; mass media facilities, minority and female ownership policies and rules; biennial regulatory review; published 12-30-98

HEALTH AND HUMAN SERVICES DEPARTMENT
Grants:
Departmental appeal procedures simplification; published 12-1-98

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Cape Fear River, NC; safety zone; published 12-24-98

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 12-16-98
Boeing; published 12-16-98
Class B and Class C airspace; published 11-30-98
Class D airspace; published 9-21-98

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Cafeteria plans; tax treatment; published 11-7-97
Tax return preparers' signatures; retention; published 12-31-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Peanut promotion, research, and information order; comments due by 1-5-99; published 11-6-98

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Loan and purchase program:
Upland cotton user market certificate program; comments due by 1-8-99; published 12-9-98

AGRICULTURE DEPARTMENT
Rural Utilities Service
Telecommunications standards and specifications:
Materials, equipment, and construction—
Telecommunications conduit; engineering and technical requirements; comments due by 1-4-99; published 11-3-98

AGRICULTURE DEPARTMENT
Administrative practice and procedure:
Civil rights adjudication; waiver of applicable statutes of limitation; comments due by 1-4-99; published 12-4-98

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic billfishes; comments due by 1-7-99; published 10-9-98
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico essential fish habitat designations; comments due by 1-8-99; published 11-9-98
West Coast States and Western Pacific fisheries—
Pelagic, crustacean, bottomfish and seamount groundfish, and precious corals fisheries; comments due by 1-4-99; published 11-5-98
Meetings:
Gulf of Mexico Fishery Management Council; comments due by 1-4-99; published 12-2-98

CONSUMER PRODUCT SAFETY COMMISSION
Consumer Product Safety Act:
Multi-purpose lighters; child resistance standard
Oral presentation of comments; comments due by 1-4-99; published 12-15-98

EDUCATION DEPARTMENT
Postsecondary education:
Lender and guaranty agency issues; loan issues; refunds, program, and student eligibility issues; and institutional eligibility issues—
Negotiated rulemaking committees; establishment; comments due by 1-6-99; published 12-23-98

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Ethylene oxide commercial sterilization and fumigation operations
Chamber exhaust and aeration room vents; requirements suspended; comments due by 1-4-99; published 12-4-98
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 1-6-99; published 12-7-98
Kentucky; comments due by 1-7-99; published 12-8-98
Maryland; comments due by 1-8-99; published 12-9-98
Missouri; comments due by 1-7-99; published 12-8-98
Pennsylvania; comments due by 1-4-99; published 12-3-98
Rhode Island; comments due by 1-7-99; published 12-8-98
South Carolina; comments due by 1-7-99; published 12-8-98
Hazardous waste program authorizations:
Oklahoma; comments due by 1-8-99; published 12-9-98
Hazardous waste:
Project XL program; site-specific projects—
New York State public utilities; comments due by 1-6-99; published 12-7-98

FEDERAL COMMUNICATIONS COMMISSION
Radio services, special:
Private land mobile services—
700 MHz band; public safety radio spectrum; priority access service requirements; comments due by 1-4-99; published 11-2-98
Biennial regulatory review; comments due by 1-4-99; published 11-27-98
Radio stations; table of assignments:
New York; comments due by 1-4-99; published 11-24-98

FEDERAL EMERGENCY MANAGEMENT AGENCY
Disaster assistance:
Public assistance project administration; redesign; comments due by 1-4-99; published 11-20-98

FEDERAL MARITIME COMMISSION
Marine carriers in foreign commerce:
Governing restrictive foreign shipping practices and controlled carriers; comments due by 1-4-99; published 12-4-98
Practice and procedures:
Miscellaneous amendments; comments due by 1-4-99; published 12-2-98

FEDERAL RESERVE SYSTEM
Availability of funds and collection of checks (Regulation CC):
Software changes related to merger; implementation time; comments due by 1-4-99; published 12-2-98

FEDERAL TRADE COMMISSION
Appliances, consumer; energy consumption and water use information in labeling and advertising:
EnergyGuide labels; prohibition against inclusion of non-required information; conditional exemption; comments due by 1-8-99; published 11-24-98
Trade regulation rules:
Pay-per-call services and other telephone-billed purchases (900-number rule); comments due by 1-8-99; published 10-30-98

GENERAL SERVICES ADMINISTRATION
Federal property management:

Utilization and disposal—
Federal surplus firearms; donation to State or local law enforcement activities; comments due by 1-8-99; published 12-9-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:
Dental devices—
Endosseous dental implant accessories; reclassification from Class III to Class I; comments due by 1-5-99; published 10-7-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:
Ambulatory surgical centers; ratesetting methodology, payment rates and policies, and covered surgical procedures list; comments due by 1-8-99; published 11-13-98
Hospital outpatient services; prospective payment system; comments due by 1-8-99; published 11-13-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Medically underserved populations and health professional shortage areas; designation process consolidation; comments due by 1-4-99; published 11-2-98

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Bonneville cutthroat trout; comments due by 1-7-99; published 12-8-98

Migratory bird hunting:
Mid-continent light geese; harvest increase; comments due by 1-8-99; published 11-9-98
Mid-continent light goose populations reduction; conservation order establishment; comments due by 1-8-99; published 11-9-98
Tin shot; temporary approval as non-toxic for 1998-1999 season; comments due by 1-4-99; published 12-4-98

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
New Mexico; comments due by 1-4-99; published 12-3-98

PERSONNEL MANAGEMENT OFFICE

Excepted service:
Promotion and internal placement; comments due by 1-4-99; published 12-3-98

POSTAL RATE COMMISSION

Post office closings; petitions for appeal:
Encinitas, CA; comments due by 1-4-99; published 12-24-98

POSTAL SERVICE

International Mail Manual:
Postal rate changes; comments due by 1-4-99; published 12-4-98

PRESIDIO TRUST

Management of Presidio; general provisions, etc.; comments due by 1-8-99; published 11-18-98

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
Florida; comments due by 1-8-99; published 11-9-98
Virginia; comments due by 1-4-99; published 11-2-98

Load lines:
Unmanned dry cargo river barges on Lake Michigan routes; exemption from Great Lakes load line requirements; comments due by 1-4-99; published 11-2-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:
Transport category airplanes—
Seat safety standards; improved seats retrofit requirements; meeting; comments due by 1-8-99; published 10-30-98

Air traffic operating and flight rules, etc.:
Grand Canyon National Park—
Special flight rules in vicinity (SFAR No. 50-2); comments due by 1-6-99; published 12-7-98

Airmen certification:
Mechanics and repairmen; certification and training requirements; comments due by 1-8-99; published 10-14-98

Airworthiness directives:
Airbus; comments due by 1-4-99; published 12-3-98
Boeing; comments due by 1-4-99; published 11-18-98
Eurocopter Deutschland GmbH; comments due by 1-4-99; published 11-3-98
Eurocopter France; comments due by 1-4-99; published 11-3-98
General Electric Aircraft Engines; comments due by 1-4-99; published 11-5-98
McDonnell Douglas; comments due by 1-7-99; published 11-23-98
Parker Hannifan Airborne; comments due by 1-5-99; published 11-17-98

Class D and Class E airspace; comments due by 1-4-99; published 12-4-98
Class E airspace; comments due by 1-4-99; published 11-18-98

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Tariffs and schedules:
Transportation of property by or with water carrier in noncontiguous domestic trade; publication, posting, and filing; comments due by 1-4-99; published 12-2-98

TREASURY DEPARTMENT

Fiscal Service

Federal agency disbursements:
Federal payments; conversion of checks to electronic funds transfers; electronic transfer accounts; comments due by 1-7-99; published 11-23-98

VETERANS AFFAIRS DEPARTMENT

Acquisition regulations:
Health care resources; simplified acquisition procedures; comments due by 1-8-99; published 11-9-98

Legal services, General Counsel:
Organization recognition and representative, attorney, and agent accreditation; comments due by 1-4-99; published 11-4-98

Medical benefits:
Advance healthcare planning; written directives and verbal and nonverbal instructions; comments due by 1-4-99; published 11-2-98
Nursing home care of veterans in State homes; per diem payments; comments due by 1-8-99; published 11-9-98