1–6–99
Vol. 64 No. 3
Pages 731–984

Federal Register

Wednesday
January 6, 1999

Now Available Online via

GPO Access

Free online access to the official editions of the *Federal Register, the Code of Federal Regulations* and other Federal Register publications is available on *GPO Access*, a service of the U.S. Government Printing Office at:

http://www.access.gpo.gov/nara/index.html

For additional information on ***GPO Access*** products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

Attention: Federal Agencies

Plain Language Tools Are Now Available

The Office of the Federal Register offers Plain Language Tools on its Website to help you comply with the President's Memorandum of June 1, 1998—Plain Language in Government Writing (63 FR 31883, June 10, 1998). Our address is: http://www.nara.gov/fedreg

For more in-depth guidance on the elements of plain language, read ''Writing User-Friendly Documents'' on the National Partnership for Reinventing Government (NPR) Website at: http://www.plainlanguage.gov

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche **202–512–1800**
Assistance with public subscriptions **512–1806**
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche **512–1800**
Assistance with public single copies **512–1803**
FEDERAL AGENCIES
Subscriptions:
Paper or fiche **523–5243**
Assistance with Federal agency subscriptions **523–5243**

NOW AVAILABLE ONLINE

The October 1998 Office of the Federal Register Document Drafting Handbook

Free, easy online access to the newly revised October 1998 Office of the Federal Register Document Drafting Handbook (DDH) is now available at:

http://www.nara.gov/fedreg/draftres.html

This handbook helps Federal agencies to prepare documents for publication in the **Federal Register.**

For additional information on access, contact the Office of the Federal Register's Technical Support Staff.

Phone: 202–523–3447

E-mail: info@fedreg.nara.gov

Contents

Federal Register

Vol. 64, No. 3

Wednesday, January 6, 1999

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 64, No. 3
Wednesday, January 6, 1999

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 801

RIN 0580–AA60

Tolerances for Moisture Meters

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: This document makes final an interim rule amending regulations under the United States Grain Standards Act (USGSA) by revising tolerances for moisture meters used in official grain inspection services. The Grain Inspection, Packers and Stockyards Administration made this revision to reflect tolerances for both the Motomco Model 919 moisture meter and the Dickey-john GAC 2100, which GIPSA started phasing in as the new official moisture meter as of August 1, 1998.

EFFECTIVE DATE: February 5, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Pforr at telephone (202) 720-0262.

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 OMB.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effect on Small Entities

The Administrator of GIPSA certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601). GIPSA made this revision to reflect tolerances for the current official moisture meter, the Motomco Model 919, and the Dickey-john GAC 2100, which GIPSA started phasing in as the new official moisture meter beginning August 1, 1998. The revised tolerances will be applied to moisture meters owned and used by GIPSA, 8 delegated States, and the 57 official agencies (49 private entities and 8 State agencies) to perform official grain inspection services. Most of these agencies would be considered small entities under Small Business Administration criteria. Although the check testing procedure for the GAC 2100 meter is simpler than that for the Motomco 919 meter, the tolerance on the GAC 2100 moisture meter used for official inspection is being neither tightened nor relaxed as compared to the tolerances for the Motomco 919. There is, therefore, little impact of making these tolerance changes in the regulations on small or large entities engaged in the inspection of grain.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995, the recordkeeping and reporting burden imposed by Part 801 was previously approved by OMB under control number 0580–0013 and will not be affected by this rule.

Background

Following the selection of a new official moisture meter for the national grain inspection system, GIPSA published an interim rule on June 25, 1998 (63 FR 34554), that revised tolerances for moisture meters used in official grain inspection services and provided an opportunity to comment on those revised tolerances. GIPSA received no comments in response to the interim rule.

In a separate notice published in the **Federal Register** on June 25, 1998 (63 FR 34629), GIPSA announced that as of August 1, 1998, all official moisture content measurements of corn, soybeans, and sunflower seed inspected under the USGSA would be made with the GAC 2100. Transition dates for other grains will be announced separately. The maintenance tolerances for Motomco 919 moisture meters have been and will continue to be applied to the Motomco 919 moisture meters used for official inspection until such time as the meters are replaced by the GAC 2100.

Differences in technology between the GAC 2100 and the Motomco 919 necessitated the development of a new procedure for checking the performance of individual GAC 2100 meters against standard meters to determine whether they are in tolerance. The three moisture range tolerances (low, mid, and high) and the direct comparison method for checking meters, other than Headquarters meters, used for the Motomco 919 will not be needed to determine if the GAC 2100 meters are in tolerance. The mid range moisture tolerance for Headquarters, and all other than Headquarters meters, will be used to determine if the GAC 2100 is within tolerance. Further, for the meters other than Headquarters, only the sample exchange method will be used.

Final Action

GIPSA received no comments during the 60-day comment period provided by the interim rule. Therefore, GIPSA has determined that the interim rule, as published at 63 FR 34554, will be adopted as the final rule.

List of Subjects in 7 CFR Part 801

Grains, Scientific equipment.

PART 801—OFFICIAL PERFORMANCE REQUIREMENTS FOR GRAIN INSPECTION EQUIPMENT

Accordingly, the interim final rule amending 7 CFR part 801 which was published at 63 FR 34554 on June 25, 1998, is adopted as a final rule without change.

Dated: December 29, 1998.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 99–35 Filed 1–5–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 301, 317, 318, 320, and 381

[Docket No. 95–033F]

Performance Standards for the Production of Certain Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, Agriculture.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations by converting into performance standards the regulations governing the production of cooked beef, roast beef, and cooked corned beef products, fully and partially cooked meat patties, and certain fully and partially cooked poultry products. Unlike the previous requirements for these products, which mandated step-by-step processing measures, the new performance standards spell out the objective level of food safety performance that establishments must meet, but allow establishments to develop and implement processing procedures customized to the nature and volume of their production. Establishments that do not wish to change their processing practices may continue following the previous requirements for these products, which will be disseminated as ''safe harbors'' in Agency guidance materials.

Establishments that have not yet developed and implemented a HACCP (Hazard Analysis and Critical Control Point) plan are required to develop and maintain on file a documented process schedule that has been approved by a process authority for safety and efficacy. The process schedule must include control, monitoring, verification, validation, and corrective action activities to be performed by the establishment during production. Establishments operating under HACCP are not required to develop a processing schedule. FSIS expects such establishments will develop and implement HACCP plans incorporating critical limits that achieve the new performance standards.

FSIS is not making final the lethality performance standards proposed for ready-to-eat, uncured meat patties. Instead, FSIS will be proposing revised lethality performance standards for this product in a future, separate rulemaking.

EFFECTIVE DATES: March 8, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Director, Regulation Development and Analysis Division, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 1996, FSIS published in the **Federal Register** (61 FR 19564–19578) a proposal to convert into performance standards the regulations governing the production of cooked beef, roast beef, and cooked corned beef; fully cooked, partially cooked, and char-marked uncured meat patties; and certain fully and partially cooked poultry products. FSIS also proposed to maintain in the regulations the then current processing requirements as examples of how an establishment might comply with the proposed performance standards (''safe harbors''). Establishments wishing to continue current manufacturing practices could follow these safe harbor examples and meet the proposed performance standards.

FSIS anticipated that establishments operating under HACCP and using processing methods other than those described in the safe harbors would incorporate into their HACCP plans CCP's and critical limits that would achieve the performance standards. Of course, such establishments would be required to meet all of the applicable HACCP requirements, such as plan validation, as well as the performance standards. Importantly in such cases, validation would ensure not only that a HACCP plan was functioning as intended, but also that performance standards were being met.

FSIS proposed to require establishments choosing to develop and use procedures different from those provided in the safe-harbors, but not yet operating under HACCP, to develop and maintain on file a process schedule approved by a process authority for safety and efficacy. Similar to a HACCP plan, the process schedule would include control, monitoring procedures, verification, validation, and corrective action activities to be performed by the establishment. This requirement would sunset as establishments developed and implemented HACCP systems.

Ready-to-Eat Products

FSIS proposed to require that certain ready-to-eat products (cooked/roast beef products, fully cooked, uncured meat patties, and certain fully cooked poultry products) meet three performance standards: lethality, stabilization, and handling. FSIS determined that ready-to-eat, cooked products meeting these three standards would contain no viable pathogenic microorganisms of concern, the intent of the then current regulations.

Lethality

To meet the first standard, lethality, FSIS proposed that establishments treat ready-to-eat product so as to ensure a specific, significant reduction in the number of *Salmonella* microorganisms, therefore eliminating or adequately reducing other vegetative pathogenic microorganisms from the product. FSIS did not propose to require that any particular means be used to meet the lethality standard, although for cooked products FSIS did propose to require a heat treatment. FSIS emphasized that cooking did not need to be the sole means by which lethality would be achieved. Other applicable treatments, such as curing or other controls, might be used in combination with cooking to achieve the required lethality.

FSIS proposed to measure the reduction of pathogenic microorganisms in ''x-decimal'' reductions, where x is a number. In this regulation, a single ''1-decimal'' reduction represents an expected 90% reduction in the number of organisms, i.e., the number of organisms would be expected to be reduced by a factor of 10. A ''5-decimal'' reduction reduces the number of organisms by an expected factor of 10^5 or 100,000.

In terms of a common logarithm ($\log_{10}$) scale, an ''x-decimal'' reduction is the same as saying an ''x-$\log_{10}$'' reduction. In the proposed regulation, FSIS referred to an ''x-$\log_{10}$'' reduction as ''decimal'' or ''-D'' reduction. However, FSIS feels that it is clearer and more descriptive to use the phrase ''x-$\log_{10}$.'' Therefore, throughout the remainder of this document and in the final rule language, FSIS will describe pathogen reduction values as ''x-$\log_{10}$'' reductions rather than ''x-decimal'' or ''-D'' reductions. Thus, a ''x-$\log_{10}$'' reduction means that the number of organisms would be expected to be reduced by a factor of $10^{\times}$. In terms of probability distributions, this means that the probability, p, that a given organism will survive a ''x-$\log_{10}$'' lethality reduction is $p = (1/10^{\times}.)$[1]

For the cooked beef, roast beef, and cooked corned beef products described in § 318.17 and the cooked poultry

[1] More generally, it is assumed that the distribution of the number of surviving organisms given N initial organisms is a binomial distribution with parameters N and p.

products described in § 381.150, FSIS proposed that the lethality performance standard be a 7-$\log_{10}$ reduction in *Salmonella*. Traditionally, the primary pathogenic microorganism of concern in these cooked products has been *Salmonella*. Furthermore, the thermal destruction of *Salmonella* in cooked beef products would indicate the destruction of most other pathogens.

In the proposal, FSIS noted that though a 7-$\log_{10}$ reduction in *Salmonella* would eliminate or adequately reduce vegetative pathogenic microorganisms from these cooked products, a 7-$\log_{10}$ reduction in *Salmonella* also may be overly conservative in certain processing environments. FSIS also recognized that developments in processing technology may indicate that a safe, ready-to-eat cooked beef or poultry product could be produced with a different level of lethality. The Agency stated, therefore, that it would consider revising the lethality performance standard and safe harbor example for these products if presented with compelling data and invited submissions on this lethality standard.

For fully cooked, uncured meat patties, as described in § 318.23, FSIS proposed that the lethality performance standard be a 5-$\log_{10}$ reduction in *Salmonella*. FSIS identified *Salmonella* as the target pathogenic microorganism in fully cooked uncured meat patties, as in fully cooked beef products. FSIS had assumed that a 5-$\log_{10}$ reduction in *Salmonella* in cooked, uncured meat patties would effectively eliminate most other bacterial pathogens of concern.

At the time of the proposal, the processing requirements for ready-to-eat cooked beef, roast beef, and cooked corned beef, meat patties, and cooked poultry products all contained heat treatment requirements that, if followed, ensured products met the proposed lethality performance standards. FSIS proposed to retain those requirements in the regulations as examples of processing methods that would achieve the performance standards. And, as stated above, establishments wishing to continue their current manufacturing practices could follow these safe harbor examples and meet the performance standards.

Stablilization

FSIS proposed to require that establishments producing any of the ready-to-eat products meet the second performance standard, stabilization, by preventing growth of spore-forming bacteria that may produce toxin either in the product or in the human intestine after consumption. If allowed to grow in number, these bacteria can cause food borne illness. Means applied to products to bring about the lethality of certain pathogenic microorganisms, particularly heat treatment, can create a model environment for the multiplication of spore-forming bacteria. Spores of *Clostridium botulinum, Clostridium perfringens*, and other spore-forming bacteria can survive cooking and, in fact, thrive in the warm product following cooking after competitive microorganisms, such as *Salmonella*, have been eliminated.

FSIS proposed to require that establishments stabilize each of the ready-to-eat products to prevent the germination and multiplication of toxigenic microorganisms such as *C. botulinum*, and allow no more than a 1-$\log_{10}$ multiplication of *C. perfringens*. Limiting the allowable growth of *C. perfringens* to a 1-$\log_{10}$ multiplication would effectively limit the multiplication of other, slower growing spore-forming bacteria, such as *Bacillus cereus*. FSIS anticipated that most establishments would meet the stabilization performance standards by rapidly cooling products following cooking.

At the time of the proposal, the regulations for cooked beef products and cooked meat patties (§§ 318.17 (h)(10) and 318.23(b)) contained chilling requirements to inhibit the growth of spore-forming bacteria. Compliance with these requirements would allow establishments to meet the proposed stabilization performance standard, so FSIS proposed to retain these requirements in the regulations as safe harbors. Consequently, meat establishments wishing to continue their current manufacturing practices could follow these safe harbor examples.

The regulations for cooked poultry products in § 381.150, however, did not contain chilling requirements. FSIS proposed to codify as safe harbors the chilling recommendations in FSIS Directive 7110.3, ''TIME/TEMPERATURE GUIDELINES FOR COOLING HEATED PRODUCTS.'' FSIS determined that this chilling directive would constitute a safe harbor because compliance would yield cooked poultry products that meet the stabilization performance standard and because most, if not all, establishments were already following this directive.

Handling

To meet the third performance standard for the ready-to-eat products, FSIS proposed to require that establishments handle product to preclude recontamination by infectious pathogenic microorganisms. The proposed standard required that no infectious pathogens be introduced into the product following processes ensuring lethality or stabilization, or after final packaging.

At the time of the proposal, the regulations for cooked beef products (§ 318.17(i), (j), and (k)) and for cooked meat patties (§ 318.23(b)(4)) required that these cooked products be handled throughout processing in a manner precluding their recontamination by infectious pathogenic microorganisms. FSIS proposed to retain these requirements in the regulations as safe harbors. Consequently, meat establishments wishing to continue their current manufacturing practices could follow these safe harbor examples and meet the performance standards.

The regulations for ready-to-eat poultry products in § 381.150, however, did not contain handling requirements. FSIS proposed to codify the handling regulations already in place for cooked beef products and cooked meat patties as the safe harbor handling requirements for cooked poultry products. As with the proposed chilling requirements, FSIS determined that these proposed handling requirements for ready-to-eat poultry would constitute safe harbors because they represent current good manufacturing practices (GMP's) accepted and in general use by industry.

Performance Standards for Partially Cooked and Char-Marked Meat Patties and Partially Cooked Poultry Breakfast Strips

Unlike the fully cooked, ready-to-eat products described above, partially cooked and char-marked uncured meat patties and partially cooked poultry breakfast strips are essentially raw, and require adequate cooking prior to consumption. FSIS determined that a lethality performance standard, therefore, would not apply to partially cooked and char-marked products, since FSIS does not require that these products be ready-to-eat. Neither would a handling performance standard apply, since these raw products might contain infectious pathogenic microorganisms after processing and prior to cooking. FSIS proposed, therefore, that establishments producing these products meet a stabilization performance standard identical to the stabilization standard proposed above for fully cooked products.

During processing, these products are partially cooked and then cooled, which creates a model environment for the growth of *Clostridium perfringens, Clostridium botulinum*, and other spore-

forming, toxigenic bacteria. Cooking by the consumer, retailer, or other end-user may not eliminate these bacteria from these products. Therefore, it is important that bacterial growth be controlled in these products to the extent possible while they remain at the producing establishment.

At the time of the proposal, the regulations for partially cooked and char-marked uncured meat patties (§ 318.23(b)(1)(ii) and (iii)) and partially cooked poultry breakfast strips (§ 381.150(a)) required that these products be quickly chilled following partial cooking or char-marking, in order to inhibit the growth of spore-forming bacteria. When applied, these chilling requirements produce partially cooked and char-marked products that meet the stabilization performance standard. FSIS proposed to retain these requirements in the regulations as safe harbors. Consequently, establishments wishing to continue their current manufacturing practices could follow these safe harbor examples and meet the proposed stabilization performance standard.

FSIS currently requires that partially cooked and char-marked meat patties, as well as partially cooked poultry breakfast strips, be labeled with cooking directions. It is imperative that consumers fully cook these products, as they are essentially raw, and may contain viable pathogenic microorganisms. Therefore, FSIS proposed to retain these labeling requirements in the regulations.

Process Schedule Approval and Validation

FSIS proposed to require that prior to its development and implementation of a HACCP plan, an establishment choosing to develop and use processing procedures different from those provided in the safe-harbor examples have on file a written process schedule describing the specific operations employed by the establishment to accomplish the objectives of the performance standards. This process schedule also would be required to contain the related control, monitoring, verification, validation, and corrective action activities associated with the establishment's procedures. These activities would be similar, if not identical, to the control, monitoring, verification, validation, and corrective action activities eventually developed by the establishment as part of its HACCP plan. Accordingly, FSIS proposed to sunset these process schedule requirements as establishments implemented HACCP.

FSIS also proposed to require that the process schedule be evaluated and approved for safety and efficacy by a process authority—a person or organization with expert knowledge in meat and poultry process control and relevant regulations. FSIS did not propose to preapprove the procedures deemed acceptable by the establishment's process authority. The process authority would evaluate the establishment's prospective processing procedures and, after using such devices as laboratory challenge studies or comparison to peer-reviewed and -accepted procedures, approve, in writing, the safety and efficacy of the establishment's prospective procedures. The process authority must have access to the establishment in order to evaluate the safety of that establishment's planned production processes.

Also, FSIS proposed to require that prior to the implementation of HACCP, establishments validate the process schedule by holding and testing product to determine that it meets the applicable performance standards. Testing would have to be conducted in accordance with a sampling program designed by the process authority to assure, with at least 95 percent statistical confidence, that an establishment's process schedule will produce product that meets applicable performance standards. Establishments could not release product for commercial use until testing confirmed that the process schedule was producing product meeting applicable performance standards. FSIS proposed to require that results of the product testing, as well as the sampling regimen, be made available as the validation activities contained in the process schedule. And, like the proposed requirements concerning the development, approval, and maintenance of the process schedule, FSIS proposed to sunset the process schedule validation requirement as establishments implemented HACCP.

FSIS noted that this particular form of validation may not be appropriate in every circumstance and invited comment on the validation requirement proposed in this document, specifically as to whether FSIS should prescribe a specific method of validation for these process schedules, and, whether the proposed testing requirement was, in fact, appropriate for ensuring that an establishment's products meet food safety performance standards.

Safe Handling Labels

Sections 317.2(l) and 381.125(b) of the regulations require that safe handling instructions be provided for beef products, meat patties, and poultry products not heat processed in a manner that conforms to the time and temperature combinations listed in §§ 318.17, 318.23, and 381.150, respectively. FSIS proposed, however, to allow ready-to-eat products to be processed by means other than the time and temperature requirements prescribed in these sections, as long as they met the performance standards proposed. Therefore, as a result of the proposal, safe handling label requirements might not be necessary for all ready-to-eat products processed by means other than those prescribed time/temperature combinations. Accordingly, FSIS proposed to amend §§ 317.2(l) and 381.125(b), to exempt from the labeling requirements ready-to-eat products meeting the proposed performance standards.

Comments and Agency Responses

FSIS received nine comments on the proposed rule from industry and an industry consultant, trade associations, a veterinary medical association, and a State government. Several of the commenters requested that the initial comment period, which was to end on July 1, 1996, be extended. Commenters were concerned that there might be conflicts between the final HACCP rule and codification of safe harbors and GMP's. Also, there was a request for more time to develop data to support lower lethality values. The Agency responded by extending the comment period for this proposal until September 9, 1996. Meanwhile, the HACCP rule was published on July 25, 1996, which gave commenters time to consider this proposal in light of the final HACCP rule.

All of the commenters expressed general support for the Agency's stated intent to move away from command-and-control regulations. One reviewer felt that the proposal provided for adequate assurance of food safety while allowing innovation in processing procedures. Some commended the Agency for promoting the move towards a HACCP approach and welcomed the flexibility to vary production schedules, as long as performance standards were met. However, some commenters stated that the goal of moving away from command-and-control regulations into a HACCP environment was not fully realized in the proposal. Their specific objections and Agency responses follow.

Performance Standards and HACCP

Comment: Several of the commenters were opposed to the Agency establishing the type of safety standard that was embodied in the proposed performance standards. These

commenters maintained that the proposal could inhibit innovation and flexibility and that allowing each plant to develop and specify their individual performance standards or food safety objectives would be more consistent with HACCP.

Response: FSIS has determined that HACCP-based process controls combined with appropriate food safety performance standards are the most effective means available for controlling and reducing harmful bacteria on meat and poultry products. In the final rule establishing HACCP and pathogen reduction requirements for all official meat and poultry establishments, FSIS explained the role played by HACCP and pathogen reduction performance standards in its food safety strategy:

> FSIS has concluded that HACCP-based process control, combined with appropriate food safety performance standards, is the most effective means available for controlling and reducing harmful bacteria on raw meat and poultry products. HACCP provides the framework for industry to set up science-based process controls that establishments can validate as effective for controlling and reducing harmful bacteria. Performance standards tell establishments what degree of effectiveness their HACCP plans will be expected to achieve and provide a necessary tool of accountability for achieving acceptable food safety performance. Science-based process control, as embodied in HACCP, and appropriate performance standards are inextricably intertwined in the Agency's regulatory strategy for improving food safety. Neither is sufficient by itself, but, when combined, they are the basis upon which FSIS expects significant reductions in the incidence and levels of harmful bacteria on raw meat and poultry products and, in turn, significant reductions in food borne illness.

(61 FR 38811)

In this rule, FSIS replaces existing, prescriptive cooking and cooling requirements for ready-to-eat products with pathogen reduction performance standards. These standards set forth the required level of food safety performance for specific types of meat and poultry processing, but allow for significant flexibility in achieving those levels of safety. Allowing individual establishments to develop their own performance standards would not provide sufficient accountability for achieving an acceptable level of food safety performance.

FSIS is providing more flexibility in meeting the lethality performance standards than that which was proposed by allowing establishments to use alternative, and presumably lower, lethalities. An establishment may develop and use an alternative lethality if it can demonstrate, within its validated HACCP plan or process schedule, that its process yields finished, ready-to-eat meat or poultry products with reductions of *Salmonella* and other pathogens equivalent to the reductions achieved through compliance with the lethality performance standards explicitly provided for in the regulations. Alternative lethalities are explained further in the following responses.

Lethality

Comment: Most commenters agreed that the Agency was scientifically justified in proposing that a 5-$\log_{10}$ reduction in *Salmonella* be achieved in ready-to-eat meat patties, but contended that the proposed 7-$\log_{10}$ lethality for whole muscle products (ready-to-eat cooked beef and poultry products) was excessive. These commenters argued that a 5-$\log_{10}$ reduction in *Salmonella* would adequately ensure the safety of all of the fully-cooked meat and poultry products. They maintained that achieving a 5-$\log_{10}$ reduction in *Salmonella* would eliminate other pathogens of concern, which generally are more sensitive to heat treatment. Also, they stated that they expect to see relatively low numbers of pathogens on incoming raw products.

One commenter stated that ''obviously, the surface of products, which are cooked to achieve a specified internal lethality value, are subject to much, much higher lethality.'' The commenter implied that a lethality applicable to the interior of a whole cut product resulted in a greater lethality on the outside surfaces, where the bacteria lie. The commenter specifically suggested that the lethality requirement for cooked meat products be reduced from a 7-$\log_{10}$ to a 5-$\log_{10}$ reduction. The justification of this commenter's recommended reduction was based on the measured ''high value'' of 240 Most Probable Number (MPN)/cm2 of *Salmonella* reported by FSIS in ''baseline'' surveys, and a ''safety'' factor of 100.

Response: In the proposal, FSIS acknowledged that both the current cooking requirements and the proposed performance standards for ready-to-eat whole muscle meat and poultry products, each of which achieves a 7-$\log_{10}$ reduction in *Salmonella*, may be overly conservative in certain processing environments. Accordingly, FSIS specifically requested comment on whether to revise the proposed lethality performance standards and regulatory safe harbors for these products.

Although establishing a single lethality performance standard for all ready-to-eat products, as suggested by commenters, would greatly simplify the regulations, the commenters did not present information that would substantiate a single lethality requirement for all ready-to-eat products. Furthermore, data collected in FSIS's national microbiological ''baseline'' surveys of raw whole and ground meat and poultry products [2] indicate that different ready-to-eat products require different lethality standards. Because the baseline data shows higher levels of *Salmonella* in poultry than in meat, FSIS is establishing higher lethality performance standards for ready-to-eat poultry products than for meat. This difference is necessitated by need for lethalities that will render raw poultry into ready-to-eat poultry products safe for consumption. FSIS already has established different *Salmonella* standards for different types raw products owing to the different prevalences of *Salmonella* found in the baselines for raw meat and poultry (§§ 310.25(b)(1) and 381.381.94(b)(1)).

After considering the comments and information collected from the baseline studies, FSIS is requiring that establishments achieve a 7-$\log_{10}$ reduction of *Salmonella* or an equivalent probability that no viable *Salmonella* organisms remain in the finished product in ready-to-eat poultry products and a 6.5-$\log_{10}$ reduction of *Salmonella* or an equivalent probability that no viable *Salmonella* organisms remain in the finished product in ready-to-eat cooked beef, roast beef, and cooked corned beef products. Effectively, processing that achieves these specific lethalities or their equivalents will result in ready-to-eat products that pose no health risks to consumers.[3]

FSIS is not finalizing the lethality performance standards proposed for ready-to-eat comminuted meat patty products. Compliance with the current requirements concerning the production of ready-to-eat meat patties effectively achieves a 5-$\log_{10}$ reduction in *Salmonella*. FSIS proposed to retain this same level of pathogen reduction in both the performance standard and the

[2] Copies of reports on FSIS's Nationwide Microbiological Baseline Data Collection Programs are available in the FSIS Docket Room, U.S. Department of Agriculture, Room 102, Cotton Annex, 300 12th St. SW, Washington, DC 20250–3700.

[3] A technical report explaining the lethality performance standards and their equivalent probabilities, ''Lethality and Stabilization Performance Standards for Certain Meat and Poultry Products: Technical Paper,'' is available from the FSIS Docket Room, U.S. Department of Agriculture, Room 102, Cotton Annex, 300 12th St. SW, Washington, DC 20250–3700.

safe harbor for this product. However, in the course of developing this final regulation, after examining the baseline surveys of raw ground meat products, FSIS has concluded that a higher lethality may be necessary to produce ready-to-eat meat patties that pose no health risk to consumers. Therefore, FSIS is considering establishing a new lethality performance standard for ready-to-eat meat patties. Until further rulemaking, the current heat-processing requirements for ready-to-eat meat patties will remain in effect.

In this rule, FSIS is finalizing lethality performance standards that, effectively, ensure that even a ''worst case'' product presents no health risk to consumers. The Agency defined worst case product by considering data from the FSIS's national baseline studies. Specifically, the worst case was defined as an approximate 97.5% upper bound for the number of organisms in a sample with the highest measured density from each baseline survey. This approach of determining a ''worst case'' is more appropriate from a scientific and statistical standpoint than using an arbitrary 2-$\log_{10}$ safety factor over a given ''high value'' measurement (another common approach), in that it allows FSIS to better address any uncertainty associated with the ''worst case'' value.

As stated above, FSIS used the baseline surveys for both raw whole and ground products in defining ''worst case product'' and determining the necessary lethalities. The ''worst case'' definition and lethality for ready-to-eat poultry products were determined using the raw ground poultry surveys. FSIS recognizes that the raw ground product survey data has certain limitations. For example, the raw ground product surveys did not cover all of the summer months and therefore do not completely represent possible seasonal variations in the prevalence and levels of pathogenic microorganisms. Nevertheless, the raw ground product surveys represent the most complete, recent data set available for the Agency's purposes.

Furthermore, FSIS has concluded that the raw ground product surveys are more appropriate as a basis for these performance standards than are epidemiological data, such as quantitative data from meat and poultry products implicated in outbreaks of food borne illness. Products implicated in outbreaks often have been temperature abused. Because the cause of the temperature abuse, as well as the bacterial levels in the implicated product prior to the abuse, are often unknown, outbreak data were not deemed useful in developing these performance standards.

To assure that ''worst case'' product subjected to the finalized lethality requirements (with subsequent proper handling) would present, effectively, no health risk to the consumers, FSIS calculated the probability distribution for the number of organisms that survive cooking. These calculations demonstrate that it is highly unlikely that worst case product subjected to the required lethality would ever contain more than a very few *Salmonella* organisms in 100 grams of product. FSIS also emphasizes that, even though it employed probability calculations regarding the survival of *Salmonella* in finished, ready-to-eat product to develop the performance standards, if it were to find viable pathogens of concern in any ready-to-eat product, FSIS would consider that product to be adulterated.

In regard to the comment contending that whole muscle meat products are inherently safer than comminuted meat products, no conclusive information was presented to FSIS that demonstrated that the distributions of bacteria on ground and whole product produced under good manufacturing practices would present comparatively higher or lower risks to consumers. In fact, research suggests that in some situations risks could be higher in whole products than in ground products.

Research has suggested that the lethality on the outside surface might not always be greater than that of the interior of product during cooking. Blankenship has shown, through an inoculation study,[4] that roast beef cooked in an oven at 229°F resulted in no *Salmonella* being recovered from the roast's center, while *Salmonella* survived on the roast's surface, even though an internal temperature of 147.5° F was achieved. The reason for this phenomenon was elucidated by Goodfellow and Brown [5] who showed that without adequate conditions of humidity, *Salmonella* could survive on dry roasted beef surfaces during low temperature dry roasting. Therefore, the research shows that, under some circumstances, cooking does not always result in a higher lethality on the surface of a product versus the interior of the product. It was for this reason that the previous cooked beef, roast beef, and cooked corned beef regulations (9 CFR 318.23) required humidity to be controlled during the cooking process, and the lethality performance standards for this regulation were clarified by adding the phrase ''throughout the product.''

Further, it is possible for intact whole muscle cuts, sectioned and formed products, and chunked and formed products, to have high microbial levels on small portions of the product (''hot spots'').[6]. A piece of meat with high levels of *Salmonella* could end up anywhere in the chunked/formed roast, resulting in an uneven distribution of *Salmonella.* This uneven distribution is in sharp contrast to the more even distribution of *Salmonella* that would be expected in ground product such as ground beef. Therefore, in such a case, the amount of lethality needed to reduce *Salmonella* for a given amount in whole muscle cuts and in chunked/formed product may exceed that needed for ground product.

Therefore, because in some situations risks could be higher in whole muscle and chunked/formed products than in ground products, FSIS will continue to require a higher lethality reduction in *Salmonella* for cooked beef, roast beef, and cooked corned beef than that which is currently required for meat patties. However, as mentioned above, FSIS is reconsidering the lethality reduction in *Salmonella* currently required for ready-to-eat meat patties.

Comment: A few commenters recommended that the industry be allowed to set plant- and process-specific lethality performance standards, since HACCP requires a hazard analysis resulting in appropriate food safety process controls. These commenters claimed that the proposed performance standards would limit an establishment's flexibility in employing alternative lethalities and inhibit innovation in pathogen reduction. One commenter said explicitly that ''there must be an option for use of other scientifically valid lethality values.'' This commenter suggested how other scientifically valid lethality values could be derived, by allowing ''a lower level of lethality as long as the food safety objectives are met (i.e., a similar probability of survival of the pathogens of concern).'' The same commenter also stated that ''The Agency must provide a clear and reasonable mechanism for review and acceptance of alternative values.''

[4] Blankenship, L.C. 1978. Survival of a *Salmonella typhimurium* Experimental Contaminant During Cooking of Beef Roasts. Appl. Environ. Microbiol. 35:1160.

[5] Goodfellow, S.J. and Brown, W.L. 1978: *Fate of Salmonella inoculated into beef for cooking.* J. Food Protect. 41:598–605.

[6] Surkiewicz, B.F., et al. (1975) *Bacteriological Survey of Raw Beef Patties Produced at Establishments under Federal Inspection,* Applied Microbiology, p. 331–334.

Response: The Agency agrees and will allow establishments to design and employ processes with lethalities different from, but effectively equivalent to, those specifically provided for in this rule. FSIS did not intend to limit an establishment's flexibility in designing processes that would produce safe food. FSIS stated in the preamble to the proposed rule that it ''recognizes * * * that a safe, ready-to-eat * * * product could be produced with a different level of lethality.'' An establishment that develops and uses an alternative lethality will be required to demonstrate, within its validated HACCP plan or process schedule, that its process yields finished, ready-to-eat meat or poultry products with reductions of *Salmonella* and other pathogens equivalent to the reductions achieved through compliance with the lethality performance standards explicitly provided for in the regulations. As suggested by the commenter, establishments will need to evaluate processes using alternative lethalities with criteria based on calculated probabilities of surviving pathogens following processing.

To develop criteria for evaluating the effectiveness of processes using alternative lethalities, it will be necessary for the processor to define, using associated statistical criteria, the expected characteristics of the treated product after processing for assumed pre-processing product conditions. For example, an establishment using an alternative lethality would specify that the probability of there being more than *x* surviving organisms in the finished product is no more than *p*, given that the ''worst case,'' pre-processed product contained at least *y* organisms. Of course, establishments would need to use an alternative lethality that results in a finished product that is as safe as product produced using the lethality explicitly set out in this regulation (a 6.5 or 7 $\log_{10}$ reduction of *Salmonella*).

The performance standards describe a property of the actual process: the lethality performance standards in this rule require that processing achieve an x-$\log_{10}$ lethality reduction in *Salmonella.* Practical difficulties would have been created for a large portion of the industry if this regulation were stated purely in terms of the statistical criteria that would indicate an adequate reduction of *Salmonella.* It would be difficult for many establishments to demonstrate that a process achieves an adequate reduction of *Salmonella* using statistical criteria. Such a demonstration would entail extensive scientific research beyond the capability of most establishments. Therefore, to allow for processing flexibility while ensuring product safety, FSIS is finalizing specific lethality performance standards in the regulations, but allowing establishments to use alternative lethalities that achieve an equivalent probability that no viable *Salmonella* organisms remain in the finished product.

As explained in the previous response, FSIS determined that processes meeting the finalized lethality performance standards will render ''worst case'' raw product, as defined by FSIS's national baseline studies, into finished product that, effectively, poses no health risk to the consumer. In determining that processes meeting the performance standards will ensure a safe product, the Agency made conservative assumptions concerning the actual lethality achieved throughout the product. The Agency acknowledges that it might be possible for producers to scientifically demonstrate that these lethality assumptions or the Agency's defined ''worst case'' would not be applicable for their particular processing situation. An establishment could then design a process with lethality values that are different from those provided in this rule, but that would still yield a product that meets the final conditions equivalent to those achieved by the lethality performance standard.

An establishment developing an alternative lethality treatment or treatments and assuming an initial product condition other than the ''worst case'' would need to include in its HACCP plan or process schedule scientific data and statistical validation that would justify the assumed initial conditions and ensure that these would not change. For example, an establishment may be able to demonstrate that the number of *Salmonella* is not uniformly distributed throughout a particular type of product. The establishment also might demonstrate that due to husbandry and slaughter practices, the worst case product processed within an establishment differs from the worst case scenarios developed for this rule. Demonstrations of initial product conditions solely by statistical means will be unacceptable.

Generally, an establishment will need to demonstrate in its HACCP plan or process schedule how its alternative lethality treatment(s) provides for a level of safety in its finished product equivalent to that provided for by compliance with the lethality performance standards explicitly provided in this rule. The establishment will need to demonstrate the relationships between the lethality treatment(s) and the specific characteristics of a product, such as physical and chemical properties. This demonstration could involve the use of heat transfer equations and should account for all variables that would affect lethality (e.g., size of product, humidity, density, thermal conductivity, specific heat, shape, product composition, and strain of organism).

Finally, establishments employing alternative lethalities will need to demonstrate, within their HACCP plans or process schedules, that they have validated their processes as being effective in ensuring product safety. Section 417.4(a)(1) of the HACCP regulations sets forth the ''initial validation'' requirements for establishments under HACCP:

> Upon completion of the hazard analysis and development of the HACCP plan, the establishment shall conduct activities designed to determine that the HACCP plan is functioning as intended. During this HACCP plan validation period, the establishment shall repeatedly test the adequacy of the CCP's, critical limits, monitoring and recordkeeping procedures, and corrective actions set forth in the HACCP plan. Validation also encompasses reviews of the records themselves, routinely generated by the HACCP system, in the context of other validation activities.

FSIS will expect establishments employing alternative lethalities, but not yet operating under HACCP, to undertake similar actions as part of the validation activities documented in their process schedules.

As mentioned above, FSIS is making available a technical paper explaining the derivation of the lethality performance standards.[7] Establishments are encouraged to use this paper when developing alternative lethalities. In the paper, FSIS explains the methodology used to calculate the probability of remaining *Salmonella* organisms in treated product.

Comment: Some commenters suggested that it would be appropriate to allow combinations of treatments or alternatives to achieve a level of safety equivalent to that provided by the specified lethality.

Response: The Agency agrees and will allow combinations of treatments or alternatives to meet the performance standards for lethality, so long as a cooking step is included and process schedules are validated by a knowledgeable processing authority.

[7] ''Lethality and Stabilization Performance Standards for Certain Meat and Poultry Products: Technical Paper'' is available from the FSIS Docket Room (see footnote 3).

FSIS has amended the lethality performance standards to clarify that one or more controlled intermediate steps applied to raw product may form part of the basis for equivalency with the specified lethality. Importantly, the net, or overall, effect of the entire process must be demonstrated to effect a required reduction in *Salmonella.* The following example, provided in part by one of the commenters, clarifies the Agency's intent:

A controlled intermediate step(s) applied to the untreated raw product may form part of the basis for the equivalency. Assume that a 7-$\log_{10}$ reduction is required. A 3-$\log_{10}$ attained by an anti-microbial spray treatment is followed immediately by a 4-$\log_{10}$ reduction using a heat treatment. The combined 3-$\log_{10}$ plus 4-$\log_{10}$ reduction could result in a net 7-$\log_{10}$ reduction. This 7-$\log_{10}$ reduction should be confirmed with reference to the level of *Salmonella* on the initial raw product compared to the level attained after the second or final treatment. This confirmation is needed because there may be an interactive effect between the treatments. A primary treatment could, for example, increase or decrease the heat resistance of *Salmonella* if heat were the second treatment. Secondly, certain conditions, such as time/temperature abuse between the steps could have an unanticipated negative affect, allowing pathogens to grow between treatments.

If treatments or interventions (organic rinses, steam vacuuming, steam pasteurization, etc,) are used in combination with a heat treatment, it is the responsibility of the establishment and processing authority to ensure not only the cumulative equivalency of a 6.5-$\log_{10}$ or 7-$\log_{10}$ lethality for *Salmonella* in ready-to-eat beef or poultry products, respectively, but also the reduction/inactivation of all other food borne pathogens of concern. The Agency has revised the lethality performance standard to clarify this point. The lethality performance standard now states that establishments are responsible not only for the required reduction in *Salmonella*, but also for the ''reduction of other pathogens and their toxins or toxic metabolites necessary to prevent adulteration, * * * throughout the product'' This phrase was added to clarify that, while *Salmonella* is the reference organism and its destruction in most cases will indicate adequate reduction of other pathogens of concern, it is the responsibility of the establishment to demonstrate and ensure that the final product is ultimately safe. ''Throughout the product'' is added to indicate FSIS's intent that the process cannot affect only the surface or restricted portions of the product.

Stabilization

Comment: As with the lethality standards, a few commenters recommended that the industry be allowed to set establishment- and process-specific stabilization performance standards, since HACCP requires a hazard analysis resulting in appropriate food safety process controls.

Response: The Agency has decided to maintain the performance standards with regard to multiplication of *Clostridium perfringens* and *Clostridium botulinum*. As noted in the HACCP final rule, *Clostridium perfringens* is ubiquitous in the environment so that controls at slaughter would not necessarily be effective in controlling the occurrence of this organism in raw product. Therefore, product cooling or stabilization is a critical factor in preventing the multiplication of this organism.

Comment: One commenter suggested that FSIS allow 1.5 logs of multiplication of *Clostridium perfringens.* The commenter stated he had data to support this level of reduction, but has yet to provide it. This commenter also recommended that the Agency convene a technical conference of appropriate scientists to develop a consensus on the stabilization performance standard and have the performance standard addressed by the NACMCF.

Another commenter suggested allowing 10 generations (approximately 3 logs) of *Clostridium perfringens* multiplication as the performance standard. This commenter's reason for permitting a 3 log increase is based on an assumed surviving spore population, after cooking, of 10 *Clostridium perfringens* per gram, and the commenter's assumption that 10^4 per gram is generally considered to be the upper acceptable limit for finished product.

Response: The performance standard provides that any more than 1-$\log_{10}$ multiplication of *Clostridium perfringens* will adulterate the product for the following reasons: First, viable counts of 10^5 or greater of *Clostridium perfringens*/gram have been recommended by the U.S. Centers for Disease Control and Prevention as one criteria for incriminating *Clostridium perfringens* as the causative agent of food borne illness in finished product[8] (although foods responsible for *Clostridium perfringens* outbreaks usually contain at least 10^6 vegetative *Clostridium perfringens* cells per gram[9,10]). Second, in the FSIS ground product surveys, some samples were found to contain more than 1000 *Clostridium perfringens*/gram (the level on one ground chicken sample was 11,000 CFU/gram). Thus, there is some probability that greater than 10^4 *Clostridium perfringens*/gram can occur in raw product on rare occasions. It is a conservative assumption (with respect to public health) that the great majority of *Clostridium perfringens* in the raw product are spores. Heating activates the spores which during the cooling become vegetative cells that can multiply to hazardous levels. Given that there can be more than 10^4 *Clostridium perfringens* (spores) per gram on raw product, it is possible that there could be as many as 10^4 vegetative *Clostridium perfringens*/gram of these surviving, after cooking, in the product.[11] Therefore, the Agency, using the aforementioned CDC criteria as an upper limit that should not be exceeded, determined that a limit of no more than 1 $\log_{10}$ growth of *Clostridium perfringens* is appropriate to ensure that there would be no more than 10^5 *Clostridium perfringens* per gram on the finished product after cooling.

Finally, although the Agency has not convened a technical conference to develop this performance standard, the Agency did informally discuss the standard with several experts in the field of clostridial research. These experts agreed that limiting relative growth of *Clostridium perfringens* to no more than 1-$\log_{10}$ would be reasonable with respect to product safety, albeit somewhat conservative.

Comment: Some commenters felt that there was little justification for including *Clostridium botulinum* as part of the performance standard. They maintained that it is unlikely to be present in meat and poultry with its sparse distribution (about 1/1000 gram) in raw meat; that the risk of *Clostridium botulinum* is low; limiting *Clostridium perfringens* would effectively limit growth of the other spore formers (e.g., *Clostridium botulinum* and *Bacillus cereus*), since *Clostridium perfringens* has a shorter generation time and

[8] Labbe, R. (1989) *Clostridium perfringens.* In M. Doyle (ed.), *Food borne Bacterial Pathogens,* Marcel Dekker, Inc., New York. pp. 210, 213.

[9] Hauschild, A. (1975) *Criteria and Procedures for Implicating Clostridium Perfringens in Food-borne Outbreaks.* Canadian Journal of Pubic Health. 66: 388–392.

[10] McClane, B.A. (1992) *Clostridium Perfringens Enterotoxin: Structure, Action, and Detection.* Journal of Food Safety. 12:237–252.

[11] For further detail refer to the ''Compliance Guidelines'' concerning stabilization performance attached to this document.

broader range of temperature growth; and, that the germination of *Clostridium botulinum* spores, per se, without multiplication, was not dangerous.

Response: The Agency is resolved to keep *Clostridium botulinum* in the performance standard because severe cooling deviations could potentially allow *Clostridium botulinum* multiplication resulting in toxin production. However, the term ''germination'' has been removed from the performance standard as suggested, since it is expected that processors could not completely prevent germination. While in recent years few, if any, cases of botulism have resulted from commercially produced fully cooked uncanned meat and poultry products, many food scientists feel that the risk has increased with the advent of vacuum-packaged products. While the risk still may remain low, the consequences of botulism are often catastrophic.

Although both *Clostridium perfringens* and *Clostridium botulinum* will remain in the performance standard, a process authority may choose to consider *Clostridium perfringens* as a reference organism to demonstrate that the performance standard was met. That is, if time, temperature, and intrinsic properties of the product have been shown to preclude over one log multiplication of *Clostridium perfringens*, then multiplication of *Clostridium botulinum*, which multiples much more slowly, would be unlikely to have occurred.

Comment: Some of the commenters strongly objected to proposed codification of cooling guidelines for cooked poultry products (FSIS Directive 7110.3, ''Time/Temperature Guidelines for Cooling Heated Products'') as safe harbors. One commenter agreed that the application of this Directive to partially cooked poultry breakfast strips may be acceptable, but felt that the proposal implies the Directive is applicable to all poultry products. For instance, the commenter claimed that the guidelines in Directive 7110.3 ''are not physically attainable'' for cooked turkey roasts and other similar large mass products because they were developed from data derived from 50 ml samples of ground chili-type product in polyethylene tubes. This commenter contended that the roast beef rules in 9 CFR 318.17 (h)(10) are more applicable to turkey roasts, but may not be applicable to all poultry products, hence this part of the safe harbor should be subjected to further scientific study. This commenter also stated that relative to cooling, it was imperative that the Agency clarify its intent with respect to poultry products. Finally, some commenters stated that the application of the cooling guidelines to partially cooked and char-marked meat patties was especially unwarranted, because these products pose no more hazard than other raw products.

Response: There has been no constraint against using the cooling requirements in the roast beef regulation for chilling whole poultry products. Further, there is no reason why any of the cooling safe harbors for fully cooked and partially cooked products could not be used across product categories (whole, ground or comminuted), regardless of the species of origin of the tissue. Research conducted by the Agricultural Research Service demonstrates that the cooling control points specified in the roast beef regulation could safely be applied to ground beef.[12] It must be understood that though these cooling guidelines and regulations were written at different times, effective use of any of them will satisfy the performance standard. Therefore, it is the intent of this rule that the cooling guidelines and regulations can freely be interchanged among product categories without requiring the approval of a processing authority.

The safe harbors for achieving the stabilization performance standards have withstood the test of time; no cases of food borne illness due to the clostridia when these times and temperatures are followed have been documented. Admittedly, the current safe harbors for cooling contain a margin of safety in meeting the performance standard. However, barring mechanical or electrical failure of equipment, the time/temperature combinations in the safe harbors for cooling are easily achieved.

Implicit and of paramount importance is that cooling be continuous between the stated temperature control points. Also important is that cooling between the temperatures of 130 °F and 80 °F, the range of most rapid *Clostridium* multiplication, be accomplished quickly, as suggested in Directive 7110.3. The upper limit for growth of *Clostridium perfringens* is about 125–126 °F.[13]

Finally, in response to the comment that stabilization performance standards for partially cooked poultry products are unwarranted, FSIS disagrees and the standards will be adopted as proposed. Partial cooking can allow heat shocking of clostridial spores, which can germinate during cooling and become vegetative cells that multiply. Therefore, the consumer potentially could receive a partially cooked product containing a high number of vegetative clostridial cells. If the consumer undercooked the product, there would be an increased risk that the number of vegetative clostridial cells would survive and increase to hazardous levels. Consequently, it is important that processors control clostridial growth as required by the performance standard.

Handling

Comment: There were a number of comments concerning the proposed provisions for sanitary handling. Many of the commenters insisted that this performance standard was unnecessary, being adequately covered by both the Agency requirement for Sanitation SOP's and GMP's that are already accepted by the industry. One stated that the requirement for Sanitation SOP's was in itself contrary to the principles of HACCP, and that the Agency should allow individual plants to determine necessary sanitation procedures. Nevertheless, this commenter stated they could support the requirement for Sanitation SOP's if it were not overlaid with this additional performance standard. This commenter also reminded the Agency of a phrase in the background to the final HACCP rule stating that current GMP's, already accepted by industry, encompass the proposed handling performance standards. Also, some commenters questioned the necessity of this performance standard for poultry, stating that handling requirements for poultry were based on GMP's.

Some of the commenters felt that the safe harbors for handling remained in the realm of command-and-control regulations, and contrary to HACCP principles, especially in regard to the stated specifications concerning the use of sanitizers and outer garments. One commenter suggested that the Agency should not prescribe how to reduce cross contamination. Instead the commenter suggested that the rule should have a performance standard stating that cross-contamination should be less than one pathogen per 100 grams of finished product.

Response: The Agency had many reservations concerning the addition of this performance standard, anticipating that it would be perceived as redundant and duplicative of other requirements. However, the Agency was also

[12] Juneja, V.K., et al. (1994) ''Influence of Cooling Rate on Outgrowth of *Clostridium perfringens* Spores in Cooked Ground Beef.'' J. Food Prot. 57(12):1063–1067.

[13] Juneja, V.K., et al. 1996. ''Interactive Effects of Temperature, Initial pH, Sodium Chloride, and Sodium Pyrophosphate on the Growth Kinetics of *Clostridium perfringens*.'' J. Food Prot. 59(9):963–968.

concerned that handling GMP's, while widely practiced by industry, were not required by regulation. Further, though FSIS is now requiring establishments to develop and implement Sanitation SOP's, there is no specific requirement as to their level of detail, which will vary in accordance with the needs, requirements, and complexity of the specific plant and its operations. Therefore the Agency was concerned that handling might be inadequately addressed by some establishments.

Ultimately, in consideration of the numerous comments, the Agency decided that it is consistent with HACCP principles for establishments to be free to devise the specific actions, practices, and procedures necessary to ensure a safe final product. Also, the Agency agrees that at least general provisions for handling and sanitation are contained in the Sanitation SOP requirements, and it did not want to impose duplicative requirements that would be burdensome in most cases. Accordingly, all handling performance standards have been removed from the requirements finalized in this rule.

Process Authority

Comment: Commenters raised concerns about insufficient detail regarding the qualifications required of persons acting as process authorities. Also, two commenters were concerned that FSIS inspection personnel may not have the qualifications to evaluate the procedures recommended by the process authority.

Response: The Agency has defined ''process authority'' as a person or organization with expert knowledge in meat or poultry production, process control, and relevant regulations. The Agency has decided that further specifications regarding the qualifications of a process authority would limit the flexibility needed by industry to develop customized, effective processes and process controls. In regard to inspection personnel qualifications, FSIS does not intend for its inspectors to evaluate the process authority-approved procedures for efficacy. FSIS has, however, initiated an aggressive national training effort for all inspection personnel regarding their roles in verifying HACCP plans and plant performance.

Testing and Other Validation Activities

Comment: Several commenters felt that the validation requirements for processing schedules were too prescriptive and poorly defined in the rule, although somewhat better defined in the preamble. Some of the commenters maintained that the hold and test requirement would inhibit flexibility and be burdensome, costly, and contrary to the principles of HACCP. One commenter stated that it could result in false conclusions of product safety, because the process is designed to handle extremes greater than that which would be presented in everyday samples. One commenter, citing the alternatives the Agency previously presented for *E. coli* O157:H7 testing of dry and semi-dry sausages, stated that a flexible precedent was already set.

A few commenters stated that challenge studies could also be construed as another costly and inflexible requirement. They claimed that ultimately this requirement would not allow a processing authority to validate new or altered processing schedules by other means, such as material gleaned from the scientific literature, heat distribution or penetration studies, or any other available, scientifically supportable means to assure product safety. One commenter stated that this requirement would require validation studies for food borne pathogens that did not pose a relevant risk for the intended product. And, two commenters maintained that this requirement implies that the Agency expected challenge studies to be conducted in the establishment, before or even after product release. Such studies could irresponsibly expose equipment, product, and ultimately the consumer to food borne pathogens.

Response: The Agency agrees with the comment regarding the hold and test requirements and is removing this requirement from the rule. Otherwise, the Agency is adopting the validation requirements. FSIS intends for processing authorities to have the flexibility to validate new or altered processes by any reasonable and scientifically supportable means.

It was not the intent of FSIS to require challenge studies and the Agency does not expect such studies to be conducted in the plant. This would indeed risk equipment contamination, product contamination, plant workers, and ultimately the public health. Challenge studies, while often appropriate and definitive, should be conducted only in the laboratory under the auspices of a process authority. The Agency has modified the regulations to accommodate these concerns and clarify the intent relative to process validation.

Safe Harbors and Performance Standards

Comment: Many of the commenters fully supported the concept of establishing performance standards that allow flexibility in processing while retaining regulatory safe harbors for use by establishments that prefer to follow existing procedures already accepted by the Agency as providing adequate food safety. Some, however, argued that the proposed safe harbors are prescriptive, inflexible, and inconsistent with HACCP. One commenter supported performance standards, but felt that safe harbors were too reminiscent of the command-and-control mode of inspection.

Response: By proposing performance standards that could be met through adherence to the earlier regulations, FSIS intended to create regulatory safe harbors for establishments that wished to follow procedures already accepted by the Agency as providing adequate food safety. The Agency proposed to retain these safe harbors in the regulations as examples of how to produce meat and poultry products that meet the performance standards. FSIS believed that these examples would assist small or new establishments that do not have the resources to develop customized process schedules. FSIS acknowledged that the regulatory safe harbors contained many prescriptive requirements, but made clear they would be provided only as examples of how to meet the performance standards; they would not be requirements.

To alleviate concerns of commenters, FSIS will not retain the safe harbors in the regulations, but instead provide them as compliance guidelines. The safe harbor compliance guidelines for ready-to-eat cooked, roast, and corned beef products, fully and partially cooked meat patties and poultry products are attached to this rule as Appendices A and B (''Compliance Guidelines for Meeting Lethality Performance Standards for Ready-to-Eat Meat and Poultry Products'' and ''Compliance Guidelines for Cooling Heat-Treated Meat and Poultry Products (Stabilization)''). Also, the Agency is currently developing a process to ensure that the safe harbor guidelines will be readily available to all interested parties.

FSIS also had proposed to exempt establishments that followed the regulatory safe harbors from the proposed process schedule requirements. However, because FSIS is removing the safe harbors from the regulations and issuing them as guidelines, such an exemption is impossible; establishments cannot be exempted from a regulatory requirement based on compliance with a nonregulatory guideline.

Establishments choosing to follow the safe harbor guidelines may use those

guidelines as their process schedules. FSIS will consider such process schedules validated, since they will consist of processing methods already accepted by the Agency as effective. As proposed, therefore, establishments affected by this rule should not have to change their current processing practices.

Comment: One commenter suggested that it would be appropriate to replace safe harbors with Hazard Control Performance Standards that would prescribe specific numerical standards for reduction of pathogens on hands and food contact surfaces. Another recommended that the Agency codify only ''food safety objectives,'' and that neither performance standards nor safe harbors should be codified as they would inhibit flexibility and innovation.

Response: Promulgation of only quantifiable hazard control performance standards, such as determining microbial counts on food contact surfaces or fingertips, would require extensive resources to implement and monitor. The Agency has determined that this would be an unreasonable and unnecessary burden for industry, especially since other alternatives would be equally effective.

In regard to establishing only food safety objectives, FSIS has determined that clearly-defined performance standards and HACCP are both necessary for improving food safety. Performance standards and HACCP provide meat and poultry establishments with the incentive and flexibility to adopt innovative, science-based processing procedures and controls, ensure safety for consumers, and provide objective, measurable standards, compliance with which can be verified through Agency inspectional oversight.

Comment: Some commenters maintained that having safe harbors would discourage establishments from conducting hazard analyses and from taking responsibility for the safety of their processes for specific products.

Response: Compliance with the safe harbors will effectively exempt some establishments from developing process schedules prior to developing and implementing HACCP plans; establishments following safe harbor guidelines may use the guidelines as validated process schedules. However, all official establishments will be required to conduct hazard analyses as part of HACCP plan development regardless of whether they follow the safe harbor examples. Further, FSIS considers following a safe harbor example to be a legitimate way of taking responsibility for ensuring the safety of meat and poultry products. The safe harbors are examples of processing methods proven to ensure the production of safe meat and poultry products.

Comment: Commenters also expressed concerns that inspection personnel would be less willing and able to evaluate or accept alternatives to safe harbors.

Response: The Agency is providing training for all inspection personnel to assure a knowledgeable and capable work force that will be prepared to deal with questions concerning performance standards and safe harbors. A technical support center, staffed with highly experienced personnel to provide clarification and guidance to inspection personnel, has been established.

Recommended Amendments to Specific Safe Harbors

Comment: Several commenters submitted recommendations for revising the processing requirements in the safe harbors. For example, one commenter recommended that the time-temperature combinations in the table ''Permitted Heat-Processing Temperature/Time Combinations for Fully-Cooked Patties'' should be amended to include temperatures as low as 130°F to enable lower temperature heat treatment processes such as sous vide to be used.

Response: FSIS has revised the safe harbor guidelines for ready-to-eat cooked, roast, and corned beef products to include processes ensuring a 6.5 $\log_{10}$ reduction in *Salmonella,* as well as the 7-$\log_{10}$ reduction required by the previous regulations. Otherwise, unless safe harbor requirements are found to be insufficient for producing meat and poultry products meeting the performance standards, FSIS sees no need to revise these provisions. If an establishment wishes to manufacture meat or poultry products by means other than those contained in the safe harbors, it may do so, provided they comply with the applicable requirements (e.g., meeting performance standards, developing and validating a process schedule, or operating under HACCP).

In response to the suggestion that temperatures as low as 130 °F be allowed for processing ready-to-eat meat patties, the Agency will consider this comment as it reconsiders lethality requirements for ready-to-eat meat patties. In general, any time/temperature combination that will achieve the lethality performance standard would be acceptable. However, establishments employing processing methods other than those described in the safe harbors will be required to develop and implement process schedules or HACCP plans. FSIS does not plan to regularly amend the safe harbors to account for processing variations. The safe harbors are only examples of how an establishment can meet the performance standards.

Comment: One commenter argued that humidity is not a significant control factor in achieving lethality and, therefore, requirements regarding humidity should be removed from the safe harbors. The commenter claimed that there has been no link established between the failure to control humidity and the incidence of food borne disease.

Response: The Agency does not agree. In the late 1970's there were several food borne disease outbreaks caused by the consumption of ''rare'' roast beef. At the time of these outbreaks, there were no regulations specifying the minimum internal temperature and humidity requirements for the type of roasts involved in the outbreaks. Published articles have demonstrated that dry heat has a lower lethality than moist heat in killing *Salmonella*.[14,15] Blankenship [16] demonstrated that *Salmonella* survived on the surface of the roast even though an internal temperature of 147.5 °F was attained in a gas-fired oven with no control for humidity. Another researcher showed that dry oven temperatures below 250 °F permitted *Salmonella* survival on the surface, but that when steam was injected for 30 minutes into a 175 °F oven, *Salmonella* was eliminated on the surface of the roasts cooked to an internal temperature of 130 °F or higher.[17]

Until 1977, the outbreaks of salmonellosis attributable to commercially produced precooked roast beef occurred frequently, particularly in the northeast.[18] In 1977 and 1978, cooking requirements for cooked beef and roast beef involving time, temperature, and in some cases, relative humidity were established. Following the implementation of the cooking requirements, one outbreak of

[14] Blankenship, L.C. (1978) Survival of a *Salmonella typhimurium* experimental contaminant during cooking of beef roasts. Appl. Environ. Microbiol. 35:1160.

[15] Goodfellow, S.J., and Brown, W.L. (1978) Fate of *Salmonella* inoculated into beef for cooking. J. Food Protect. 41–598.

[16] Blankenship, L.C.

[17] Goodfellow, S.J., and Brown, W.L.

[18] Centers for Disease Control (1981) Multi state Outbreak of Salmonellosis Caused by Precooked Roast Beef. MMWR 30:391–2.

salmonellosis occurred in 1978 due to a deviation from the cooking requirements. No further outbreaks were reported until 1981. Investigation showed that the 1981 outbreaks of salmonellosis resulted from processing procedures unrelated to humidity control. The processors either did not use one of the prescribed cooking time/temperature combinations or failed to maintain good sanitary practices (e.g., failed to maintain adequate separation of raw and cooked product).[19]

Comment: One commenter suggested that FSIS have the same cooking standard for roasts weighing less than 10 pounds as for those weighing more than 10 pounds.

Response: FSIS does not agree. Research has been done to determine the effect of product size on *Salmonella* survival on the surface of beef roasts. The results of the research showed that beef rounds of 10 pounds and larger can be dry roasted safely; beef rounds of 5 pounds or less cannot be safely dry roasted to the rare state (<135°F or 57.2 °C internal temperature).[20]

Disposition of Products Not Meeting Performance Standards

Comment: One commenter stated that the disposition of products not meeting the performance standards was not addressed in this rule. The commenter recommended that as deviations occur, the establishment should assess product safety as one activity of corrective action; and the establishment may seek the advice of a process authority in this regard. This commenter declared that under HACCP, the Agency role in assuring product safety is in verification.

In a comment related to disposition of product produced under extreme conditions, a commenter recommended that ''come-up time'' during the cooking process be addressed as a performance standard. He suggested that the performance standard be less than 10 generations of multiplication of *Clostridium perfringens* when heating product from 50 °F to over 130 °F.

Response: FSIS agrees that the proposal did not include provisions for determining the disposition of product that did not meet the performance standards. FSIS also agrees that under HACCP, it will be the establishment's responsibility to determine the disposition of product not meeting performance standards. The Agency realizes that the determination of disposition of such a product can often be a vexing problem. Most important may be the question of whether or not the product can be reprocessed to make it safe for consumption.

Heating deviations are generally related to the issue of ''come-up time.'' Computer modeling as a tool to address problems related to excessive time to temperature is somewhat problematic. One of the primary difficulties of modeling specific occurrences is that current programs only allow modeling under only unfluctuating temperature conditions. Currently, the Agency has been using the ARS Pathogen Modeling Program Version 4.0 to model growth conditions. Further discussion on ''come-up time'' is contained in the attached Compliance Guides.

With respect to addressing cooling deviations, the Agency has been using another program that estimates the relative growth of *Clostridium perfringens* and *Clostridium botulinum* to provide an initial rough assessment of the severity of a cooling deviation. In cooperation with ARS, efforts are underway to improve this program. In the future, the Agency would like to make this program available to the industry and will welcome comments towards further advancing its capabilities and usefulness.

Following an initial assessment, some establishments may want to sample product to determine whether or not the specific lot of finished product meets the performance standard for stabilization. Because of a lack of information concerning the distribution of *C. perfringens* in product, sampling may not be the best recourse for determining the disposition of product following cooling deviations. After obtaining the test results from the samples, the disposition of the product can be determined. There are three possibilities: the lot should be destroyed; recooking will render the product safe for consumption; or the lot is safe for consumption and no reprocessing is necessary.

Further guidance concerning cooling deviations is available in Appendix B, ''Compliance Guidelines for Cooling Heat-Treated Meat and Poultry Products (Stabilization).''

Other Issues

Comment: A commenter pointed out that *Staphylococcus aureus* was incorrectly identified as a spore former.

Response: FSIS has corrected this error in this document.

Comment: A commenter stated that the word ''cooked'' is inappropriately used throughout this document, arguing that ''pasteurized'' or ''fully pasteurized'' would be more correct, referring to the reduction of vegetative pathogens to a safe level.

Response: The word ''cooked'' is commonly used and understood; ''pasteurized'' or ''fully pasteurized'' would be confusing.

Comment: A commenter contended that the words ''stabilization'' and ''handling'' are unnecessary. The operator only need describe the process, steps, and then limits for process variables at each step to control hazards, minimizing risk.

Response: The term ''stabilization'' is useful in describing the performance standard established in this rulemaking and will be retained. The handling performance standard is not being finalized, so the term ''handling'' does not appear in these regulations.

Comment: A commenter stated that is not possible to prevent germination of spore-forming bacteria after cooking as indicated in the proposal; only multiplication can be controlled.

Response: FSIS agrees; the term ''germination'' has been removed from the stabilization performance standard.

Comment: One of the commenters applauded the Agency's recent efforts to extend food safety concerns to the restaurant and institutional settings, especially with regards to the shifting of resources outside the environment of meat and poultry establishments. This commenter also supported and applauded efforts toward broad application of FDA's Food Code in these areas.

Response: Harmonization of regulations and initiatives towards HACCP principles with those of FDA and other government bodies has been a worthwhile effort. Ultimately, State, local, and municipal authorities will be operating under harmonious principles. To this end, the Agency has also been involved in working through Association of Food and Drug Officials (AFDO) committees to encourage State adoption of acceptable uniform standards presented in the Food Code. In addition, FSIS has devoted resources to educating the public in food safety concerns. Today, it is important that consumers know how to safely store and prepare their food, and particularly important that they be aware of and follow good sanitary practices in the kitchen.

The Final Rule

FSIS is adopting the proposal as a final rule, with changes made in response to comments and noted above. In summary, the substantive changes are:

- The lethality performance standard for all of the ready-to-eat cooked beef,

[19] Houston, D.L. (1982) Production Requirements for Cooked Beef, Roast Beef, and Cooked Corned Beef. FR 47:31854.

[20] Goodfellow, S.J., and Brown, W.L. (1978) Fate of *Salmonella* Inoculated Into Beef for Cooking. J. Food Protect. 41:598.

roast beef, and cooked corned beef, is a 6.5 $\log_{10}$ reduction in *Salmonella.*

- The lethality performance standard proposed for ready-to-eat, uncured meat patties is not being finalized. A revised lethality standard will be proposed in an upcoming **Federal Register** publication. (Section 318.23 is being amended in this document, however, by replacing cooling requirements with stabilization performance standards for fully-cooked, partially-cooked, and char-marked meat patties.)
- The lethality performance standards now clarify establishment responsibility not only for reducing *Salmonella,* but also for the ''reduction of other pathogens and their toxins or toxic metabolites necessary to prevent adulteration,* * * throughout the product.''
- The lethality performance standards now explicitly provide for the optional use of a combination of controlled, intermediate steps to achieve the required lethality throughout ready-to-eat products.
- Establishments may produce ready-to-eat roast beef or poultry products using lethalities other than those prescribed in the regulations, as long as they demonstrate in a validated process schedule that the processes used achieve an equivalent probability that no viable *Salmonella* organisms remain in the finished product.
- The handling performance standards proposed for ready-to-eat cooked beef, roast beef, and cooked corned beef and for fully cooked meat patty and poultry products are not being finalized. The handling requirements for ready-to-eat, uncured meat patties are being removed from the regulations.
- Establishments will not be required to hold and test product.
- The safe harbors will not be retained in the regulations as proposed, but instead will be issued as compliance guidelines. Establishments following the safe harbor guidelines may use them as process schedules; FSIS will consider such process schedules already validated as being effective.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This rule allows meat and poultry establishments to employ processing methods other than those previously mandated, as long as those methods yield products that meet the performance standards set forth in this rule. However, FSIS also will allow establishments to meet the performance standards by following the previously mandated production methods, which are being disseminated in compliance guidelines by FSIS as ''safe harbors.'' Therefore, establishments can choose to continue using their current methods of processing and probably incur no new expenses (or savings or income) as a result of this rule.

As explained above, the safe harbor compliance guidelines for fully cooked poultry contain chilling requirements currently contained in FSIS Directive 7110.3, since previously there were no regulatory chilling requirements for the poultry products covered under § 381.150. FSIS has determined, however, that all establishments producing cooked poultry products are meeting the chilling requirements in FSIS Directive 7110.3. FSIS anticipates, therefore, that establishments choosing the safe harbor guidelines for producing fully cooked poultry would experience no economic effect, positive or negative.

The rule will have a favorable economic impact on all establishments, regardless of size. When an establishment voluntarily elects to use a processing method other than one of those contained in the safe harbors, it is likely that it expects to receive increased revenues, greater than the cost of implementing and validating the processing method, as a result. Also, changes made in response to comments received on the proposed rule have reduced costs of adopting alternative processing methods, providing even greater incentive for innovation. The increased flexibility to innovate allowed by the rule will encourage competition, which is a benefit to consumers.

It is difficult to quantify the potential benefits of this rule since it is not possible to predict what effect innovations will have on revenues to the establishments or on benefits to consumers. Under the previous regulations, FSIS required that ready-to-eat poultry products reach specific, minimum internal temperatures before being removed from a cooking medium. The products lose water during cooking at these temperatures and consequently, establishments must add water and other ingredients both to make the products palatable and to restore lost yield. FSIS anticipates that most establishments initially taking advantage of the proposed performance standards would develop customized process schedules for ready-to-eat poultry products that minimize lost yield.

As an alternative to this rulemaking, FSIS considered merely expanding the list of time/temperature combinations previously allowed for processing ready-to-eat meat and poultry products, but otherwise maintaining the detailed processing requirements. While this option would have expanded flexibility in regard to heat treatment, establishments still would have been constrained by the remaining prescriptive processing requirements, which are inconsistent with the principles of HACCP and can impede innovation. FSIS, therefore, has chosen an option it believes will both maximize flexibility and encourage innovation: establishments may employ innovative or unique processing procedures customized to the nature and volume of their production, provided they meet the designated performance standards for pathogen reduction.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking or packaging requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States.

This rule is not intended to have retroactive effect.

Administrative proceedings will not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR §§ 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or the PPIA.

Paperwork Requirements

In the proposal preceding this final rule, FSIS proposed ''hold and test'' requirements for treated product and a handling performance standard, both of which would account for some of the estimated paperwork burden. In response to comments requesting that FSIS allow establishments more flexibility in meeting the proposed

performance standards, FSIS decided not to make final the ''hold and test'' and handling requirements. Therefore, the paperwork burden is decreased, though not significantly. FSIS has not adjusted the estimated paperwork burden. The paperwork and recordkeeping requirements in this final rule are approved under OMB control number 0583–0109.

List of Subjects

9 CFR Part 301

Meat inspection.

9 CFR Part 317

Food labeling.

9 CFR Part 318

Meat inspection, Reporting and recordkeeping requirements.

9 CFR Part 320

Meat inspection, Reporting and recordkeeping requirements.

9 CFR Part 381

Poultry and poultry products inspection, Reporting and recordkeeping requirements.

Accordingly, title 9, chapter III, of the Code of Federal Regulations is amended as follows:

PART 301—DEFINITIONS

1. The authority citation for part 301 is revised to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 301.2 is amended by removing the paragraph designations (a) through (yyy) and adding, in alphabetical order, new definitions for ''Process authority'' and ''Process schedule,'' to read as follows:

§ 301.2 Definitions.

* * * * *

Process authority. A person or organization with expert knowledge in meat production process control and relevant regulations. This definition does not apply to subpart G of part 318.

Process schedule. A written description of processing procedures, consisting of any number of specific, sequential operations directly under the control of the establishment employed in the manufacture of a specific product, including the control, monitoring, verification, validation, and corrective action activities associated with production. This definition does not apply to subpart G of part 318.

* * * * *

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

3. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

4. In § 317.2, paragraph (l) introductory text is revised to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(l) Safe handling instructions shall be provided for: All meat and meat products of cattle, swine, sheep, goat, horse, other equine that do not meet the requirements contained in § 318.17, or that have not undergone other processing that would render them ready-to-eat; and all comminuted meat patties not heat processed in a manner that conforms to the time and temperature combinations in the Table for Permitted Heat-Processing Temperature/Time Combinations For Fully-Cooked Patties in § 318.23, except as exempted under paragraph (l)(4) of this section.

* * * * *

5. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 138f, 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

6. Section 318.17 is revised to read as follows:

§ 318.17 Requirements for the production of cooked beef, roast beef, and cooked corned beef products.

(a) Cooked beef, roast beef, and cooked corned beef products must be produced using processes ensuring that the products meet the following performance standards:

(1) *Lethality.* A 6.5-$\log_{10}$ reduction of *Salmonella* or an alternative lethality that achieves an equivalent probability that no viable *Salmonella* organisms remain in the finished product, as well as the reduction of other pathogens and their toxins or toxic metabolites necessary to prevent adulteration, must be demonstrated to be achieved throughout the product. The lethality process must include a cooking step. Controlled intermediate step(s) applied to raw product may form part of the basis for the equivalency.

(2) *Stabilization.* There can be no multiplication of toxigenic microorganisms such as *Clostridium botulinum*, and no more than 1-$\log_{10}$ multiplication of *Clostridium perfringens* within the product.

(b) For each product produced using a process other than one conducted in accordance with the Hazard Analysis and Critical Control Point (HACCP) system requirements in part 417 of this chapter, an establishment must develop and have on file and available to FSIS, a process schedule, as defined in § 301.2 of this chapter. Each process schedule must be approved in writing by a process authority for safety and efficacy in meeting the performance standards established for the product in question. A process authority must have access to the establishment in order to evaluate and approve the safety and efficacy of each process schedule.

(c) Under the auspices of a processing authority, an establishment must validate new or altered process schedules by scientifically supportable means, such as information gleaned from the literature or by challenge studies conducted outside the plant.

7. Section 318.23 is revised to read as follows:

§ 318.23 Heat-processing and stabilization requirements for uncured meat patties.

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Patty.* A shaped and formed, comminuted, flattened cake of meat food product.

(2) *Comminuted.* A processing term describing the reduction in size of pieces of meat, including chopping, flaking, grinding, or mincing, but not including chunking or sectioning.

(3) *Partially-cooked patties.* Meat patties that have been heat processed for less time or using lower internal temperatures than are prescribed by paragraph (b)(1) of this section.

(4) *Char-marked patties.* Meat patties that have been marked by a heat source and that have been heat processed for less time or using lower internal temperatures than are prescribed by paragraph (b)(1) of this section.

(b) *Heat-processing procedures for fully-cooked patties.* (1) Official establishments which manufacture fully-cooked patties shall use one of the following heat-processing procedures:

PERMITTED HEAT-PROCESSING TEMPERATURE/TIME COMBINATIONS FOR FULLY-COOKED PATTIES

Minimum internal temperature at the center of each patty (Degrees)		Minimum holding time after required internal temperature is reached (Time)	
Fahrenheit	Or centigrade	Minutes	Or seconds
151	66.1	.68	41
152	66.7	.54	32
153	67.2	.43	26
154	67.8	.34	20
155	68.3	.27	16
156	68.9	.22	13
157 (and up)	69.4 (and up)	.17	10

(2) The official establishment shall measure the holding time and temperature of at least one fully-cooked patty from each production line each hour of production to assure control of the heat process. The temperature measuring device shall be accurate within 1 degree F.

(3) Requirements for handling heating deviations. (i) If for any reason a heating deviation has occurred, the official establishment shall investigate and identify the cause; take steps to assure that the deviation will not recur; and place on file in the official establishment, available to any duly authorized FSIS program employee, a report of the investigation, the cause of the deviation, and the steps taken to prevent recurrence.

(ii) In addition, in the case of a heating deviation, the official establishment may reprocess the affected product, using one of the methods in paragraph (b)(1) in this section; use the affected product as an ingredient in another product processed to one of the temperature and time combinations in paragraph (b)(1) in this section, provided this does not violate the final product's standard of composition, upset the order of predominance of ingredients, or perceptibly affect the normal product characteristics; or relabel the affected product as a partially-cooked patty product, if it meets the stabilization requirements in paragraph (c) of this section.

(c) *Stabilization.* (1) Fully cooked, partially cooked, and char-marked meat patties must be produced using processes ensuring no multiplication of toxigenic microorganisms such as *Clostridium botulinum,* and no more than a 1 $\log_{10}$ multiplication of *Clostridium perfringens,* within the product.

(2) For each meat patty product produced using a stabilization process other than one conducted in accordance with the Hazard Analysis and Critical Control Point (HACCP) system requirements in part 417 of this chapter, an establishment must develop and have on file, available to FSIS, a process schedule, as defined in § 301.2 of this chapter. Each process schedule must be approved in writing by a process authority for safety and efficacy in meeting the performance standards established for the product in question. A process authority must have access to an establishment in order to evaluate and approve the safety and efficacy of each process schedule.

(3) Under the auspices of a processing authority, an establishment must validate new or altered process schedules by scientifically supportable means, such as information gleaned from the literature or by challenge studies conducted outside the plant.

(4) Partially cooked patties must bear the labeling statement ''Partially cooked: For Safety Cook Until Well Done (Internal Meat Temperature 160 degrees F.).'' The labeling statement must be adjacent to the product name, and prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(5) Char-marked patties must bear the labeling statement ''Uncooked, Char-marked: For Safety, Cook Until Well Done (Internal Meat Temperature 160 degrees F.).'' The labeling statement shall be adjacent to the product name, at least one-half the size of the largest letter in the product name, and prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

PART 320—RECORDS, REGISTRATION, AND REPORTS

8. The authority citation for part 320 is revised to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 320.1 [Amended]

9. In § 320.1, paragraph (b)(4) is removed and reserved.

320.4 [Amended]

10. In § 320.4, the first sentence is amended by adding the phrase ''process schedules,'' immediately before the phrase ''facilities and inventory.''

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

11. The authority citation for part 381 is revised to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

12. Section 381.1 is amended by removing the paragraph designations (b)(1) through (62) and adding, in alphabetical order, within paragraph (b), new definitions for ''Process authority'' and ''Process schedule,'' to read as follows:

381.1 Definitions.

* * * * *

(b) * * *

Process authority. A person or organization with expert knowledge in poultry production process control and relevant regulations.

Process schedule. A written description of processing procedures, consisting of any number of specific, distinct, and ordered operations directly under control of the establishment employed in the manufacture of a specific product, including the control, monitoring, verification, validation, and corrective action activities associated with production.

* * * * *

§ 381.125 [Amended]

13. In § 381.125, the introductory text of paragraph (b) is amended by removing the word ''heat''; by removing the phrase ''§ 381.150(b)'' and by adding the phrase ''§ 381.150(a)'' in its place; and by removing the word ''further''.

14. Section 381.150 is revised to read as follows:

§ 381.150 Requirements for the production of fully cooked poultry products and partially cooked poultry breakfast strips.

(a) Fully cooked poultry products must be produced using processes ensuring that the products meet the following performance standards:

(1) *Lethality.* A 7-$\log_{10}$ reduction of *Salmonella* or an alternative lethality that achieves an equivalent probability that no viable *Salmonella* organisms remain in the finished product, as well as the reduction of other pathogens and their toxins or toxic metabolites necessary to prevent adulteration, must be demonstrated to be achieved throughout the product. The lethality process must include a cooking step. Controlled intermediate step(s) applied to raw product may form part of the basis for the equivalency.

(2) *Stabilization.* There can be no multiplication of toxigenic microorganisms such as *Clostridium botulinum*, and no more than a 1 $\log_{10}$ multiplication of *Clostridium perfringens* within the product.

(b) Partially cooked poultry breakfast strips must be produced using processes ensuring that the products meet the performance standard listed in paragraph (a)(2) of this section. Labeling for these products must comply with § 381.125. In addition, the statement ''Partially Cooked: For Safety, Cook Until Well Done'' must appear on the principal display panel in letters no smaller than ½ the size of the largest letter in the product name. Detailed cooking instructions shall be provided on the immediate container of the products.

(c) For each product produced using a process other than one conducted in accordance with the Hazard Analysis and Critical Control Point (HACCP) system requirements in part 417 of this chapter, an establishment must develop and have on file, available to FSIS, a process schedule, as defined in § 381.1(b). Each process schedule must be approved in writing by a process authority for safety and efficacy in meeting the performance standards established for the product in question. A process authority must have access to an establishment in order to evaluate and approve the safety and efficacy of each process schedule.

(d) Under the auspices of a processing authority, an establishment must validate new or altered process schedules by scientifically supportable means, such as information gleaned from the literature or by challenge studies conducted outside the plant.

Done in Washington, DC: December 29, 1998.

Thomas J. Billy,

Administrator, Food Safety Inspection Service.

The following are appendices to the preamble of the Final Rule.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Compliance Guidelines for Meeting Lethality Performance Standards for Certain Meat and Poultry Products

Introduction

Establishments producing ready-to-eat roast beef, cooked beef and corned beef products and certain ready-to-eat poultry products are required by FSIS to meet the lethality performance standards for the reduction of *Salmonella* contained in §§ 318.17(a)(1) and 381.150(a)(1) of the meat and poultry inspection regulations. Further, FSIS requires meat and poultry establishments, if they are not operating under a HACCP plan, to demonstrate how their processes meet these lethality performance standards within a written process schedule validated for efficacy by a process authority (§§ 318.17(2)(b)and (c) and 381.150 (2)(c) and (d)).

To assist establishments in meeting the lethality requirements, FSIS is issuing these compliance guidelines, which are based upon the time/temperature requirements contained in previous regulations. Establishments may choose to employ these guidelines as their process schedules. FSIS considers these guidelines, if followed precisely, to be validated process schedules, since they contain processing methods already accepted by the Agency as effective.

Also within these guidelines, FSIS has provided discussion regarding disposition of product following heating deviations and advice for the development of customized procedures for meeting the lethality performance standards.

Guidelines for Cooked Beef, Roast Beef, and Cooked Corned Beef

1. Cooked beef and roast beef, including sectioned and formed roasts, chunked and formed roasts, and cooked corned beef can be prepared using one of the following time and temperature combinations to meet either a 6.5-$\log_{10}$ or 7-$\log_{10}$ reduction of *Salmonella.* The stated temperature is the minimum that must be achieved and maintained in all parts of each piece of meat for at least the stated time.

Minimum internal temperature		Minimum processing time in minutes or seconds after minimum temperature is reached	
Degrees fahrenheit	Degrees centigrade	6.5-$\log_{10}$ lethality	7-$\log_{10}$ lethality
130	54.4	112 min	121 min.
131	55.0	89 min	97 min.
132	55.6	71 min	77 min.
133	56.1	56 min	62 min.
134	56.7	45 min	47 min.
135	57.2	36 min	37 min.
136	57.8	28 min	32 min.
137	58.4	23 min	24 min.
138	58.9	18 min	19 min.
139	59.5	15 min	15 min.
140	60.0	12 min	12 min.
141	60.6	9 min	10 min.
142	61.1	8 min	8 min.
143	61.7	6 min	6 min.
144	62.2	5 min	5 min.
145	62.8	4 min	4 min.*
146	63.3	169 sec	182 sec.

Minimum internal temperature		Minimum processing time in minutes or seconds after minimum temperature is reached	
Degrees fahrenheit	Degrees centigrade	6.5-log_{10} lethality	7-log_{10} lethality
147	63.9	134 sec	144 sec.
148	64.4	107 sec	115 sec.
149	65.0	85 sec	91 sec.
150	65.6	67 sec	72 sec.
151	66.1	54 sec	58 sec.
152	66.7	43 sec	46 sec.
153	67.2	34 sec	37 sec.
154	67.8	27 sec	29 sec.
155	68.3	22 sec	23 sec.
156	68.9	17 sec	19 sec.
157	69.4	14 sec	15 sec.
158	70.0	11 sec	12 sec.
159	70.6	10 sec	10 sec.
160	71.1	10 sec	10 sec.

*Past regulations have listed the minimum processing time for roast beef cooked to 145° F as ''Instantly.'' However, due to their large size, most of these roasts dwell at 145° F, or even at higher temperatures, for at least 4 minutes after the minimum internal temperature is reached.

2. Cooked beef, including sectioned and formed roasts and chunked and formed roasts, and cooked corned beef should be moist cooked throughout the process or, in the case of roast beef or corned beef to be roasted, cooked as in paragraph (3) of this compliance guide. The moist cooking may be accomplished by placing the meat in a sealed, moisture impermeable bag, removing the excess air, and cooking; by completely immersing the meat, unbagged in water throughout the entire cooking process; or by using a sealed oven or steam injection to raise the relative humidity above 90 percent throughout the cooking process.

3. Roast beef or corned beef to be roasted can be cooked by one of the following methods:

- Heating roasts of 10 pounds or more in an oven maintained at 250 °F (121 °C) or higher throughout a process achieving one of the time/temperature combinations in (1) above;
- Heating roasts of any size to a minimum internal temperature of 145 °F (62.8 °C) in an oven maintained at any temperature if the relative humidity of the oven is maintained either by continuously introducing steam for 50 percent of the cooking time or by use of a sealed oven for over 50 percent of the cooking time, or if the relative humidity of the oven is maintained at 90 percent or above for at least 25 percent of the total cooking time, but in no case less than 1 hour; or
- Heating roasts of any size in an oven maintained at any temperature that will satisfy the internal temperature and time combinations of the above chart of this compliance guide if the relative humidity of the oven is maintained at 90 percent or above for at least 25 percent of the total cooking time, but in no case less than 1 hour. The relative humidity may be achieved by use of steam injection or sealed ovens capable of producing and maintaining the required relative humidity.

4. Establishments producing cooked beef, roast beef, or cooked corned beef should have sufficient monitoring equipment, including recording devices, to assure that the time (accuracy assured within 1 minute), the temperature (accuracy assured within 1 °F), and relative humidity (accuracy assured within 5 percent) limits of these processes are being met. Data from the recording devices should be made available to FSIS program employees upon request.

Guidelines for Cooked Poultry Rolls and Other Cooked Poultry Products

1. Cooked poultry rolls and other cooked poultry products should reach an internal temperature of at least 160 °F prior to being removed from the cooking medium, except that cured and smoked poultry rolls and other cured and smoked poultry should reach an internal temperature of at least 155 °F prior to being removed from the cooking medium. Cooked ready-to-eat product to which heat will be applied incidental to a subsequent processing procedure may be removed from the media for such processing provided that it is immediately fully cooked to the 160 °F internal temperature.

2. Establishments producing cooked poultry rolls and other cooked poultry products should have sufficient monitoring equipment, including recording devices, to assure that the temperature (accuracy assured within 1 °F) limits of these processes are being met. Data from the recording devices should be made available to FSIS program employees upon request.

Discussion

Heating Deviations and Slow Come Up Time

Determining the appropriate disposition of products following heating deviations can be even more difficult than determining the disposition of product after a cooling deviation. Heating deviations, which most often involve slow come-up time or an inordinate dwell time within the optimum temperature range for microorganism growth, can foster the multiplication of many pathogens. This multiplication sometimes can be so prodigious that even recooking may be ineffective in rendering the product safe. Also, certain toxigenic bacteria can release toxins into the product. Some of these toxins, such as those of *Staphylococcus aureus,* are extremely heat stable and are not inactivated by normal recooking temperatures.

Further, the sampling of product following a heating deviation may not yield sufficient information to determine the safety of the product in question. Heating deviations can favor the multiplication of many types of bacteria. It would be difficult and expensive to sample for all of them.

Depending on the circumstances, establishments may want to use computer modeling to estimate the relative multiplication of bacteria. For example, in a past incident involving an extreme heating deviation, product was put in an oven in which the temperature was inadvertently set to 95°F for about 12 hours. Computer modeling was easily applied in this case because much of the dwell time was at one temperature. The Agency determined that within a 6 hour time frame (with other growth conditions assumed to be favorable), the relative multiplication of many pathogens of concern could have exceeded five logs. Clearly the product could not be salvaged by reprocessing and was therefore destroyed.

Under changing conditions of temperature, however, computer modeling becomes more difficult. One approach is to average lag/log times over small increments such as 5° and add these times to get an approximation of possible total relative growth over a larger increment of time. Establishments must keep in mind that the population of bacteria before processing is generally unknown and that assumptions in the high range often are used as input parameters in the modeling.

Establishments should ultimately rely upon the expertise of a processing authority to determine the severity of heating deviations and subsequent appropriate disposition of the product in question. Dwell times of greater than 6 hours in the 50°F to 130°F range should be viewed as especially hazardous, as this temperature range can foster substantial growth of many pathogens of concern. And, a knowledge of the specific product and factors that would favor or

inhibit the growth of various bacteria is essential.

Computer Modeling Program Availability

The Microbial Food Safety Research Unit of the Eastern Regional Research Center, USDA Agriculture Research Service, has developed a bacterial pathogen modeling program. Entitled ''Pathogen Modeling Program-Version 5.1 for Windows,'' it is available on the Internet from http://www.arserrc.gov. Other programs may be available commercially.

Customized Processes

Although compliance with these guidelines will yield product that meets the lethality performance standards, some establishments may want to develop customized processing procedures that meet the codified lethality performance standards: 6.5 $_{10}$ log of *Salmonella* in ready-to-eat beef products and 7 $\log_{10}$ in ready-to-eat poultry products. Establishments also may want to develop and implement processes using alternative lethalities. Keep in mind, however, that all processes also must achieve, throughout the product, an appropriate reduction of other pathogens of concern and their toxins or toxic metabolites.

Establishments or their process authorities may develop customized procedures or alternative lethalities that meet the performance standards by using information obtained from the literature and/or by comparing their methods with established processes. However, statistical calculations on results obtained from sampling alone are not sufficient to demonstrate that product satisfies reduced initial product conditions or that product meets the performance standards. Rather, the demonstration should be based on scientific rationale, supported by experimental data.

One of the most definitive tools at the disposal of an establishment or processing authority is the challenge study. Although challenge studies must be conducted in the laboratory rather than the establishment, they should be designed and conducted to accurately simulate the commercial process. Challenge studies should be undertaken by individuals who have a thorough knowledge of laboratory methods used in salmonellae research. A cocktail of various serotypes of *Salmonella* should be used in an inoculated pack study to demonstrate that the lethality performance standard is met. Relatively heat resistant pathogenic strains should be included in the cocktail to develop a worst case. The serotypes/strains selected should be among those that have been historically implicated in an appreciable number of outbreaks.

Appendix B—Compliance Guidelines for Cooling Heat-Treated Meat and Poultry Products (Stabilization)

Introduction

Establishments producing ready-to-eat roast beef, cooked beef and corned beef products, fully cooked, partially cooked, and char-marked meat patties, and certain partially cooked and ready-to-eat poultry products are required by FSIS to meet the stabilization performance standards for preventing the growth of spore-forming bacteria (§§ 318.17(a)(2), 318.23(d)(1), and 381.150(a)(2), respectively). Further, FSIS requires meat and poultry establishments, if they are not operating under a HACCP plan, to demonstrate how their processes meet these stabilization performance standards within a written process schedule validated for efficacy by a process authority (§§ 318.17(b) and (c); 318.23(d)(2) and (3); and 381.150(c) and (d)).

To assist establishments in meeting the stabilization requirements, FSIS is issuing these compliance guidelines, which are based upon FSIS Directives and the product cooling requirements contained in previous regulations. Establishments may choose to employ these guidelines as their process schedules. FSIS considers these guidelines, if followed precisely, to be validated process schedules, since they contain processing methods already accepted by the Agency as effective.

Also within these guidelines, FSIS has provided discussion regarding disposition of product following cooling deviations and advice for the development of customized procedures for meeting the stabilization performance standards.

Stabilization Guidelines

It is very important that cooling be continuous through the given time/temperature control points. Excessive dwell time in the range of 130° to 80°F is especially hazardous, as this is the range of most rapid growth for the clostridia. Therefore cooling between these temperature control points should be as rapid as possible.

1. During cooling, the product's maximum internal temperature should not remain between 130 °F and 80 °F for more than 1.5 hours nor between 80 °F and 40 °F for more than 5 hours. This cooling rate can be applied universally to the products and is preferable to (2) below.

2. Product consisting of pieces of intact muscle, such as beef, turkey breast or pork loin, may be cooled as follows: Chilling should begin within 90 minutes after the cooking cycle is completed. All product should be chilled from 120°F (48°C) to 55°F (12.7°C) in no more than 6 hours. Chilling should then continue and the product not packed for shipment before it has reached 40°F (4.4°C)

This cooling guideline was derived from the former (''Roast Beef Regulation'', 9 CFR 318.17(h)(10)), which originally applied to cooked beef, cooked corned beef, and cooked roast beef. However, if this cooling rate is used as a guideline it remains important that cooling be rapid between 130°F and 80°F.

Discussion

Cooling Deviations

In spite of the best efforts of an establishment to maintain process control, cooling deviations will occasionally occur. Power failures or breakdowns of refrigeration equipment cause situations that cannot always be anticipated. However, it is important that the establishment plan how to cope with such eventualities before they occur.

The recommended time/temperature combinations in these guidelines incorporate a small safety margin. Therefore, an occasional small lapse in and of itself may not cause a problem in every instance. If the cause of a small cooling deviation is not traced and corrected when first noticed, however, the problem will likely recur and possibly become more frequent and more severe. The processor should consider an occasional small deviation an opportunity to find and correct a control problem. Of course, a large deviation or continual small ones will always constitute unacceptable risk.

After it is determined that a cooling deviation has occurred, the processor should:

1. Notify the inspector, the QC unit, and other concerned units, such as refrigeration maintenance and production.

2. Hold the involved product and determine the potential adulteration by bacteria, particularly clostridial pathogens. If adulteration is confirmed or appears to be likely, inform the inspector.

3. Postpone further product manufacturing using that chill facility until the processor has:

a. determined the cause of the deviation;

b. completed adjustments to assure that the deviation will not recur; and

c. informed the inspector and the production units of the determinations and adjustments and make any needed amendments in the written processing procedures.

Computer Modeling and Sampling

In the event that a cooling deviation does occur, the product may often be salvaged if the results of computer modeling and/or sampling can ensure product safety. Because of a lack of information concerning the distribution of *C. perfringens* in product, sampling may not be the best recourse for determining the disposition of product following cooling deviations. However, computer modeling can be a useful tool in assessing the severity of a cooling deviation. While computer modeling cannot provide an exact determination of the possible amount clostridial growth, it can provide a useful estimate.

A technical document (available from the FSIS Docket Room [1]) provides description of the calculations that are used to estimate relative growth.

With careful continuous monitoring of the heating and cooling time/temperature profile of each lot, there will always be many available data points, enhancing the accuracy of computer modeling. Conversely, when there are few documented time/temperature data points, the accuracy of the modeling decreases markedly. If time/temperature monitoring has not been conducted through the end point internal product temperatures of 40° F or less, sampling is not an option and the product should be destroyed.

Options after computer determination of cooling deviation severity

If computer modeling suggests that the cooling deviation would likely result in more than one log increase in *Clostridium perfringens*, without any multiplication

[1] FSIS Docket Room, U.S. Department of Agriculture, Room 102, Cotton Annex, 300 12th St. SW, Washington, DC 20250–3700.

(remains in lag phase) of *Clostridium botulinum,* then the establishment can choose to recook or sample the product.

Recook only when:

- All product was either immediately refrigerated after the deviation or can be immediately recooked after the deviation; and
- The recooking procedure can achieve a final internal product temperature of at least 149 °F (65 °C) for two minutes. Subsequent to recooking, the product must be cooled in strict conformance to existing guidelines. When the product is to be reworked with another raw product, the recooking procedure for the combined product must achieve a minimum internal temperature of 149 °F, to address the cooling deviation, and further to an increased time/temperature if necessary to be in accord with any other requirement relative to microbiological safety for the intended final product. Subsequent to recooking, the product must be cooled in strict conformance to existing guidelines.

Custom Stabilization Processes

While compliance with the guidelines above will yield product that meets the cooling performance standards, some establishments may want to develop customized stabilization procedures. Because customized process schedules must be validated by process authorities for efficacy, most establishments will probably rely upon processing authorities to develop such procedures, demonstrate their efficacy, and attest to their safety. Process authorities may obtain information from the literature, or likely compare peer reviewed methods in determining safe procedures that meet the performance standards.

Probably one of the most definitive tools at the disposal of the processing authority is the inoculated pack study. Such studies should, of course, be conducted only in the laboratory, not in the plant. Further, such studies should be undertaken by individuals who have a thorough knowledge of laboratory methods used in clostridial research. *Clostridium perfringens* can be used alone in an inoculated pack study to demonstrate that the cooling performance standard is met for both microorganisms, *Clostridium perfringens,* and *Clostridium botulinum.* This is because conditions of time/temperature that would limit the growth of *Clostridium perfringens* to one log or less would also prevent multiplication of *Clostridium botulinum,* which is much slower. A cocktail of various strains of *Clostridium perfringens* spores is often used for this purpose. Relatively ''fast'' toxigenic strains should be used to develop a worst case. However, the strains selected should be among those that have been historically implicated in an appreciable number of outbreaks, especially in products similar to those being prepared in the establishment.

[FR Doc. 99–32 Filed 1–5–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–75–AD; Amendment 39–10968; AD 99–01–01]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80C2 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 General Electric Company CF6–80C2 series turbofan engines. This action requires a one-time visual inspection to ensure the correct accessory gearbox (AGB) idler adapter inserts are installed, and, if necessary, removal of AGB idler adapters with the improper inserts. This amendment is prompted by a report of a failure of a fuel tube flange connection due to improper AGB idler adapter inserts that resulted in a high pressure fuel leak and engine fire. The actions specified in this AD are intended to identify and remove AGB idler adapters with improper inserts, which can result in an engine fire and damage to the aircraft.

DATES: Effective January 21, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 21, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 8, 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–75–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 General Electric Aircraft Engines, c/o Commercial Technical Publications, 1 Neumann Way, Rm. 230, Cincinnati, OH 45215–1988; telephone (513) 552–2005, fax (513) 552–2816. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received a report of an engine fire on an Airbus A300 aircraft with General Electric Company (GE) Model CF6–80C2A5 turbofan engines installed. The investigation into the cause of the fire identified a high pressure fuel leak at the fuel cross-over tube to accessory gearbox (AGB) idler adapter flange interface. The fuel leak occurred due to shearing of the idler adapter threads by the threaded inserts, allowing the inserts to pull out. This was attributed to incorrect Service Bulletin (SB) instructions which created a situation where a repair station installed improper inserts into the AGB idler adapter housing at a previous maintenance shop visit.

The maintenance on the idler adapter was performed using GE SB 72–743, dated August 25, 1994, that provided instructions for AGB idler adapter rework on P/N 9395M78G06 adapters to improve the reliability and correct a fuel leak problem that had been identified on engines in revenue service. Idler adapters that were reworked were required to be remarked to P/N 9395M78G08. The instructions in SB 72–743 were incorrect and could have resulted in repair stations installing improper inserts into the idler adapter. GE issued supplemental instructions by way of Repair Document 032–273–S1, dated April 8, 1998, which addresses the problem in SB 72–743 and has proven to be an acceptable repair procedure. Furthermore, GE has published SB 72–743, Revision 1, dated November 2, 1998, to cancel the rework of any AGB idler adapter in accordance with the original issue of the SB. Presently, the total number of GE CF6–80C2 engines that have incorporated SB 72–743 and that could have improper inserts installed is not known. Therefore, work performed using SB 72–743 by any repair facility is suspect at this time. This condition, if not corrected, can result in shearing of the idler adapter threads and pullout of the threaded inserts from the AGB idler adapter which could result in a high pressure fuel leak leading to a potential engine fire and damage to the aircraft.

The FAA has reviewed and approved the technical contents of GE CF6–80C2 Alert Service Bulletins (ASB) 73–A283, Revision 2, dated November 18, 1998, Revision 1, dated October 30, 1998, and Original, dated September 18, 1998. These ASBs describe procedures for a one-time visual inspection on AGB idler adapters, P/N 9395M78G08, that had been reworked from a P/N 9395M78G06 configuration, to ensure the correct AGB idler adapter threaded inserts are installed, and if necessary, removal of AGB idler adapters with the improper inserts.

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 an engine fire and damage to the aircraft. This AD requires a one-time visual inspection to ensure the correct AGB idler adapter threaded inserts are installed, and if necessary, removal of the AGB idler adapters with the improper inserts. The actions are required to be accomplished in accordance with the ASB described previously.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–75–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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–01–01 General Electric Company: Amendment 39–10968 Docket 98-ANE–75-AD.

Applicability: General Electric Company (GE) CF6–80C2 series turbofan engines, with Accessory Gearbox (AGB) idler adapters, Part Number (P/N) 9395M78G08 that had been reworked from a P/N 9395M78G06 configuration using GE CF6–80C2 Service Bulletin (SB) 72–743, dated August 25, 1994, excluding those parts that were repaired by GE Repair Document 032–273–S1, dated April 8, 1998. These engines are installed on but not limited to Airbus A300 and A310 series, and Boeing 747, 767, and MD–11 aircraft.

Note 1: Methods of determining if a P/N 9395M78G08 AGB idler adapter had been reworked from a P/N 9395M78G06 configuration include a record search or a visual inspection of the AGB idler adapter part number in accordance with GE CF6–80C2 Alert Service Bulletin (ASB) 73–A283, Revision 2, dated November 18, 1998, Revision 1, dated October 30, 1998, or Original, dated September 18, 1998.

Note 2: 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an engine fuel leak, which can result in an engine fire and damage to the aircraft, accomplish the following:

(a) Within 10 days after the effective date of this AD:

(1) Perform a visual inspection of AGB idler adapter inserts in accordance with paragraph (2)(B) of the Accomplishment Instructions of GE CF6–80C2 ASB 73–A283, Revision 2, dated November 18, 1998, Revision 1, dated October 30, 1998, or Original, dated September 18, 1998.

(2) Remove the AGB adapter from service and replace with a serviceable part those adapters with one or more inserts that are flush with or extend past the back face of the casting.

(b) For the purpose of this AD, a serviceable part is defined as any AGB idler adapter, except for P/Ns 9395M78G08 that had been reworked from a P/N 9395M78G06 configuration having one or more inserts flush with or extended past the back face of the casting, as described in GE CF6–80–C2 ASB 73–A283, Revision 2, dated November

18, 1998, Revision 1, dated October 30, 1998, or Original, dated September 18, 1998.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(e) The actions required by this AD shall be done in accordance with the following GE CF6–80C2 ASBs:

Document No.	Pages	Revision	Date
73–A283	1	2	November 18, 1998.
	2–4	1	October 30, 1998.
	5	Original	September 18, 1998.
	6–27	1	October 30, 1998.
Total pages: 27.			
73–A283	1–4	1	October 30, 1998.
	5	Original	September 18, 1998.
	6–27	1	October 30, 1998.
Total pages: 27			
73–A283	1–9	Original	September 18, 1998.
Total pages: 9..			

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 General Electric Aircraft Engines, c/o Commercial Technical Publications, 1 Neumann Way, Rm. 230, Cincinnati, OH 45215–1988; telephone (513) 552–2005, fax (513) 552–2816. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 21, 1999.

Issued in Burlington, Massachusetts, on December 23, 1998.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–10 Filed 1–5–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–101–AD; Amendment 39–10977; AD 99–01–11]

RIN 2120–AA64

Airworthiness Directives; The Uninsured Relative Workshop Inc. Vector Parachute Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all The Uninsured Relative Workshop Inc. (doing business as and referred to herein as Relative Workshop) vector parachute systems that were manufactured between January 1, 1996, and September 10, 1998. This AD requires inspecting the amp fittings on the end of the breakaway housing for proper swaging, and re-swaging any incorrectly swaged fittings using the Nicopress® or Swage-It swaging tool. This AD is the result of a quality control problem on Relative Workshop vector parachute systems. In particular, a loose amp fitting was found on the breakaway housing during packing of one of these vector parachute systems. Further analysis reveals that the amp fittings on the end of the stainless steel breakaway housing were improperly swaged, and that this condition could exist on any of the 2,127 parachute systems that were manufactured during the above-referenced time period. The actions specified by this AD are intended to prevent the amp fittings from coming off the stainless steel breakaway housing, which could result in an unintentional partial breakaway of the main chute and interference with the deployment of the reserve parachute.

DATES: Effective January 29, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 29, 1999.

Comments for inclusion in the Rules Docket must be received on or before February 26, 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–101-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Relative Workshop, 1645 North Lexington Avenue, DeLand, Florida 32724; telephone: (904) 736–7589; facsimile: (904) 734–7537. 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–101-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: Donald J. Young, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6079; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received information regarding a quality control problem on Relative Workshop vector parachute systems. A loose amp fitting on the breakaway housing was found during packing of one of these Relative Workshop vector parachute systems. Further analysis reveals that the amp fittings on the end of the stainless steel breakaway housing were improperly swaged. This problem could exist on any of the 2,127 Relative Workshop vector parachute system that were manufactured between January 1, 1996, and September 10, 1998.

This condition, if not detected and corrected in a timely manner, could result in an unintentional partial breakaway of the main chute and

interference with deployment of the reserve parachute.

Relevant Service Information

Relative Workshop has issued Product Service Bulletin #091098–B, dated September 10, 1998, which specifies procedures for inspecting the amp fittings on the end of the breakaway housing for proper swaging, and re-swaging any incorrectly swaged fittings using the Nicopress® or Swage-It swaging tool.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incident described above, including the above-referenced service information, the FAA has determined that AD action should be taken to prevent the amp fittings from coming off the stainless steel breakaway housing, which could result in an unintentional partial breakaway of the main chute and interference with the deployment of the reserve parachute.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other The Uninsured Relative Workshop Inc. vector parachute systems that were manufactured between January 1, 1996, and September 10, 1998, the FAA is issuing an AD. This AD requires inspecting the amp fittings on the end of the breakaway housing for proper swaging, and re-swaging any incorrectly swaged fittings using the Nicopress® or Swage-It swaging tool. Accomplishment of the actions specified in this AD is required in accordance with Relative Workshop Product Service Bulletin #091098–B, dated September 10, 1998.

Determination of the Effective Date of the AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior 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 immediate flight safety and, thus, was not preceded by notice and opportunity to 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 above. 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–101–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 parachutes, 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 (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

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:

99–01–11 The Uninsured Relative Workshop Inc. (doing business as and referred to herein as Relative Workshop): Amendment 39–10977; Docket No. 98–CE–101–AD.

Applicability: All Vector II and III Parachute Systems That Were Manufactured Between January 1, 1996, and September 10, 1998.

Note 1: This AD applies to any parachute system referenced in the Applicability section of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For those parachute systems 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 prior to the next jump after the effective date of this AD, unless already accomplished.

To prevent the amp fittings from coming off the stainless steel breakaway housing, which could result in an unintentional partial breakaway of the main chute and interference with the deployment of the reserve parachute, accomplish the following:

(a) Inspect the amp fittings on the end of the breakaway housing for proper swaging, and re-swage any incorrectly swaged fittings using the Nicopress or Swage-It swaging tool. Accomplish these actions in accordance with Relative Workshop Product Service Bulletin #091098–B, dated September 10, 1998.

Note 2: The above-referenced service bulletin may be obtained from the manufacturer at the address in paragraph (d) of this AD or through the Internet at ''http://www.relativeworkshop.com/''.

(b) As of the effective date of this AD, no person shall put into service any of the affected parachute systems, unless the parachute system has been inspected and modified (as necessary), as specified in paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time 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. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(d) The inspection and modification required by this AD shall be done in accordance with Relative Workshop Product Service Bulletin #091098–B, dated September 10, 1998. 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 Relative Workshop, 1645 North Lexington Avenue, DeLand, Florida 32724. 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.

(e) This amendment becomes effective on January 29, 1999.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certfication Service.

[FR Doc. 99–142 Filed 1–5–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF–405; Ref. T.D. ATF–370; Notice Nos. 581, 749, 871]

RIN 1512–AB81

Johannisberg Riesling; Deferral of Compliance Date (98R–406P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule temporarily extends the applicability date with respect to the use of the term Johannisberg Riesling set forth in § 4.92(b) in T.D. ATF–370. The reason ATF is deferring this date is to allow for the sufficient review and evaluation of comments and any additional information received as a result of a notice of proposed rulemaking, Notice Number 871, proposing to extend the phase-out for the term Johannisberg Riesling as a designation for American wines for an additional seven years.

DATES: This document is effective January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Teri Byers, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927–8195, or e-mail: <thbyers@atfhq.atf.tres.gov>

SUPPLEMENTARY INFORMATION:

Background

Treasury Decision ATF–370, 61 FR 522, January 8, 1996, adopted a list of grape variety names which ATF has determined to be appropriate for use in designating American wines. The Treasury decision did not include Johannisberg Riesling in the list of prime names, either as a prime grape name or as a synonym. Johannisberg Riesling was instead listed as an alternative name in § 4.92 for use in advertising and labeling wines only until January 1, 1999, after which the required varietal designation for this wine would be Riesling or the synonym White Riesling.

Petition

ATF received a petition from the law firm of Buchman & O'Brien, filed on behalf of trade associations representing United States wineries. This petition requests ATF to extend the phase-out period for the term Johannisberg Riesling for an additional seven years to January 1, 2006. The petition asserts that this change would allow American wineries additional time to educate the consumers and provide additional time for wineries to change labels, packaging, and merchandising material for this wine. Based on the evidence presented in the petition as well as documented support and marketing information, ATF is issuing a notice of proposed rulemaking that solicits comments and requests further information to determine whether the phase-out date should be extended to January 1, 2006.

Because ATF needs time to receive and consider the evidence produced as a result of this notice, ATF is temporarily extending the current phase-out date provided by T.D. ATF–370 for the term Johannisberg Riesling from January 1, 1999, to September 30, 1999. ATF wishes to make it clear that neither the airing of this petition nor the issuance of this rule represents any change in ATF's position to eventually phase-out use of the term Johannisberg Riesling.

Notice and Public Procedure

Because this final rule merely postpones the compliance date with respect to the use of Johannisberg Riesling as an alternative name in T.D. ATF–370, and in view of the immediate need for time to solicit and review comments received as a result of the notice of proposed rulemaking discussed above, it is found to be impractical and contrary to the public interest to issue this rule with notice and public procedure under 5 U.S.C. 553(b), and with a 30-day delayed effective date under 5 U.S.C. 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

List of Subjects in 27 CFR Part 4

Advertising, consumer protection, Customs duties and inspections, Imports, Labeling, Packaging and containers, Wine.

Disclosure

Copies of the petition, the notices, the Treasury decision, and all comments are available for public inspection during normal business hours at: ATF Reading Room, Room 6300, 650 Massachusetts Avenue NW, Washington, DC.

Drafting Information

The principal author of this document is Ms. Teri Byers, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

Therefore, pursuant to the authority set forth in 27 U.S.C. 205(e), ATF is postponing the compliance date with respect to the use of the term Johannisberg Riesling set forth in 27 CFR 4.92(b) to September 30, 1999.

Signed: October 16, 1998.

John W. Magaw,

Director.

Approved: November 20, 1998.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 98–34843 Filed 12–31–98; 2:07 pm]

BILLING CODE 4810–31–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0117; FRL–6211–9]

California State Implementation Plan Revision; Interim Final Determination That State Has Corrected Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a notice of proposed rulemaking fully approving revisions to the California State Implementation Plan (SIP). The revisions concern a rule from the South Coast Air Quality Management District (SCAQMD): Rule 1150.1, Control of Gaseous Emissions from Municipal Solid Waste Landfills. Based on the proposed full approval, EPA is making an interim final determination by this action that the State has corrected the deficiencies for which sanctions clocks began on July 7, 1997. This action will defer the imposition of offsets and highway funding sanctions under the Clean Air Act, as amended in 1990 (CAA or the Act). Although the interim final action is effective upon publication, EPA is taking public comment on this action. If no comments are received on EPA's proposed approval of the State's submittal, EPA will finalize its determination that the State has corrected the deficiencies that started the sanctions clocks by publishing a final rulemaking in the **Federal Register**. If comments are received on EPA's proposed approval and this interim final action, EPA will publish a final action taking into consideration any comments received.

DATE: This determination is effective on January 6, 1999. Comments must be received by February 5, 1999.

ADDRESSES: Comments should be sent to Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

The state submittal and EPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address and at the following locations:

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1188.

SUPPLEMENTARY INFORMATION:

I. Background

On October 16, 1985 and February 10, 1986, the State submitted Rule 1150.1, Control of Gaseous Emissions from Active Landfills, and Rule 1150.2, Control of Gaseous Emissions from Inactive Landfills, respectively. EPA published a limited approval/limited disapproval for these rules in the **Federal Register** on May 6, 1997. 62 FR 24574. EPA's disapproval action started an 18-month clock for the imposition of one sanction (followed by a second sanction 6 months later) under section 179 of the Clean Air Act (Act) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP) under section 110(c) of the Act. The State subsequently submitted a revised rule [1] on June 23, 1998. The revised rule was adopted by SCAQMD on April 10, 1998. In the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State of California's submittal of SCAQMD's Rule 1150.1, Control of Gaseous Emissions from Municipal Solid Waste Landfills.

Based on the proposed approval set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this interim final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have not been corrected. Until EPA takes such action, the application of sanctions will continue to be deferred.

This action does not stop the sanctions clocks that started for this area on July 7, 1997. However, this action will defer the imposition of the offsets sanction and will defer the imposition of the highway sanction. See 59 FR 39832 (Aug. 4, 1994). If EPA publishes a final rulemaking fully approving the State's submittal, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed, or deferred sanctions. If EPA must withdraw the proposed full approval based on adverse comments and EPA subsequently determines that the State did not in fact correct the disapproval deficiencies, the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832, codified at 40 CFR 52.31.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clocks. Based on this action, imposition of the offsets and highway funding sanctions will be deferred until EPA's final action fully approving the State's submittal becomes effective or until EPA proposes or takes final action disapproving in whole or in part the State submittal. If EPA's proposed rulemaking action fully approving the State submittal becomes final, all sanctions clocks will be permanently stopped and any imposed, stayed, or deferred sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[2] 5 U.S.C. 553(b)(3). EPA believes that

[1] Submitted SCAQMD Rule 1150.1, Control of Gaseous Emissions from Municipal Waste Landfills, is intended to replace both Rule 1150.1, Control of Gaseous Emissions from Active Landfills, and Rule 1150.2, Control of Gaseous Emissions from Inactive Landfills.

[2] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, 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, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, 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 is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, 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, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 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 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 action temporarily relieves sources of an additional burden potentially placed on them by the sanctions provisions of the Act. Therefore, I certify that it does not have an impact on any small entities.

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 8, 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, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 18, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–13 Filed 1–5–99; 8:45 am]

BILLING CODE 6560–50–W

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL178–1a, I1179–1a; FRL–6216–2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving two negative declarations submitted by the State of Illinois. The first indicates there is no need for regulations covering the industrial wastewater category in the Metro-East St. Louis (Metro-East) ozone nonattainment area. The Metro-East ozone nonattainment area includes Madison, Monroe and St. Clair Counties which are located in southwest Illinois, adjacent to St. Louis, Missouri. The second negative declaration indicates there is no need for regulations covering the industrial cleaning solvents category in the Metro-East ozone nonattainment area. The State's negative declarations regarding industrial wastewater category sources and industrial cleaning solvent sources were submitted to USEPA in two letters dated October 2, 1998. In the proposed rules section of this **Federal Register**, the USEPA is proposing approval of, and soliciting comments on, the approval of these two negative declarations. If adverse written comments are received on this action, the USEPA will withdraw this final rule based and address the comments received in response to this action in a final rule based on the related proposed rule. A second public comment period will not be provided. Parties interested in commenting on this action should do so at this time.

DATES: This rule is effective on March 8, 1999, unless USEPA receives adverse written comments by February 5, 1999. If adverse comment is received, USEPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

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

Copies of the negative declarations are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph O. Cano at (312) 886–6036 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION:

I. Background-Emission Control Requirements

Under the Clean Air Act (Act), as amended in 1977, ozone nonattainment areas were required to adopt emission controls reflective of reasonably available control technology (RACT) for sources of volatile organic compound (VOC) emissions. USEPA issued three sets of control technique guidelines (CTGs) documents, establishing a ''presumptive norm'' for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. USEPA determined that an area's State Implementation Plan (SIP) approved attainment date established which RACT rules the area needed to adopt and implement. In those areas where the State sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987, RACT was required for all CTG sources and for all major (100 tons per year or more of VOC emissions under the pre-amended Act) non-CTG sources. Illinois sought and received such an extension for the Metro-East area.

Section 182(b)(2) of the Act as amended in 1990 requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the amended Act of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG. These section 182(b)(2) RACT requirements are referred to as the RACT ''catch-up'' requirements.

Section 183 of the amended Act requires USEPA to issue CTGs for 13 source categories by November 15, 1993. A CTG was published by this date for the following source categories—Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactors and Distillation, aerospace manufacturing coating operation, shipbuilding and ship repair coating operations, and wood furniture coating operation; however, the CTGs for the remaining source categories have not been completed. The amended Act requires States to submit rules for sources covered by a post-enactment CTG in accordance with a schedule specified in a CTG document.

The USEPA created a CTG document as Appendix E to the *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.* (57 FR 18070, 18077, April 28, 1992). In Appendix E, USEPA interpreted the Act to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG, based on the list of CTGs USEPA expected to issue to meet the requirement in section 183. Appendix E states that if USEPA fails to issue a CTG by November 15, 1993 (which it did for 11 source categories), the responsibility shifts to the State to submit a non-CTG RACT rule for those sources by November 15, 1994. In accordance with section 182(b)(2), implementation of that RACT rule should occur by May 31, 1995.

II. The Negative Declarations and Their Justification

The USEPA does not require States to develop plans or regulations to control emissions from sources which are not present in the planning area. If it is thought that this might be the case, the State carefully examines its emissions inventory before initiating the planning and regulation development process. If a careful examination of the emissions inventory finds no sources, then the State prepares and submits to USEPA, a negative declaration stating that there are no sources in the planning area which would be subject to the required rule rather than a control plan for sources in a particular category.

On October 2, 1998, the State of Illinois submitted to USEPA a negative declaration regarding the need for regulations covering the industrial wastewater category in the Metro-East Area. The State indicated that in making this determination, the Illinois Environmental Protection Agency (Illinois EPA) conducted a search of its 1996 Metro-East inventory for any major source potentially subject to USEPA's draft Control Techniques Guideline (CTG) document for the ''Control of Volatile Organic Material Emissions from Industrial Wastewater'' [EPA–453/D–93–056, September 1992]. The Illinois EPA found only one major source, industrial wastewater from Shell Oil Refinery (Shell) in Wood River with a potential to emit more than 100 tons per year from this draft CTG category.

Portions of Shell's wastewater operation emissions are subject to the Federal rule covering benzene waste operations applicable to petroleum refineries, the Benzene National Emissions Standards for Hazardous Air Pollutants (Benzene NESHAP) which was promulgated on January 7, 1993 (58 FR 3072) and codified at 40 CFR part 61, subpart FF. Other wastewater operation emissions are subject to the petroleum refinery NESHAP which was promulgated on August 18, 1995 (60 FR 43244) and codified at 40 CFR part 61, subpart CC. All new sources added to Shell's wastewater collection and treatment system will be subject to the new source performance standards for petroleum refineries which were promulgated on November 23, 1985 (53 FR 47623) and codified at 40 CFR part 60, subpart QQQ.

The Illinois EPA stated in its October 2, 1998, negative declaration submittal that Shell Oil was in compliance with the above listed requirements. They noted that this was affirmed in a consent agreement reached among the company, Illinois EPA, and USEPA which was issued by the United States District Court in Civil Action No. 97–539–GPM and became effective on September 25, 1997. The Illinois EPA also noted that Shell Oil's current operating permit for the wastewater collection and treatment system contains permit conditions which compel Shell Oil to meet the various requirements of the previously discussed Federal regulations.

For these reasons, Illinois EPA believes that volatile organic material (VOM) [1] emissions from Shell Oil, the only major source as defined by the draft CTG for the industrial wastewater category in the Metro-East ozone non-attainment area, are adequately regulated. No further industrial wastewater source emissions controls are contemplated by Illinois EPA.

On October 2, 1998, Illinois also submitted a second negative declaration which addressed the need for regulations covering the use of industrial cleaning solvents in the Metro-East area. The State indicated that in making this determination, the Illinois EPA conducted a search of its 1996 Metro-East inventory for any major source subject to USEPA's 1994 Alternative Control Techniques (ACT) for Industrial Cleaning Solvents. This inventory is a combination of all permitted sources and emissions estimates for the units therein. Any source that would emit 100 Tons Per Year (TPY) of industrial cleaning solvent would be required to have an operating period and would appear in this data base.

Illinois' search of its inventory identified five industrial cleaning solvent sources in the Metro-East ozone nonattainment area, four of which are below 3 TPY. The fifth source was in excess of 100 TPY, however it is already subject to Illinois' cold cleaning RACT rule, 35 IAC 219.182.

It should be noted that Illinois' rules for the Metro-East ozone non-attainment area already contain provisions for the regulation of cleaning solvents used in cold cleaning/degreasing, conveyorized degreasing, vapor degreasing, cleaning solutions on lithographic printing lines and cleaning solvents for wood furniture coating operations. It should be noted that the industrial cleaning solvent category is not specifically exempted from coverage under Illinois' ''generic'' rules. Any industrial cleaning solvent operation in the Metro-East ozone nonattainment area that did have maximum theoretical emissions of 100 TPY or greater and was not otherwise regulated by 35 IAC Part 219 would be regulated by the ''generic'' rules.

[1] The USEPA generally uses the term ''Volatile Organic Compounds (VOC)'' to refer to the hydrocarbon compounds that participate in the chemical formation of ozone in the lower Troposphere. The State of Illinois uses the term ''Volatile Organic Material (VOM)'' to refer to the same hydrocarbon compounds. The definition of VOM is identical to the definition of VOC. The two terms can be used interchangeably.

III. USEPA Review of the Negative Declarations

USEPA has examined the State's negative declarations regarding the lack of need for regulations controlling emissions from industrial wastewater or industrial cleaning solvent sources located in the Metro-East ozone nonattainment areas. The supporting evidence provided by the State was also examined. Based on these examinations, USEPA agrees there are no industrial wastewater or industrial cleaning solvent sources in the Metro-East ozone nonattainment area which would require the adoption of rules to control these two categories of sources.

USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, USEPA is proposing to approve the State Plan should adverse written comments be filed. This action will be effective without further notice unless USEPA receives relevant adverse written comment by February 5, 1999. Should USEPA receive such comments, it will publish a timely withdrawal informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 8, 1999.

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, USEPA 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, USEPA must provide to the Office of Management and Budget a description of the extent of USEPA'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 USEPA 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 USEPA 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, USEPA 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, USEPA 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 USEPA'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, E.O. 13084 requires USEPA to develop an effective process permitting elected officials and other representatives of 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 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 (CAA) 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 CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids USEPA 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, USEPA 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, USEPA 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 USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

USEPA 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. USEPA 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**. A major rule cannot take effect until 60 days after it is published 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 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, Administrative practice and procedure, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 21, 1998.

David A. Ullrich,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, 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 O—Illinois

2. Section 52.726 is amended by adding paragraphs (u) and (v) to read as follows:

§ 52.726 Control strategy: Ozone.

* * * * *

(u) Negative declaration—Industrial wastewater category. On October 2, 1998, the State of Illinois certified to the satisfaction of the United States Environmental Protection Agency that no major sources categorized as part of the Industrial wastewater category are located in the Metro-East ozone nonattainment area (Metro-East). The Metro-East area is comprised of Madison, Monroe and St. Clair Counties which are located in southwest Illinois, adjacent to St. Louis, Missouri.

(v) Negative declaration—Industrial cleaning solvents category. On October 2, 1998, the State of Illinois certified to the satisfaction of the United States Environmental Protection Agency that no major sources categorized as part of the Industrial cleaning solvents category are located in the Metro-East ozone nonattainment area (Metro-East). The Metro-East area is comprised of Madison, Monroe and St. Clair Counties which are located in southwest Illinois, adjacent to St. Louis, Missouri.

[FR Doc. 99–227 Filed 1–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300767; FRL–6049–2]

RIN 2070–AB78

Dicamba (3,6-dichloro-o-anisic acid); Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes, revises and revokes tolerances for combined residues of Dicamba in or on various raw agricultural commodities. BASF Corporation requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective January 6, 1999. Objections and requests for hearings must be received by EPA on or before March 8, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300767], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300767], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300767]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6224, e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 20, 1998 (63 FR 64481)(FRL–6043–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of pesticide petitions (PP 6F4604, 4F3041 and FAP 4H5428) for tolerances by BASF Corporation. This notice included a summary of the petitions prepared by BASF. There were no comments received in response to the notice of filing.

These petitions requested that 40 CFR 180.40 CFR part 180.227 be amended by establishing, revising and revoking tolerances for combined residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its metabolites 3,6-dichloro-5-hydroxy-*o*-anisic acid and 3,6-dichloro-2-hydroxybenzoic acid in or on the commodities listed in the summary of this Final Rule

I. Risk Assessment and Statutory Findings

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

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

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant

information in support of this action. EPA has sufficient data to assess the hazards of Dicamba (3,6-dichloro-*o*-anisic acid) and to make a determination on aggregate exposure, consistent with section 408(b)(2), for revising and establishing tolerances for combined residues of Dicamba as described as follows:

1. Establishing new tolerances for residues of dicamba and its metabolite 3,6-dichloro-5-hydroxy-*o*-anisic acid in or on: barley hay at 2 ppm, corn, field, forage at 3 ppm; corn, field, stover at 3 ppm, corn, pop, stover at 3 ppm; cottonseed meal at 5 ppm; Crop Group 17 (grass forage, fodder, and hay) forage at 125 ppm and hay at 200 ppm; oats forage at 80 ppm, oats hay at 20 ppm; wheat forage at 80 ppm, wheat hay at 20 ppm.

2. Establishing new tolerances for residues of dicamba and its metabolites 3,6-dichloro-2-hydroxybenzoic acid and 3,6-dichloro-5-dichloro-5-hydroxy-*o*-anisic acid in or on aspirated grain fractions at 5100 ppm, and soybean hulls at 13 ppm.

3. Revising tolerances for residues of dicamba (3,6-dichloro-*o*-anisic acid) and its metabolite 3,6-dichloro-5-hydroxy-*o*-anisic acid in or on: barley grain to 6 ppm, barley straw at 15 ppm; cottonseed to 3 ppm; wheat grain to 2 ppm, wheat straw to 30 ppm.

4. Revising tolerances for residues of dicamba and its metabolite 3,6-dichloro-2-hydroxybenzoic acid in or on: asparagus to 4 ppm.

5. Revise tolerances for residues of dicamba and its metabolites 3,6-dichloro-2-hydroxybenzoic acid and 3,6-dichloro-5-hydroxy-*o*-anisic acid in or on soybeans seed to 10 ppm, changing the name of the commodity from soybean grain to soybean seed.

6. Revoking the following tolerances: grasses, hay at 40 ppm; grasses, pasture at 40 ppm and grasses, rangeland at 40 ppm as these tolerances are being replaced by Crop Group 17.

EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by Dicamba (3,6-dichloro-*o*-anisic acid) are discussed below.

1. *Acute toxicity*. The following acute toxicity studies with technical dicamba were submitted in support of this regulatory action:

- Acute oral in rats with an LD_{50} 2,740 mg/kg
- Acute dermal in rabbits with an LD_{50} > 2,000 mg/kg
- Acute inhalation in rats with an LD_{50} > 5.3 mg/L
- Acute eye irritation in rabbits with mild to moderate eye irritation
- Acute dermal irritation in rabbits with irritation
- Dermal Sensitization in guinea pigs with no dermal sensitization

The results from the eye irritation study and the dermal irritation study placed technical in category II as an acute toxicant.

2. In a 13-week oral toxicity study, Charles River CD rats were exposed to dicamba (86.8% a.i.) at 0, 5,000, 10,000, 12,500 or 15,000 ppm (approximately 500, 1,000, 1,250 or 1,500 mg/kg/day). At 10,000 ppm and above, a reduction of cytoplasmic vacuolization of hepatocyte was observed, along with slight decreases in body weight and food consumption. The NOAEL = approximately 500 mg/kg/day, the LOAEL = approximately 1,000 mg/kg/day based on body weight changes and liver effects.

3. In a 21-day dermal study Dicamba was administered to New Zealand white rabbits (5/sex/group) at levels of 0, 40, 200, or 1,000 mg/kg/day for 3 weeks. Administration was 6 hr/day to an area approximately 10 x 15 cm (10% of body surface area). No systemic toxicity was observed at any dose level. Dose-related dermal irritation was observed at the application sites. Desquamation was seen predominantly in the 1,000 mg/kg/day group while moderate erythema, moderate edema and atonia were observed exclusively in the 1,000 mg/kg/day group. A dose-related incidence of fissuring was noted in the 200 and 1,000 mg/kg/day groups. The severity of acanthosis and the incidence of hyperkeratosis was increased at these sites among rabbits in the 200 and 1,000 mg/kg groups. Based on these findings, the systemic NOAEL for males and females is 1,000 mg/kg/day. A systemic LOAEL could not be established. The NOAEL for dermal irritation is 40 mg/kg/day and the LOAEL is 200 mg/kg/day.

4. In the combined chronic toxicity/carcinogenicity study in rats, Dicamba 86.8% a.i. was administered to 50 Charles River CD rats/sex/dose via the diet at dose levels of 0, 50, 250 or 2,500 ppm/day (approximately 2.5, 12.5, or 125 mg/kg/day) for 24 months. There were no effects of dosing on clinical signs of toxicity, survival, mean body weights or weight gains, food consumption, and hematologic, clinical chemistry, or urinary parameters. Organ weights, macroscopic findings, and non-neoplastic histologic findings were similar among dosed and control groups.The NOAEL is approximately 125 mg/kg/day, the highest dose level tested. A LOAEL was not established. As an effect level was not achieved, it is possible that the animals may have tolerated a higher dose.

5. In the carcinogenicity study in mice, dicamba 86.8% a.i. was administered to 52 CD-1 mice/sex/dose via the diet at dose levels of 0, 50, 150, 1,000, and 3,000 ppm (approximately 0, 6, 18, 115 or 361 mg/kg/day) for 24 months. There was no significant biological evidence of oncogenicity from ingestion of dicamba. A statistically significant increase ($p<0.05$) in the mortality rate (-31%) in 3,000 ppm males could not clearly be associated with treatment because a statistically significant increase was also observed in males at 150 ppm. Also, decreased body weight gain and an increased ratio of lymphocytes to neutrophils in high-dose females could not be related to treatment with any degree of certainty.The LOAEL is 3,000 ppm (approximately 360 mg/kg/day) based on increased mortalities in males and decreased body weight gain in females. The NOAEL is 1,000 ppm (approximately 115 mg/kg/day. There was no evidence of a treatment related oncogenic response.

6. In a 1-year chronic feeding study, dicamba 86.8% a.i. was administered to Beagle dogs (4/sex/group) in the diet at 0, 10, 500 or 2,500 ppm (0, 2, 11 or 52 mg/kg/day) for 12 months. No adverse effects were observed at any dose level. No abnormalities in clinical signs, hematology, clinical chemistry or urinalysis were reported. No abnormal findings were made at necropsy, nor were there any significant changes in food consumption or body weight. The NOAEL for this study is 52 mg/kg/day, the highest dose level tested. The LOAEL could not be established.

7. In a developmental toxicity study CD (Charles River) pregnant rats (25/dose group) were administered dicamba (85.8% a.i.) at oral dose levels of 0, 64, 160 or 400 mg/kg/day in corn oil on days 6 through 19 of gestation. Maternal toxicity, limited to the high-dose group, was characterized by mortality in three gravid and one non-gravid dams that exhibited neurotoxic signs prior to death; clinical signs of nervous system toxicity that included ataxia, salivation, stiffening of the body when held, and decreased motor activity; statistically

significant ($p \leq 0.05$) decreases in body weight gain during the dosing period (days 0 to 20); and concomitant decreases in food consumption. Dicamba had no effect on any of the cesarean parameters. The maternal LOAEL is 400 mg/kg/day, based on mortality, clinical signs, body weight changes and decreases in food consumption. The maternal NOAEL is 160 mg/kg/day. No treatment-related fetal gross external, skeletal or visceral anomalies (malformations or variations) were seen at any dose level. The developmental LOAEL is not established. The developmental NOAEL is > 400 mg/kg/day, the highest dose level tested.

8. In a developmental toxicity study inseminated New Zealand White rabbits (19 or 20/dose group) were administered dicamba (90.5% a.i.) at oral (capsule) dose levels of 0, 30, 150, or 300 mg/kg/day on days 6 through 18 of gestation.No maternal toxicity was observed at 30 mg/kg/day. At 150 mg/kg/day maternal toxicity was characterized by abortion (5%) and clinical signs such as ataxia, rales, decreased motor activity. At 300 mg/kg/day maternal toxicity was manifested by abortions, clinical signs, decreased body.

9. In a 2-generation reproduction study, Sprague-Dawley rats (32 or 28/group) received dicamba technical (86.5% a.i.) in the diet at dose levels of 0, 500, 1,500, or 5,000 ppm (0, 40, 122, or 419 mg/kg/day (male) and 0, 45, 136 or 450 mg/kg/day (female). Systemic toxicity was observed at 5,000 ppm, manifested as clinical signs in dams from both generations during lactation (tense/stiff body tone and slow righting reflex) and significantly increased relative liver to body weights ratios (112% of control) in both generations and sexes, adults as well as weanlings. Relative kidney to body weights (107%) at 1,500 and/or 5,000 ppm were not considered to be toxicologically relevant since there were no gross or histopathological findings. Based on these results, the NOAEL for systemic toxicity was 1,500 ppm (122 and 136 mg/kg/day for males and females (M/F), respectively). The LOAEL was 5,000 ppm (M/F: 419/450 mg/kg/day) based on clinical signs of neurotoxicity. Reproductive and/or offspring toxicity was observed at 1,500 and 5,000 ppm, manifested as significantly decreased pup growth (decreased body weight gain) in all generations and matings at 1,500 ppm (86 - 90% of control) and at 5,000 ppm (74 - 94% of control). In addition, delayed sexual maturation was noted in F1 males at 5,000 ppm. Based on these results, the NOAEL for reproductive toxicity was 500 ppm (45 mg/kg/day) and the LOAEL was 1,500 ppm (136 mg/kg/day based on decreased pup growth. Lastly, the NOAEL for offspring toxicity was 45 mg/kg/day and the LOAEL was 136 mg/kg/day, based on significantly decreased pup growth.

10. In an acute neurotoxicity study in rats, Dicamba was administered by gavage in a single dose to Crl: CD BR rats at doses of 0, 300, 600, or 1,200 mg/kg. Vehicle controls received corn oil only. Positive controls received acrylamide at 50 mg/kg/day by i.p. injection on seven consecutive days. At 300 mg/kg, transiently impaired respiration; rigidity upon handling, prodding or dropping; freezing of movement when touched; decreased arousal and fewer rears/minute compared to controls; impaired of gait and righting reflex were observed in both sexes. In addition, males showed decreased forelimb grip strength. With the exception of the decrease in forelimb grip strength, which persisted until day seven, these effects were observed only on the day of dosing. In addition, at 600 mg/kg, both sexes showed decreases in locomotor activity and males showed significant decreases in tail flick reflex and a raised posture when placed in an open field. These effects were also observed only on the day of dosing. At the highest dose level tested (1,200 mg/kg), both males and females showed an impaired startle response to an auditory stimulus. The effect was significant in males on day seven and in females on the day of dosing. In addition, males showed decreases in body weight (5 - 9%), body weight gain (24%) and food consumption (13% between days 0 and 7. The LOAEL for this study was 300 mg/kg based on the several neurologic signs listed above; the NOAEL was < 300 mg/kg/day.

11. In a subchronic neurotoxicity study Sprague-Dawley rats (10/sex/dose) were fed test diets containing 0, 3,000, 6,000, or 12,000 ppm (0, 197.1, 401.4, 767.9 mg/kg/d (M) and 0, 253.4, 472.0 or 1,028.9 mg/kg/day (F)) Dicamba (86.9% a.i.) for 13 weeks. Neurobehavioral evaluations, consisting of FOB, locomotor activity, and auditory startle response, were conducted at prestudy and during Weeks 4, 8 and 13. No toxicologically significant differences were noted in either the mean body weights or food consumption of the treated animals. Neurobehavioral evaluations at the 4-, 8-, and 13–week evaluations revealed abnormal FOB observations consisting of rigid body tone, slightly impaired righting reflex and impaired gait. At Week 13 the incidences of these findings were decreased. Rigid body tone was also noted during evaluation of the righting reflex and landing foot splay. The NOAEL is 401.4/472.0 mg/kg/day (M/F), and the LOAEL is 767.9/1,028.9 mg/kg/day (M/F) based on rigid body tone, slightly impaired righting reflex and impaired gait.

12. In a microbial mutagenicity assay, *Salmonella typhimurium* strains TA98, TA100, TA1535, TA1537, or TA1538 were exposed to the dimethylamine (DMA) salt of dicamba (40.3% a.i.) in deionized distilled water at concentrations of 100, 333, 1,000, 3,333, or 5,000 µg/plate in the presence and absence of mammalian metabolic activation. Preparations for metabolic activation were made from induced rat livers. The DMA salt of dicamba was tested up to the limit concentration of 5,000 µg/plate and no cytotoxicity was observed. The positive controls induced the appropriate responses in the corresponding strains. There was no evidence of induced mutant colonies over background (reversion to prototrophy).

13. In a microbial mutagenicity assay, *Salmonella typhimurium* strains TA98, TA100, TA1535, TA1537, or TA1538 were exposed to the diglycolamine (DGA) salt of dicamba (39.7% a.i.) in deionized distilled water at concentrations of 100, 333, 1,000, 3,333, or 5,000 µg/plate in the presence and absence of mammalian metabolic activation. Preparations for metabolic activation were made from induced rat livers. The DGA salt of dicamba was tested up to the limit concentration of 5,000 µg/plate, but no cytotoxicity was observed. The positive controls induced the appropriate responses in the corresponding corresponding strains. There was no evidence of induced mutant colonies over background (reversion to prototrophy).

14. In a microbial mutagenicity assay, *Salmonella typhimurium* strains TA98, TA100, TA1535, TA1537, or TA1538 were exposed to the isopropylamine (IPA) salt of dicamba (32.3% a.i.) in deionized distilled water at concentrations of 100, 333, 1,000, 3,333, or 5,000 µg/plate in the presence and absence of mammalian metabolic activation. Preparations for metabolic activation were made from induced rat livers. The IPA salt of dicamba was tested up to the limit concentration of 5,000 µg/plate and no cytotoxicity was observed. The positive controls induced the appropriate responses in the corresponding strains. There was no evidence of induced mutant colonies over background (reversion to prototrophy).

15. In a mammalian cell gene mutation assay at the thymidine kinase locus, L5178Y mouse lymphoma cells cultured *in vitro* were exposed to dicamba dimethylamine (DMA) salt (40.3% a.i.) in distilled water at concentrations of 900, 1,000, 1,500, 2,000, 2,500, 3,000, 3,500, 4,000, 4,500, and 5,000 µg/mL in the presence and absence of S9 mammalian metabolic activation. Dicamba DMA salt was tested up to the limit dose. Under nonactivation conditions, the percent total growth values over the evaluated dose range were from 69-109% (initial assay) and 65-111% (confirmatory assay). The mutation frequencies (MFs) for all of the treated cultures were <2x the solvent controls; the exception was the 4,500 µg/mL dose, which had a MF of approximately 2x background in the confirmatory trial. However, the 4,500 µg/mL response was not reproducible. The S9-activation assay confirmed the findings of the nonactivation assay. The percent total growth values were 26-109% (initial assay) and 23-113% (confirmatory assay). The MFs for all of the treated cultures were <2x the solvent controls with the exception of the 3,000 µg/mL dose in the confirmatory trial which had a MF of approximately 2x background; this result was not reproducible. It was determined that dicamba DMA salt was not mutagenic under either nonactivation or S9-activation conditions. In both the nonactivated and activated conditions, the positive controls induced the appropriate response.

16. In a mammalian cell gene mutation assay at the thymidine kinase locus (MRID 43310305), L5178Y mouse lymphoma cells cultured *in vitro* were exposed to dicamba diglycolamine (DGA) salt (39.7% a.i.) in distilled water at concentrations of 900, 1,000, 1,500, 2,000, 2,500, 3,000, 3,500, 4,000, 4,500, and 5,000 µg/mL in the presence and absence of S9 mammalian metabolic activation. Dicamba DGA salt was tested up to the limit dose. Under nonactivation conditions, the percent total growth values over the evaluated dose range were from 68-116% (initial assay) and 72-105% (confirmatory assay). The mutation frequencies (MFs) forall of the treated cultures were <2x the solvent controls. The S9-activation assay confirmed the findings of the nonactivation assay. The percent total growth values were 43-102% (initial assay) and 46-99% (confirmatory assay). The MFs for all of the treated cultures were <2x the solvent controls with the exception of the 4,500 µg/mL dose in the initial trial, which had a MF of approximately 2x background. However, this result was not reproducible. Therefore, it was determined that dicamba DGA salt was not mutagenic under either nonactivation or S9-activation conditions. In both the nonactivated and activated conditions, the positive controls induced the appropriate response.

17. In a mammalian cell gene mutation assay at the thymidine kinase locus, L5178Y mouse lymphoma cells cultured *in vitro* were exposed to dicamba isopropyl amine (IPA) salt (32.3% a.i.) in distilled water at concentrations of 900, 1,000, 1,500, 2,000, 2,500, 3,000, 3,500, 4,000, 4,500, and 5,000 µg/mL in the presence and absence of S9 mammalian metabolic activation. Dicamba IPA salt was tested up to the limit dose. Under nonactivation conditions, the percent total growth values over the evaluated dose range were from 92-101% (initial assay) and 51-107% (confirmatory assay). The mutation frequencies (MFs) for all of the treated cultures were <2x the solvent controls. The S9-activation assay confirmed the findings of the nonactivation assay. The percent total growth values were 75-126% (initial assay) and 49-114% (confirmatory assay). The MFs for all of the treated cultures were <2x the solvent controls. Therefore, it was determined that dicamba IPA salt was not mutagenic under either nonactivation or S9-activation conditions. In both the nonactivated and activated conditions, the positive controls induced the appropriate response.

18. In an *in vivo* mouse bone marrow micronucleus assay, groups of five ICR mice/sex received a single IP injection of 525, 1,050, or 2,100 mg/kg of the diglycolamine DGA salt formulation of dicamba (39.7% a.i.). Bone marrow cells were harvested at 24, 48, or 72 hours post treatment and scored for micronucleated polychromatic erythrocytes (MPCEs). Mortality occurred in 3/20 male and 1/20 female mice dosed at 2,100 mg/kg. Lethargy was observed in male and female mice at all dose levels. Cytotoxicity by the DGA salt formulation was observed by a reduction in the ratio of PCEs to total erythrocytes in males dosed at 2,100 mg/kg 48 and 72 hours following dosing. The positive control induced significant increases in MPCEs in both sexes. The DGA salt of dicamba was non-mutagenic. There was no significant increase in the frequency of MPCEs in bone marrow after any treatment time.

19. In an *in vivo* mouse bone marrow micronucleus assay, groups of five ICR mice/sex received a single IP injection of 500, 1,000, or 2,000 mg/kg of the isopropylamine (IPA) salt formulation of dicamba (32.3% a.i.). Bone marrow cells were harvested at 24, 48, or 72 hours post-treatment and scored for micronucleated polychromatic erythrocytes (MPCEs). Mortality occurred in 2/20 male and 0/20 female mice dosed at 2,000 mg/kg. Lethargy was observed in male and female mice at all dose levels. The IPA salt formulation of dicamba was not cytotoxic to the target cell. The positive control induced significant increases in MPCEs in both sexes. The IPA salt of dicamba was non-mutagenic. There was no significant increase in the frequency of MPCEs in bone marrow after any treatment time.

20. In a metabolism, distribution and excretion study, (1) groups of four males and eight females per dose of Charles River CD rats received a single oral dose (0.1 or 0.93 gm/kg) in peanut oil by esophageal intubation. The rats were sacrificed at intervals ranging from one hour to 72 hours after dosing. Tissues, urine and blood were retained for subsequent analysis. (2) One male and one female each received a single injection subcutaneously of C_{14} labeled dicamba. The rats were sacrificed at 72 hours. (3) Groups of five male and five female rates per dose housed in individual metabolic cages were fed C_{14} labeled dicamba at 10, 100, 1,000, 10,000 and 20,000 ppm for 24 days. Rats were sacrificed at 1, 3, 6, 13 and 24 days. Dietary ingestion resulted in 96% urinary excretion in 48 hours and 4% via the feces. Fairly equal tissue distribution occurred initially but tissue levels did not persist beyond a few hours, indicating no bioaccumulation. It was concluded that when administered orally to rats, C_{14} labeled dicamba is rapidly absorbed and excreted. Over 95% is excreted in the urine and the compound is not metabolized or appreciable accumulated by the tissues. A fraction of the dicamba in the urine (ca. 13%) is conjugated to the glucuronide.

B. Toxicological Endpoints

1. *Acute dietary (1–day).* In an acute neurotoxicity study in rats groups of Crl: CD BR rats (10/sex/dose) received a single oral (gavage) administration of Dicamba (86.9%) in corn oil at doses of 0, 300, 600, or 1,200 mg/kg. Vehicle controls received corn oil only. Positive controls received Acrylamide at 50 mg/kg/day by intra peritoneal injection on seven consecutive days. At 300 mg/kg, transiently impaired respiration; rigidity upon handling, prodding or dropping; freezing of movement when touched; decreased arousal and fewer rears/

minute compared to controls; impairment of gait and righting reflex were observed in both sexes. In addition, males showed decreased forelimb grip strength. With the exception of the decrease in forelimb grip strength, which persisted until day seven, these effects were observed only on the day of dosing. In addition, at 600 mg/kg, both sexes showed decreases in locomotor activity and males showed significant decreases in tail flick reflex and a raised posture when placed in an open field. These effects were also observed only on the day of dosing. At the highest dose level tested (1,200 mg/kg), both males and females showed an impaired startle response to an auditory stimulus. The effect was significant in males on day seven and in females on the day of dosing. In addition, males showed decreases in body weight (5 - 9%), body weight gain (24%) and food consumption (13% between days 0 and 7). The LOAEL was 300 mg/kg based on the several neurologic signs listed above; a NOAEL was not established.

i. *Dose and Endpoint for Risk Assessment*: LOAEL=300 mg/kg/day based on severe neurologic signs described above.

ii. *Comments about Study and Endpoint*: Neurotoxicity was seen in both sexes at the lowest dose tested. With the exception of the decrease in forelimb grip strength, which persisted until day seven, the other neurologic signs were seen only on the day of dosing. The Acute Dietary RfD is 0.10 mg/kg/day, based on the LOAEL of 300 mg/kg/day and an uncertainty factor of 3,000 for infants and children (10x for intra species variations, 10x for inter species variations, 10x because a LOAEL was used instead of a NOAEL, and 3x for FQPA considerations). The EPA used 10x because a LOAEL was used, not 3x, because of the severity of neurotoxic signs exhibited by all animals in both sexes at the lowest dose level used.

2. *Chronic dietary Reference Dose (RfD).* In a 2-generation reproduction study, Sprague-Dawley rats (32 or 28/group) received Dicamba technical (86.5%) in the diet at dose levels of 0, 500, 1,500, or 5,000 ppm (0, 40, 122, or 419 mg/kg/day for males and 0, 45, 136 or 450 mg/kg/day for females, respectively) for two generations. Systemic toxicity was observed at 5,000 ppm, manifested as clinical signs in dams from both generations during lactation (tense/stiff body tone and slow righting reflex) and significantly increased relative liver to body weights (112% of control) in both generations and sexes, adults as well as weanlings. The increase (107%) in relative kidney weights observed at 1,500 and/or 5,000 ppm were not considered to be toxicologically significant due to lack of corroborative gross or histopathological lesions in the kidneys. For parental systemic toxicity, the NOAEL was 122 and 136 mg/kg/day for males and females, respectively and the LOAEL was 419 and 450 mg/kg/day in males and females based on clinical signs of neurotoxicity. Reproductive toxicity at 1,500 and 5,000 ppm, manifested as significantly decreased pup growth in all generations and matings at 1,500 ppm (86 - 90% of control) and at 5,000 ppm (74 - 94% of control). In addition, delayed sexual maturation was noted in F1 males at 5,000 ppm. For offspring toxicity, the NOAEL was 45 mg/kg/day and the LOAEL was 136 mg/kg/day based on significantly decreased pup growth.

i. *Dose and endpoint for establishing the RfD.* NOAEL = 45 mg/kg/day based on significant decreases in pup growth in all generations and mating at 136 mg/kg/day (LOAEL).

ii. *Comments about study and endpoint.* The NOAEL/LOAEL in the two-generation study is supported by the maternal NOAEL of 30 mg/kg/day and the LOAEL of 150 mg/kg/day established in the developmental toxicity study in rabbits; the maternal LOAEL was based on abortions (5%) and clinical signs of neurotoxicity (ataxia, rales, and decreased motor activity) Uncertainty Factor (UF): An UF of 1,000 was applied to account for inter (10x)-and intra-(10x) species variation and 10 for F PA.

RfD = 45 mg/kg/day (NOAEL)/1,000 (UF) = 0.045 mg/kg/day

3. *Occupational and residential exposure (dermal).* Short-Term (1 - 7 days) Dermal In a 21-day dermal study (MRID No. 40547901) New Zealand white rabbits (5/sex/group) received 15 repeated dermal applications of dicamba in deionized water at dose levels of 0, 40, 200, or 1,000 mg/kg/day, 6 hours/day, 5 days/week over a 3-week period. No systemic toxicity was observed at any dose level. Dose-related dermal irritation was observed at the application sites. Desquamation was seen predominantly in the 1,000 mg/kg/day group while moderate erythema, moderate edema and atonia were observed exclusively in the 1,000 mg/kg/day group. A dose-related incidence of fissuring was noted in the 200 and 1,000 mg/kg/day groups. The severity of acanthosis and the incidence of hyperkeratosis was increased at these sites in rabbits at 200 and 1,000 mg/kg. For systemic toxicity, the NOAEL was 1,000 mg/kg/day (HDT); a systemic LOAEL was not established. For dermal irritation, the NOAEL was 40 mg/kg/day and the LOAEL was 200 mg/kg/day.

i. *Dose and endpoint for risk assessment.* Systemic NOAEL = 1,000 mg/kg/day, the highest dose tested.

ii. *Comments about study and endpoint.* Although no systemic toxicity was observed at the Limit-Dose, the EPA recommended this dose for risk assessment because:

a. Dicamba is used in residential lawns and thus there is potential exposure by children and infants.

b. Increased sensitivity to offspring was demonstrated in the 2-generation reproduction study. A systemic toxicological end point was not determined from the study; however, for the risk assessment for the exposures involving these tolerance actions, a conservative default NOAEL of 1,000 was used.

4. *Intermediate-term (7 days to several months) dermal.* Summarized under short term in Unit above. Dose and Endpoint for Risk Assessment: Systemic NOAEL = 1,000 mg/kg/day, the highest dose tested. Comments about Study and Endpoint: Although no systemic toxicity was observed at the Limit-Dose, the EPA recommended this dose for risk assessment because (1) Dicamba is used in residential lawns and thus there is potential exposure by children and infants and (2) increased sensitivity to offspring was demonstrated in the 2-generation reproduction study.

5. *Long term (Several months to lifetime) dermal.* Based on the current use pattern, long-term dermal exposure is not anticipated. Therefore, a dose and endpoint was not identified.

6. *Inhalation exposure (Any-time period).* Based on the LC_{50} of >5.3 mg/L, Dicamba is placed in Toxicity Category IV. The EPA determined that a risk assessment via the inhalation route is not required because of the low acute inhalation toxicity and the use pattern/application method does not indicate high exposure via this route.

7. *Margin of exposure for residential exposures.* For Short-and Intermediate Term dermal exposures a MOE of 300 is required for residential exposures because: (a) Although developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following in utero exposures in rats and rabbits, increased sensitivity to offspring, however, was demonstrated in the 2-generation reproduction toxicity study in rats (See Section III.2).

(b) There is evidence of neurotoxicity in the following studies: acute and subchronic neurotoxicity, combined chronic toxicity/carcinogenicity,

developmental toxicity (rats and rabbits) and the 2-generation reproduction (See Section III.1).

(c) A weight-of-the-evidence evaluation of the data base indicates the need for a developmental neurotoxicity study.

C. Exposures and Risks

1. *Food and feed.* Tolerances have been established (40 CFR 180.227) for the combined residues of Dicamba, in or on a variety of raw agricultural commodities, including meat, milk and poultry and eggs. Risk assessments were conducted by EPA to assessed dietary exposures from Dicamba (3,6-dichloro-*o*-anisic acid) as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The endpoint selected by EPA for assessment of acute dietary risk is severe neurological effects in both sexes at 300 mg/kg/day (LOAEL, a NOAEL was not established) in a rat acute neurotoxicity study. Thus, this risk assessment is required for all population subgroups. This acute dietary (food) risk assessment used the Dietary Exposure Evaluation Model (DEEM). This program utilizes individual food consumption as reported by respondents in the USDA 1989-1991 nationwide Continuing Surveys for Food Intake by Individuals (CSFII) and food residue levels to estimate possible exposure levels of various population subgroups. Regulating at the 95th percentile, acute dietary exposure values and percent of the acute RfD are shown in following table:

Acute Dietary Exposure and Risks

Population Subgroup	Acute RfD[1] (mg/kg/day)	High-end Exposure (mg/kg/day)	% Acute RfD
US Population	0.1	0.02860	28.6
Nursing Infants (<1 yr old)	0.1	0.02610	26.1
Non-nursing Infants (<1 yr old)	0.1	0.06315	63.2
Children (1-6)	0.1	0.04581	45.8
Children (7-12)	0.1	0.03116	31.2

[1] Based on LOAEL of 300 mg/kg/day and an uncertainty factor of 3,000. Adjusted for FQPA.

These estimates indicate that risks from acute dietary exposures to dicamba do not exceed EPA's level of concern.

ii. *Chronic exposure and risk.* The chronic dietary exposure analysis from food sources was conducted using the reference dose (RfD) of 0.045 mg/kg/day. The RfD is based on the NOAEL of 45 mg/kg/day, which in turn is based on reduced pup weights in all generations and matings at 136 mg/kg/day in a multi-generation reproduction study in rats; and an uncertainty factor of 1,000 applicable to all populations which include infants and children. In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions: 100% of RACs having dicamba tolerances will contain dicamba residues and those residues will be at the level of the established tolerance. This results in an overestimate of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment.

The Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989-91 nationwide Continuing Surveys for Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The chronic DEEM analysis used mean consumption (3 day average) data and gave the results listed below:

Subgroups	%RfD
U.S. Population (48 states)	23.9
Nursing Infants (< 1 year old)	16.5
Non-Nursing Infants (< 1 year old)	71.1
Children (6 years old)	54.8
Children (7-12 years old)	36.8
Non-Hispanic Whites	24.1
Males (13-19 years old)	25.6

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants and children; and (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states). These estimates indicate that risks from chronic dietary exposures to dicamba do not exceed EPA's level of concern.

iii. *Carcinogenic risk.* In the chronic toxicity/carcinogenicity study in rats there were no observed clinical signs of toxicity, including survival, mean body weights or body gains, food consumption, hematologic clinical chemistry, urinary parameters, organ weights, macroscopic findings, and non-neoplastic histology findings at 125 mg/kg/day, the highest dose tested. A LOAEL was not established. In the mouse carcinogenicity study at the highest dose tested, 361 mg/kg/day, there were no clinical signs of carcinogenicity. A NOAEL of 115 mg/kg/day was determined for increased mortalities in males and decreased body weight gains in females. Based on these studies, a finding of carcinogenicity in rats or mice would not change the Rfd previously stated.

In accordance with the EPA Proposed Guidelines for Carcinogen Risk Assessment (10-APR-1996), the EPA classified dicamba as a ''not classifiable'' human carcinogen. This was based on the mouse carcinogenicity study and the rat combined chronic toxicity/carcinogenicity study, being classified as supplemental because an MTD was not achieved in both studies. However, these studies were adequate to indicate that dicamba has either a low or no cancer potential in mammals. A pharmacokinetics study pending EPA review indicates that the MTD for both the rat and mouse studies was reached. If this is corroborated by EPA's review, a quantitative cancer risk will not be made for dicamba and its metabolites, on the other hand, if the review does not corroborate this indication, replacement studies will be required.

2. *From drinking water.* EPA does not have monitoring data available to perform a quantitative drinking water risk assessment for dicamba at this time. A Tier 1 drinking water assessment of dicamba is given below.. This assessment utilized the GENEEC and SCI-GROW screening models to provide estimates of ground and surface water contamination from dicamba and its metabolite, 3,6-dichlorosalicylic acid (DCSA). Concentrations of the 5-hydroxy metabolite of dicamba (3,6-

dichloro-5-hydroxy-*o*-anisic acid) in surface and ground water could not be estimated; however, based on the available environmental fate data, it is not likely that this metabolite would be found in surface and ground water.

EPA followed an Interim Approach for Addressing Drinking Water Exposure in Tolerance Decision making issued on 17-NOV-1997. Thus, the GENEEC model and the SCI-GROW model were run to produce estimates of dicamba concentrations in surface and ground water respectively. The primary use of these models is to provide a coarse screen for sorting out pesticides for which OPP has a high degree of confidence that the true levels of the pesticide in drinking water will be less than the human health drinking water levels of concern (DWLOCs). A human health DWLOC is the concentration of a pesticide in drinking water which would result in unacceptable aggregate risk, after having already factored in all food exposures and other non-occupational exposures.

$DWLOC_{acute}$ = [acute water exposure (mg/kg/day) x (body weight)]/[consumption (L) x 10^{-3} mg/µg]

where acute water exposure (mg/kg/day) = acute RfD - acute food exposure (mg/kg/day)

$DWLOC_{chronic}$ = [chronic water exposure (mg/kg/day) x (body weight)]/[consumption (L) x 10^{-3} mg/µg]

where chronic water exposure (mg/kg/day) = [RfD - (chronic food exposure + chronic residential exposure) (mg/kg/day)].

There is no chronic residential exposure for dicamba. The $DWLOC_{chronic}$ is the concentration in drinking water as part of the aggregate chronic exposure that results in a negligible cancer risk. The Agency's default body weights and consumption values used to calculate DWLOCs are as follows: 70 kg/2L (adult male), 60 kg/2L (adult female), and 10 kg/1L (child).

Population Subgroup[1]	Acute Scenario				Chronic Scenario			
	Acute RfD[2] mg/kg/day	DWLOC µg/L	Ground Water SCI-GROW2 EEC in µg/L	Surface Water GENEEC EEC in µg/L	RfD2 mg/kg/day	DWLOC µg/L	SCI-GROW2 EEC in µg/L	GENEEC EEC in µg/L
U.S. Population	0.10	25000	0.013	98	0.045	1200	0.013	66
Children (1-6 yrs)	0.10	540	0.013	98	0.045	200	0.013	66

[1] DEEM TMRCs in mg/kg/day: U.S. Population = 0.01075, children (1-6 yrs) = 0.02465
[2] Adjusted for FQPA

For chronic (non-cancer) exposure to dicamba in surface and ground water, the drinking water levels of concern are 1,200 µg/L for U.S. population, and 200 µg/L for children (1-6 yrs). To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DEEM) was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to dicamba in drinking water. DWLOCs were then calculated using default body weights and drinking consumption figures.

Estimated maximum concentrations of dicamba in surface and ground water are 98 and 0.013 ppb, respectively. The estimated concentrations of dicamba in surface and ground water are less than OPP's level of concern for dicamba in drinking water as a contribution to chronic aggregate exposure. Therefore, taking into account present uses and uses proposed in this action, EPA concludes with reasonable certainty that residues of dicamba in drinking water (when considered along with other sources of exposure for which there are reliable data) would not result in unacceptable levels of aggregate human health risk at this time.

The dietary (food and water) exposure database for dicamba is adequate to assess infants' and children's exposure.

3. *From non-dietary exposure.* Dicamba (3,6-dichloro-*o*-anisic acid) is currently registered for use on outdoor residential and recreational turf. Application is made by both homeowners and professional applicators. There is a potential oral, inhalation, eye and dermal exposure to infants and children to dicamba from the registered uses for lawn and turfgrass weed control These exposures are considered to be very low. Currently there are no inhalation or eye exposure data required for post-application of pesticides to lawns and turf. As inhalation exposure for mixer/loaders is acceptable, the risk to infants and children from inhalation exposure under a much lower exposure scenario is characterized qualitatively as being extremely low. Exposure data are required for hand to mouth movements of infants and children. As there are no chemical-specific or site-specific data available to determine the potential risks associated with residential exposures, the EPA has determined that residential exposure and risk are acceptable for dosages of 0.5 lb/A, based on a dermal NOAEL of 1,000 mg/kg/day and exposures of 0.051 mg/kg/day for low pressure hand wand, liquid formulations; and 0.079 mg/kg/day for granular formulations. For residential post-application exposure and risk assessment, EPA determined that the potential residential post-application risks for short-term and intermediate exposures did not exceed their level of concern. In this analysis both oral and dermal exposures and risks for adults and infants from post-applications were determined. This analysis was based on assumptions and generic data from the Draft HED Standard Operating Procedures (SOPs) for Residential Exposure Assessments (December 18, l997. These SOPs rely on what are considered to be upper-percentile assumptions and intended to represent Tier 1 assessments.

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

EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

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

EPA does not have, at this time, available data to determine whether dicamba and its metabolites (3,6-dichloro-5-hydroxy-*o*-anisic acid and 3,6-dichloro-*o*-2-hydroxybenzoic acid) have a common mechanism of toxicity with other substances or how to include this pesticide or its metabolites in a cumulative risk assessment. For the purposes of this tolerance action, therefore, EPA has not assumed that dicamba and its metabolites have a common mechanism of toxicity with other substances.

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

1. *Acute risk*. Under Unit II.C.1.i of this preamble an acute risk assessment using a high-end exposure estimate for dicamba was determined for the general U.S. population, infants (<1 year), children (1-6 years), children (7 -12) years). None of the population subgroups yielded percent RfDs (adjusted for FQPA) above 100.

Based on the drinking water risk assessment under Unit II.C.2 of this preamble, the maximum estimated concentrations of dicamba in surface and ground water are less than levels of concern in drinking water as a contribution to acute aggregate exposure.

2. *Chronic risk*. Using the exposure assumptions described Unit II.C.1.ii of this preamble, EPA has concluded that aggregate exposure to dicamba from food will utilize 23.9% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1-6 years old). The percent of the RfD utilized by this subgroup was determined to be 71.1%. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to dicamba in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short and intermediate-term aggregate risk*. Dicamba is currently registered for use on turfgrass including sod production, commercial and residential turf. Short- or intermediate-term dermal toxicity endpoints have been identified for dicamba, and was quantified at 1,000 mg/kg/day. Using EPA Standard Operating Procedures for Residential Exposure Assessments, including post-application exposures and risk assessments; the Margin of Exposure (MOE) did not exceed 300 the level of concern.

4. *Aggregate cancer risk for U.S. population*. EPA has classified dicamba as a ''not classifiable'' human carcinogen. Available oncogenicity studies have been classified as supplemental because the studies did not achieve an MTD. However, the studies indicate no carcinogenicity potential at the highest dose tested, 2,500 ppm (rat) and 3,000 ppm (mice). A quantitative cancer risk can not be made based on the supplemental rat and mouse carcinogenicity studies. However, these studies were adequate to indicate that dicamba has either a low cancer risk or no cancer risk. A pharmacokinetics study presently pending review by EPA indicates that the MTD of these carcinogenicity studies was reached, thus changing these carcinogenicity studies to be acceptable studies. No quantitative cancer risk will be made for dicamba and its metabolites if the pending study is corroborated by EPA's review. Alternatively, if the study is not corroborated, replacement carcinogenicity studies will be required.

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

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

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

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

ii. *Pre- and post-natal sensitivity*. There was evidence of increased susceptibility to the offspring following pre- and/or postnatal exposure in the 2-generation reproduction study in rat. In this study, offspring toxicity was manifested as significantly decreased pup growth in all generations and mating at a dose lower than that which caused parental systemic toxicity(abortions and clinical signs of neurotoxicity). Available studies indicated no increase susceptibility of rats or rabbits in *in utero* exposure to dicamba. In a prenatal developmental toxicity study in rats, there was no evidence of developmental toxicity at the highest dose tested. In a prenatal developmental toxicity study in rabbits, developmental toxicity (irregular ossification of internasal bones) were only seen at the dose that caused maternal toxicity (abortions and neurotoxic clinical signs).

iii. *Conclusion*. There is a adequate toxicity database for dicamba and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. A ten-

fold safety factor for increased susceptibility of infants and children was applied for chronic (long-term) exposure, and a three-fold safety factor was applied for acute (short- and intermediate-term) exposures to dicamba, due to evidence of increased susceptibility to the offspring following pre- and/or postnatal exposure in the 2-generation reproduction study in rats. The uncertainty factor (FQPA Safety Factor) of ten-fold was reduced for acute dietary and short- and Intermediate-term residential exposures because the increased susceptibility was only observed in the reproduction study and not in the prenatal developmental studies. The FQPA Safety Factor was reduced to 3x for acute dietary risk assessment for all populations, including infants and children, because: (1) the endpoint of concern is clinical signs of neurotoxicity (in the absence of neuropathology) observed following a single oral exposure in an acute neurotoxicity study; (2) the increased susceptibility was seen in the offspring of parental animals receiving repeated oral exposures in a 2-generation reproduction toxicity study; (3) no increased susceptibility was observed following in utero exposures to rats or rabbits in the developmental studies; and (4) a developmental neurotoxicity study in rats is required.

2. *Acute risk.* Acute dietary risks were discussed under B_1 above. As stated there, an acute dietary RfD was determined to be 0.10 mg/kg/day, based on the LOAEL of 300 mg/kg/day and and uncertainty factor of 3,000 for infants and children. The assessment made by EPA included only exposure from food. Based on high-end exposures, the percent of the RfD occupied for the U.S population, Nursing Infants, Non-nursing Infants, Children (ages 1-6 years) and Children (ages 7-12 years) were less than 100%. The subgroup with the highest exposure was the Non-nursing Infants which occupied 63.2% of the RfD. The EPA concluded that with reasonable certainty the residues of dicamba in food and water do not contribute significantly to the aggregate acute human health risk at the present time considering the present uses and uses proposed in this Final Rule.

3. *Chronic risk.* Using the exposure assumptions described above, EPA has concluded that aggregate exposure to dicamba from food will utilize 16.5% of the RfD for nursing infants, 71.1% for non-nursing infants, 54.8% for children (1-6 years old), and 36.8% for children (7-12 years old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to dicamba.... in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD

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

III. Other Considerations

A. Endocrine Disrupter Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect....'' The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, l999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

B. Analytical Enforcement Methodology.

An adequate analytical method for determining the magnitude of residues in the raw agricultural commodities listed in this Final Rule has been evaluated by EPA and is published in the Pesticide Analytical Manual (PAM II). The method may be requested from: Calvin Furlow, Public Information Branch, Field Operations Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 1130A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–305–5937).

C. Magnitude of Residues.

The nature of the residue in plants is adequately understood for the purposes of this time-limited tolerance.

D. International Residue Limits

No CODEX Maximum Residue Levels (MRLs) have been established for dicamba in or on wheat, barley, soybeans, corn, cotton or asparagus. Compatibility cannot be achieved with the Canadian, Mexican, German or Australian tolerances because their levels are expressed in terms of parent compound only.

IV. Conclusion

The scientific evaluation of data supporting dicamba using 100% crop treated and anticipated residues for all population subgroups examined by EPA shows the use on the raw agricultural commodities for which tolerances are established or revised by this Final Rule will not cause exposure at which the Agency believes there is an appreciable risk and thus EPA concludes there is a reasonable certainty of no harm from aggregate exposure to dicamba. Based on the information cited above, EPA has determined that the tolerances for residues of dicamba in the raw agricultural commodities listed in this Final Rule will be safe; therefore, the tolerances are established as set forth below.

V. Objections and Hearing Requests

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

Any person may, by March 8, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the

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

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300767] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

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

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

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

B. Executive Order 12875

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

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

C. Executive Order 13084

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

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

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: December 22, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

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

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

2. Section 180.227 is amended by adding a paragraph heading to paragraph (a), designating the text following the paragraph heading as paragraph (a)(1), redesignating paragraphs (b) and (c) as paragraphs (a)(2) and (a)(3), respectively, and by adding and reserving with paragraph headings new paragraphs (b), (c) and (d).

3. Section 180.227 is further amended as follows:

i. In newly designated paragraph (a)(1), by revising the entries for the following commodities: barley, grain; barley, straw; wheat, grain; and wheat, straw; by adding alphabetically entries for barley, hay; corn, field, forage; corn, field, stover; corn, pop stover; cottonseed; cottonseed, meal; crop Group 17 (grass, forage, fodder and hay); grass, forage; grass, hay; oats, forage; oats, hay; wheat, forage; and wheat, hay; and by removing the entries for asparagus; grasses, pasture; and grasses, rangeland.

ii. In newly designated paragraph (a)(2) by removing the entries for soybeans; soybeans, forage; and soybeans, hay; and by adding an entry in alphabetical order for asparagus.

iii. By revising newly designated paragraph (a)(3).

The added and revised text reads as follows:

§ 180.227 Dicamba; tolerances for residues.

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

Commodity	Parts per million
Barley, grain	6.0
Barley, hay	2.0
Barley, straw	15.0
* * *	* *
Corn, field, forage	3.0
Corn, field, stover	3.0
* * *	* *
Corn, pop, stover	3.0
Cottonseed	3.0
Cottonseed, meal	5.0
Crop Group 17 (grass, forage, fodder and hay).	
Grass, forage	125.0
Grass, hay	200.0
* * *	* *
Oats, forage	80.0
* * *	* *
Oats, hay	20.0
* * *	* *
Wheat, forage	80.0
Wheat, grain	2.0
Wheat, hay	20.0
Wheat, straw	30.0

(2) * * *

Commodity	Parts Per million
Asparagus	4.0
* * *	* *

(3) Tolerances are established for the combined residues of dicamba (3,6-dichloro-*o*-anisic and its metablites 3,6-dichloro-5-hydroxy-*o*-anisic acid and 3,6-dichloro-*o*-2-hydroxy-benzoic acid in or on the raw agricultural commodities as follows:

Commodity	Parts Per million
Aspirated grain fractions	5100.0
Soybean, hulls	13.0
Soybean, seed	10.0

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

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

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

[FR Doc. 99–109 Filed 1–5–99; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018–AF23

Export of River Otters Taken in Missouri in the 1998–1999 and Subsequent Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This document announces final findings by the CITES Scientific and Management Authorities of the United States that approve the addition of Missouri to the list of States and Indian Nations approved for the export of river otter skins. This approval is on a multi-year basis. The Service intends to apply these findings to river otters taken in Missouri during the 1998–1999 season and subsequent seasons, subject to the same conditions applying to other States previously approved.

DATES: This rule is effective on January 6, 1999.

FOR FURTHER INFORMATION CONTACT: Scientific Authority finding: Dr. Susan Lieberman, Chief, Office of Scientific Authority; phone: 703–358–1708; fax: 703–358–2276; E-mail: r9osa@mail.fws.gov. Management Authority finding: Ms. Teiko Saito, Chief, Office of Management Authority; U.S. Fish and Wildlife Service; Mail Stop ARLSQ 700; 1849 C Street, NW; Washington, DC 20240; phone: 703–358–2095; fax: 703–358–2280.

SUPPLEMENTARY INFORMATION: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a treaty that regulates international trade in certain species of animals and plants. Exports of specimens (live, dead, or parts and products thereof) of animals and plants listed in Appendix II of CITES require an export permit from the country of origin. Export permits for specimens of species listed in CITES Appendix II are issued by a country's CITES Management Authority after two conditions are met: first, the country's CITES Scientific Authority must determine that the exports will not be detrimental to the survival of the species. This is known as a ''non-detriment finding''. Second, the CITES Management Authority must determine that the specimens were not obtained in violation of laws for their protection. Live animals or plants require additional findings. For exports from the United States, the U.S. Fish and

Wildlife Service's Office of Management Authority and Office of Scientific Authority make these findings.

On January 5, 1984 (49 FR 590), we published a rule granting approval for the export of pelts of North American river otters (*Lontra canadensis*) and certain other CITES-listed Appendix-II species of furbearing mammals from specified States and Indian Nations, Tribes, and Reservations (hereafter referred to as Indian Nations). That rule covered the 1983–1984 season as well as subsequent seasons. In succeeding years, we have approved the export of pelts of one or more species of furbearing mammals listed in CITES Appendix II from other States and Indian Nations, through the administrative or rule-making processes. These approvals were and continue to be subject to certain population monitoring and export requirements. The purposes of this final rule are to: (1) Announce final findings by the Scientific and Management Authorities of the United States for the export of river otter pelts (*Lontra canadensis*) taken in the State of Missouri; and (2) to add Missouri to the list of States and Indian Nations approved for the export of river otter skins. We adopt these findings for the export of the pelts of river otters taken in the State of Missouri during the 1998–1999 and subsequent seasons, subject to the conditions applying to other approved States and Indian Nations.

CITES regulates the import, export, re-export, and introduction from the sea of animal and plant species listed in the three CITES Appendices for the purpose of controlling trade in those species. According to CITES (and the Endangered Species Act, which implements CITES in the United States):

(1) Appendix I includes species threatened with extinction that are or may be affected by trade.

(2) Appendix II includes species that, although not necessarily threatened with extinction now, may become so unless their trade is strictly controlled. Appendix II also includes species that must be subject to regulation in order that trade in other currently or potentially threatened species (those in Appendix I or II) may be brought under effective control (e.g., because of difficulty in distinguishing specimens of threatened species from those of other non-threatened species).

(3) Appendix III includes species that any Party country identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Party countries to control trade.

CITES Appendix II includes the American river otter pursuant to CITES Article II, paragraph 2(b). You may obtain a copy of the CITES Treaty from the Office of Scientific Authority at the above address or from the Service's web page at http://www.fws.gov. CITES Article II, paragraph 2 states: ''Appendix II shall include: (a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.'' In the January 5, 1984, **Federal Register** (49 FR 590), we announced the results of a review at the fourth meeting of the CITES Conference of the Parties (COP4, held in 1983 in Botswana) regarding U.S. species of furbearing mammals, including the river otter. Specifically, it was determined that the river otter is included in Appendix II of CITES because of the similarity in appearance of its pelts (and of products manufactured from those pelts) to other species listed in Appendix I or II. The Service determined at that time that the American river otter did not qualify for CITES Appendix II based on its own conservation status, but rather due to its similarity to other listed species. The January 5, 1985, Notice in the **Federal Register** described how our Office of Scientific Authority planned to monitor, on an annual basis, the population and trade status of the native furbearer species listed pursuant to CITES Article II.2(b). We stated then that we could institute restrictive export controls for a given species, for one or more States or Indian Nations, if export levels appeared to be contributing to long-term population declines. In that document we also described how our Office of Management Authority would require States and Indian Nations to assure the legal acquisition of specimens entering international trade, as evidenced by marking with approved, serially unique tags.

This is the second **Federal Register** document published in 1998 concerning the Service's findings on export of river otters, *Lontra* (formerly *Lutra*) *canadensis*, taken in Missouri. The first document (63 FR 52226; September 30, 1998) announced the proposed findings on the export of river otters taken in Missouri in the 1998–99 season and subsequent seasons and solicited public comments.

The purpose of this rule is to add Missouri to the list of States and Indian Nations for which the export of river otter is approved (50 CFR 23.53). The Service will apply these findings to harvests in Missouri during the 1998–99 and subsequent seasons, subject to the same conditions applying to other approved entities.

Comments and Information Received

Twenty-two comments were received in response to the September 30, 1998, **Federal Register** (63 FR 52226) proposed rule on the export of river otters taken in the State of Missouri. Comments were received from State wildlife agencies, animal welfare and animal protection organizations, scientists and other private citizens. About the same number of comments reflected support for the proposed rule as those comments that opposed approval of the export of Missouri otters.

All State wildlife agencies that submitted comments (Montana, Illinois, Indiana, Wisconsin, and Minnesota) supported the proposed rule. Several of these States, as well as the National Trappers Association, claimed that Missouri's population estimates used sound biological methods and indicated that the otter population could sustain a regular harvest. Those States that used the population model as well as the pelt tagging system adopted by Missouri said that the model and system had served them well.

All of the animal welfare organizations that submitted comments, as well as several private individuals, opposed the proposed rule. Several groups, including the Animal Protection Institute and The Humane Society of the United States, claimed that the current population estimates of Missouri otters were inadequate. The Animal Legal Defense Fund and the Rocky Mountain River Otter Protection Coalition are among those that conclude that there are no reliable census methods for otters. We acknowledge that the census methods for otters and other furbearers are not free of imperfections; however, several of the standard methods were used and the growth trend of the Missouri otter population is clear.

Richard Ostfeld, a mammalogist at the Institute of Ecosystem Studies whose work was also cited in other letters, commented that the computer simulation built by the Missouri Department of Conservation was overly simplistic in at least two ways: there was no density dependence and no consideration of population subdivision. While these could be important factors at a later time, in a

recently reintroduced and expanding population it is our opinion that these are not critical omissions in the population model, though we concur that these parameters could improve the model if and when the population stabilizes. Several respondents pointed out the discrepancy between the projected otter population and the revised number based on the actual harvest in the years that trapping has been conducted. Both private individuals and groups including The Fund for Animals and the International Otter Survival Fund contend that the survival rates used to project otter populations are inaccurate, and that environmental factors such as river pollution and deforestation could further decrease otter survival.

The survival rates given are based on methods supported in the scientific literature. While environmental factors may have a greater effect on otter survival at some time in the future, the empirical evidence suggests that both habitat and prey base have been adequate to support the rapid increase of the reintroduced population. We agree that there are other factors influencing otter mortality, but do not find evidence that they presently pose a threat that could deplete the otter population to the point that export would be detrimental. Many of those that opposed the otter export by Missouri noted that there was no limit to the number of individuals that could be taken but only a limit on the length of the trapping season. The State has argued convincingly that if they were to limit the number of individuals trapped rather the number of trapping days, otters that are taken in traps set for other furbearers would be given to other trappers or not reported.

Several individuals and groups stated that the trapping of otters solely for their pelts is inhumane, and the practice is opposed by the majority of Missouri residents. Given that the river otter is listed as an Appendix II.2.(b) species, it is the role of the Service to assess whether the proposed plan poses a threat to otter species worldwide or river otter populations in North America, but not the fate of individual animals. The types of traps that are used, while also an important issue, is not germane to the decision that the Service is required to make. Some of the comments reflected the primary concern of an Appendix II.2.(b) status of species: That the trade in Missouri river otters would be detrimental to the same species in other States where they were protected, or other otter species that were listed as CITES Appendix I. We feel that the tagging system developed for otters and other exported CITES-listed furbearer species limits this risk (See Scientific Authority Findings), and there are also forensic methods for determining the species-identity of otter pelts.

The Office of Scientific Authority also sought the independent assessments of two expert scientists with Department of Interior, U.S. Geological Survey Biological Resources Division (BRD). These scientists noted that the population modeling approach used by the Missouri Department of Conservation (MDC) was a standard one when the population is treated as a single interbreeding group. In this regard they pointed out that all of the Missouri otters have been reintroduced from founder stocks that originated in Louisiana and other localities outside of Missouri. They concurred that the high reproductive rate based on corpora lutea found upon necropsy is supported in the scientific literature, and other measures used were standard for carnivore population biology. Both scientists concluded that the population estimation methods were sound. The population model did not consider density dependence or the development of local populations. The evaluators indicated that these assumptions were allowable in a recently introduced, rapidly growing otter population. One scientist noted that the model has already undergone modification, and the other suggested that such factors might be added to the model if the Missouri population reached equilibrium in the future. While acknowledging that all populations models and estimates have limitations, both biologists indicated that the Missouri Department of Conservation made a thorough analysis of the effects of otter trapping. We concur with these BRD scientists that both the census and modeling efforts show that river otters in Missouri represent an expanding population that can sustain harvesting without a serious risk of rapid decline.

Scientific Authority Findings

Article IV (paragraph 2) of CITES requires that, before the Management Authority issues a permit to export a specimen of a species included in Appendix II, the Scientific Authority must advise ''that such export will not be detrimental to the survival of that species.'' Our Office of Scientific Authority must develop such advice (known as a ''non-detriment finding'') for the export of Appendix-II animals, in accordance with section 8A(c)(2) of the Endangered Species Act of 1973, as amended. For native U.S. species such as the river otter, the Act requires the Secretary of the Interior to base export determinations and advice ''upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice.''

The wildlife agencies of individual States and Indian Nations manage the river otter. We identified in the January 5, 1984, **Federal Register**, and listed in 50 CFR 23.53 States and Indian Nations approved for the export of river otters. We granted administrative approval to the State of Tennessee for the 1994–1995 season and multi-year approval through a rule-making for 1995–1996 and subsequent seasons (61 FR 2454, January 26, 1996). We granted administrative approval to the State of Missouri for the 1996–1997 and 1997–1998 seasons. Each State or Indian Nation approved by the Service for the export of river otters has a program to regulate the trapping and take of the species.

The Service's Office of Scientific Authority therefore has two primary obligations regarding exports of river otters taken in the United States. We must find that any U.S. exports of river otter pelts are not detrimental to the population status in the wild of any other similar furbearer species listed in Appendix I or II. We also must determine that the status of river otters in the United States (based on information provided by the States and based on our own monitoring of trade) does not decline to the point where the species itself could qualify for inclusion in CITES Appendix II in its own right, pursuant to Article II.2(a). The CITES Parties adopted new, improved criteria for inclusion of species in Appendix II, pursuant to Article II.2(a), at the ninth meeting of the Conference of the Parties, held in the United States in November 1994 (Resolution Conf. 9.24).

Since listing of the river otter in Appendix II was due to its similarity of appearance to other listed species in need of trade controls, an important component of our non-detriment finding is consideration of the impact of river otter trade on the status of these other species. The Office of Scientific Authority has determined that the CITES requirement of issuing export permits naming the species being traded, coupled with the marking of pelts with tags bearing the name of the species, State of origin, year of take, and a unique serial number, is sufficient to eliminate potential problems of confusion with, and therefore risk to, other listed species. The requirement to

tag all river otter pelts with unique, tamper-proof tags is a U.S. requirement that goes beyond any CITES requirement (see Management Authority Findings, below, for tag specifications).

In addition to considering the effect of trade on species or populations other than those being exported from the United States, we will regularly examine information on river otters in the State of Missouri to determine if there is a population decline that might warrant more restrictive export controls. The Service will continue to work closely with the State of Missouri, which has primary management responsibility for its river otters. The monitoring and assessment for Missouri will follow the same approach used for other States and Indian Nations. As part of this monitoring, we annually request that the States and Indian Nations already approved for export of river otters certify to the Service that the best available biological information derived from professionally accepted wildlife management practices indicates that take of river otters during the forthcoming season will not be detrimental to the survival of the species. The Service plans to work with Missouri and other States and Indian Nations to develop consistent methods of assessing river otter populations.

Whenever available information from the States or other sources indicates a possible problem in a particular State, the Scientific Authority will conduct a comprehensive review of accumulated information to determine whether conclusions about the treatment of these species as listed for similarity of appearance (Article II.2.b) continue to be true for the particular State.

Though at one time found commonly in the State of Missouri, river otters were nearly extirpated from the State between 1860 and 1910. An estimated 70 animals survived in the southeastern part of the State by the mid-1930s. Because most significant habitat changes occurred more recently, this early population decline is believed to be a consequence of unregulated trapping and other killing of the species. Legal protection for the species occurred in 1936, but the species did not begin to recover until the State initiated a restoration and reintroduction program. The MDC initiated a river otter reintroduction program in 1982, whereby it released 845 river otters at 43 locations in the State. The MDC considers that restoration program to have been completed in 1992; during those 10 years it studied the status and distribution of river otters in the State. Based on information provided by the State of Missouri and other States, the Service believes that the status of river otters in the Midwest of the United States has improved, and populations in virtually all States where the species is native are either stable or increasing. We published a discussion of this release program and our previous findings on river otters in Missouri in the **Federal Register** on April 2, 1996 (61 FR 14543), and October 7, 1996 (61 FR 52403).

According to the MDC, Missouri has in place several different methods to monitor and assess the status of river otters in the State: (1) A three-year study began in 1996, in cooperation with the University of Missouri, to develop population monitoring methods, including a stream survey for otter sign, a capture-per-unit-effort index based on trappers' records, and a refined population model based on age-specific reproduction data and age-distribution data from a sample of Missouri river otters; (2) the State uses aerial surveys of winter tracks to monitor populations, along with Archer's Index to Furbearer Populations, as an index of population trends; and (3) the State has in place a mandatory pelt registration and tagging program during annual trapping seasons, in order to provide a harvest accounting system.

In 1995, the Missouri Conservation Commission approved an otter trapping season for the 1996–1997 season. After further deliberation we approved export authorization for pelts of Missouri river otters taken during the 1996–1997 season. Subsequently, in July 1997, the MDC requested export authority for the 1997–1998 season and subsequent trapping seasons. We granted export authorization for the 1997–1998 season only, based on our evaluation of information provided by Missouri. On June 22, 1998, our Office of Scientific Authority received a detailed request from the State of Missouri for approval of exports of river otter pelts for 1998-1999 and subsequent seasons. The June 22, 1998, request from the State of Missouri Department of Conservation contained detailed analyses of data from the 1997–1998 season as well as previous seasons. This information is available on request from the Office of Scientific Authority.

According to the State of Missouri, trappers took 1,146 otters in the 1997–1998 trapping season. The State believes that trapping pressure and the number of otters taken per licensed trapper (an index of population status) remained basically the same from previous years. Of those otters taken, the State tagged 1,128 with CITES tags provided by the Service. The State also analyzed and necropsied 260 river otters taken in the State as an important component of its assessment of river otter populations. The submission of June 22, 1998, from the State elaborates on these assessments. Using a number of indices and measurements, the State of Missouri has determined that reproductive rates are higher than previously predicted for river otters and that a healthy proportion of the river otter population in the State consists of juveniles and yearlings (both males and females), which reinforces the State's assertion that the population is increasing. The State also used population demographic data from otter necropsies and survival data from radio-telemetry studies to model otter population growth. The MDC has concluded that there is a pre-season estimated population of 6,736 river otters in the State of Missouri, and that this population continues to increase.

Ongoing river otter population surveys in Missouri have taken place both prior to and after the trapping seasons. Preliminary results indicate a stable or increasing population. The State also calculates indices of capture-per-unit-effort based on trapper diaries, and has provided preliminary data for the 1996–1997 and the 1997–1998 seasons. The MDC has also used Archer's Index to Furbearer Populations to detect changes in furbearer populations; those results are consistent with an increase in river otter populations.

The State of Missouri has presented information that supports a conclusion that river otter populations are widely distributed and secure in Missouri. The Service notes that the State of Missouri has primary responsibility for managing its river otter population including its decision to authorize trapping. The State of Missouri is committed to continue its surveys, population monitoring, and population modeling. Based on: (1) The biological and other information provided by the Missouri Department of Conservation; (2) the existence of a management infrastructure in the State for managing and enforcing trapping regulations; (3) independent scientific review of the Missouri Department of Conservation otter population model and assessment; (4) an evaluation of the disparate comments received on the proposed rule; and (5) the determination that permitting and tagging requirements will minimize the risk that exporters will misrepresent other similar-appearing CITES-listed species in trade as river otters, the Service's Office of Scientific Authority has advised the Office of Management Authority that exports of river otter pelts of animals legally taken in the State of Missouri

will not be detrimental to the population of other similar furbearer species listed in CITES Appendix I or II. Furthermore, the Office of Scientific Authority also believes that river otters in the United States do not qualify for inclusion in CITES Appendix II pursuant to Article II.2(a). Therefore, the Service hereby adds the State of Missouri to the list of States and Indian Nations approved for export of river otters.

Management Authority Findings

Exports of Appendix-II species are allowed under CITES only if the Management Authority is satisfied that the specimens were not obtained in violation of laws for their protection. Therefore, to allow any export, we must be satisfied that applicants wishing to export river otter pelts, hides, or products obtained those items in compliance with State, Indian, and Federal law. State or Tribal tagging programs provide evidence of legal take for the following native U.S. species: Alaskan gray wolf, Alaska brown or grizzly bear, American alligator, bobcat, lynx, and river otter. The States and Tribes have responsibility for management of these species, and we assure ourselves that pelts are taken in accordance with State and Tribal law through a tagging program. The Service annually contracts for the manufacture and delivery of specific CITES animal-hide tags for States and Indian Nations that qualify. We note that, although the United States instituted this tagging requirement independently of CITES, the CITES Parties adopted it for all crocodilian species. The Office of Management Authority is responsible for ordering the tags for all approved States and Indian Nations and provides them at no charge. We have adopted the following export requirements for the 1983–1984 and subsequent seasons:

(1) Current State or Indian Nation, Tribe, or Reservation hunting, trapping, and tagging regulations and sample tags must be on file with our Office of Management Authority;

(2) The tags must be durable and permanently locking, and must show the U.S.-CITES logo, the name of the State or Indian Nation, Tribe, or Reservation of origin, the year of take, the species, and a unique serial number;

(3) Trappers or other persons taking otters must attach tags to all pelts taken within a minimum time after take, as specified by the State or Indian regulation, and must do so as soon as possible to minimize movement of untagged pelts (even pelts not intended for export must be tagged);

(4) Trappers or other persons taking otters must attach tags permanently as authorized and prescribed by the State or Indian regulation;

(5) Takers/trappers/dealers who are licensed or registered by the State or Indian Nation must account for all tags received and must return unused tags to the State or Indian Nation within a specified time after the season closes; and

(6) We will allow the export of fully manufactured fur or hide products from the United State only when the CITES export tags removed from the hides prior to manufacture are surrendered to us prior to export.

Export Approval

This document represents the final administrative step in procedures established to authorize exports of river otters and other designated furbearing mammals from Service-approved States and Indian Nations in accordance with CITES. Accordingly, the export of Missouri river otters harvested during the 1998–1999 and subsequent seasons is now approved on the grounds that such exports meet the criteria for both the Scientific Authority and Management Authority under CITES.

The Department has determined within the meaning of 5 U.S.C. 553(d)(1) and (3) of the Administrative Procedure Act, that there is good cause to make these findings and rule effective immediately. It is the Department's opinion that a delay in the effective date of the regulations after this rule is published could affect the export of pelts taken in the harvest season that has already begun in Missouri. Because Scientific and Management Authority criteria have been satisfied, it follows that making this rule effective immediately will not adversely affect the species involved. This approval is subject to revision prior to any subsequent taking season in any State or Indian Nation, if a review of information reveals that Management Authority or Scientific Authority findings in favor of export should be changed.

Effects of the Rule and Required Determinations

As a preface to this portion of the notice, we note that the issuance of Management Authority and Scientific Authority findings under CITES does not constitute rulemaking under the Administrative Procedure Act (APA). Nevertheless, we have used the rulemaking procedure to enhance involvement by the States and the public.

The Department of the Interior previously determined (48 FR 37494, August 18, 1983) that the export of river otters from various States and Indian Nations, taken in the 1983–1984 and subsequent seasons, is not a major Federal action that would significantly affect the quality of the human environment under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347). The Fish and Wildlife Service has determined that a finding of no significant impact is appropriate for this action under regulations implementing NEPA.

This rule was not subject to Office of Management and Budget review under Executive Order 12866 and would not pose significant economic effects to a substantial number of small entities as outlined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because the existing rule treats exports on a State-by-State and Indian Nation-by-Indian Nation basis and approves export in accordance with an already existing State or Indian Nation management program, the rule would have little effect on small entities in and of itself. This final rule will allow continued international trade in river otters from the United States in accordance with CITES and does not contain any Federalism impacts as described in Executive Order 12612. This action is not expected to have significant taking implications for U.S. citizens, as per Executive Order 12630.

Information Collection Requirements

We have examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no new information collection requirements for which Office of Management and Budget (OMB) approval is required. Persons exporting river otter skins from the United States may obtain permits which are already authorized under 50 CFR part 23 as approved by OMB and assigned clearance number 1018–0093. No new information collection or permit requirements are contained in this regulation. 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.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability

of U.S.-based enterprises to compete with foreign-based enterprises.

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule will not significantly or uniquely affect small governments, nor will it produce a Federal mandate of $100 million or greater in any year (i.e., it is not a significant regulatory action under the Unfunded Mandates Reform Act).

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. Individual tribal members are subject to the same regulatory requirements as other individuals who export American river otters.

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation.

This final rule is issued under the authority of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Treaties.

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, the Service amends Part 23 of Title 50, Code of Federal Regulations, as set forth below:

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq.

2. In Subpart F-Export of Certain Species, revise § 23.53 to read as follows:

§ 23.53 River otter (Lontra canadensis)

States for which we permit the export of the indicated season's take under § 23.15 of this part:

(a) States and Indian Nations, and Seasons Approved for Export of River Otter From the United States:

	1977–78 [1]	1978–79 [2]	1979–80 [3]	1980–81	1981–82	1982–83	1983–84 and future	1995–96 and future	1996–98 and future	1998–99 and future
Alabama	Q	+	+	+	+	+	+	+	+	+
Alaska	+	+	+	+	+	+	+	+	+	+
Arkansas	Q	+	+	+	+	+	+	+	+	+
Connecticut	Q	+	+	+	+	+	+	+	+	+
Delaware	Q	+	+	+	+	+	+	+	+	+
Florida	Q	+	+	+	+	+	+	+	+	+
Georgia	Q	+	+	+	+	+	+	+	+	+
Louisiana	Q	+	+	+	+	+	+	+	+	+
Maine	Q	+	+	+	+	+	+	+	+	+
Maryland	Q	+	+	+	+	+	+	+	+	+
Massachusetts	Q	+	+	+	+	+	+	+	+	+
Michigan	Q	+	+	+	+	+	+	+	+	+
Minnesota	Q	+	+	+	+	+	+	+	+	+
Mississippi	Q	+	+	+	+	+	+	+	+	+
Missouri	–	–	–	–	–	–	–	–	+[5]	+
Montana	Q	+	+	+	+	+	+	+	+	+
New Hampshire	Q	+	+	+	+	+	+	+	+	+
New Jersey	–	–	–	–	–	+	+	+	+	+
New York	Q	+	+	+	+	+	+	+	+	+
North Carolina	Q	+	+	+	+	+	+	+	+	+
Oregon	Q	+	+	+	+	+	+	+	+	+
Penobscot Nation	–	–	–	–	–	–	+	+	+	
Rhode Island	Q	+	–	–	–	–	–	–	–	–
South Carolina	Q	+	+	+	+	+	+	+	+	+
Tennessee	–	–	–	–	–	–	–	+[4]	+	+
Vermont	Q	+	+	+	+	+	+	+	+	+
Virginia	Q	+	+	+	+	+	+	+	+	+
Washington	Q	+	+	+	+	+	+	+	+	+
Wisconsin	Q	+	+	+	+	+	+	+	+	+

[1] For further information, see 42 FR 43729, Aug. 30, 1977; 43 FR 11081, Mar. 16, 1978; and 43 FR 29469, July 7, 1978.
[2] For further information, see 43 FR 11096, Mar. 16, 1978; 43 FR 13913, Apr. 3, 1978; 43 FR 15097, Apr. 10, 1978; 43 FR 29469, July 7, 1978; 43 FR 35013, Aug. 7, 1978; 43 FR 36293, Aug. 16, 1978; and 43 FR 39305, Sept. 1, 1978.
[3] For further information, see 44 FR 25383, Apr. 30, 1979; 44 FR 31583, May 31, 1979; 44 FR 40842, July 12, 1979; 44 FR 52289, Sept. 7, 1979; and 44 FR 55540, Sept. 26, 1979.
[4] Export for 1994–95 approved administratively (for Tennessee).
[5] Export for 1996–97 and 1997–98 approved administratively (for Missouri).
Q Export approved with quota.
+ Export approved.
– Export not approved.

(b) Condition on export: Exporters must clearly identify each pelt as to species, State or Indian Nation of origin, and season of taking by permanently attaching a serially numbered tag of a type approved and provided by the Service and attached under conditions established by the Service. Exception to the tagging requirement: We will allow

the export of fully manufactured fur or hide products from the United States only when the CITES export tags removed from the hides prior to manufacture are surrendered to us prior to export. Such tags must be removed by cutting the tag straps on the side next to the locking socket of the tag, so that the locking socket and locking tip remain joined.

Dated: December 29, 1998.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–34837 Filed 12–31–98; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 64, No. 3
Wednesday, January 6, 1999

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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 715 and 741

Supervisory Committee Audits and Verifications

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The Credit Union Membership Access Act has amended certain audit and financial reporting requirements of the Federal Credit Union Act. The National Credit Union Administration solicits public comment on proposed rules implementing those amendments. The amendments specify the minimum annual audit a credit union is required to obtain according to its charter type and asset size, the licensing authority required of persons performing certain audits, the auditing principles which apply to certain audits, and the accounting principles which must be followed in reports filed with the NCUA Board.

DATES: Comments must be received on or before March 8, 1999.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand deliver comments to: National Credit Union Administration Board, 1775 Duke Street, Alexandria, VA 22314–3428. You may fax comments to (703) 518–6319. You may E-mail comments to boardmail@ncua.gov. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Karen Kelbly, Program Officer, Office of Examination and Insurance, at (703) 518–6360, or Steven W. Widerman, Trial Attorney, Office of General Counsel, at (703) 518–6540, at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Supervisory Committee Audit Requirements

Two of the duties that § 115 of the Federal Credit Union Act (FCUA), 12 U.S.C. 1761d, imposes on the Supervisory Committee of a federally-insured credit union are: (1) to ''make or cause to be made an annual audit'' of the credit union; and (2) to ''cause the passbooks and accounts of the members to be verified with the records of the treasurer from time to time, and not less frequently than once every two years.'' Current § 701.12 of NCUA's rules and regulations, 12 CFR 701.12, sets forth the Supervisory Committee's responsibilities in meeting the audit and verification requirements of FCUA 115.

Current § 701.12 requires a Supervisory Committee to perform, or engage another to perform an annual supervisory committee audit. The scope of the audit must include a level of audit testing based on the Supervisory Committee's assessment of control risk. § 701.12(c)(3). If the Committee engages an independent, compensated auditor to perform the credit union's audit, the terms and conditions must be memorialized in an engagement letter. § 701.12(d). Whether produced by the Committee itself or received from an independent auditor, a written report of the audit must be submitted to the board of directors and, upon request, to NCUA. § 701.12(e). The Committee is responsible for maintaining the audit working papers and/or ensuring that they will be accessible to NCUA. § 701.12(e). It also must conduct a verification of members' accounts against the records of the credit union using prescribed sampling methods. § 701.12(h). The requirements of § 701.12 apply to Federally-insured State-chartered credit unions (''FISCUs''), 12 CFR 741.202, both as a prerequisite for share insurance and under NCUA's administrative powers. 12 U.S.C. 1781(b)(9), 1789(a)(11). The NCUA may impose sanctions against a credit union which violates these audit rules. § 701.12(f).

Additional audit remedies are available against federal credit unions by statute, 12 U.S.C. 1782(a)(6)(A), as added by the Financial Institutions Reform, Recovery and Enforcement Act, Pub. L. No. 101–73, 103 Stat. 482 (1989). Current § 701.13 of NCUA's rules and regulations, 12 CFR 701.13, establishes three conditions under which the NCUA Board may compel a federal credit union to use an outside, independent State-licensed auditor, § 701.13(a)(1)–(2). One of these conditions also may be the basis for compelling a federal credit union to obtain a financial statement audit (performed by an independent State-licensed auditor). § 701.13(a)(3), (b)–(c). These sanctions also are available against FISCUs under current § 701.12(f)(ii). NCUA is permitted to treat the failure to use an independent State-licensed auditor or to obtain a financial statement audit, when ordered to do so, as an unsafe and unsound practice for purposes of terminating the credit union's insurance. 12 U.S.C. 1782(a)(6)(B) and 1786(b).

B. New Statutory Audit Requirements

Section 201(a) of the Credit Union Membership Access Act (CUMAA), Pub. L. No. 105–219, 112 Stat. 918 (1998), has now added two new subsections to section 202(a)(6) of the FCUA, 12 U.S.C. 1782(a)(6)(C) and (D). Subsection (C) addresses accounting principles; it generally requires credit unions having assets of $10 million or more to follow generally accepted accounting principles (GAAP) in all reports or statements filed with the NCUA Board.[1] 12 U.S.C. 1782(a)(6)(C). The NCUA Board, and State credit union supervisors under applicable statutes, are given the authority to require credit unions having less than $10 million in assets to follow GAAP. 12 U.S.C. 1782(a)(6)(C)(iii).

Subsection (D) imposes audit requirements for large federally-insured credit unions-those having assets of $500 million or more. A credit union at or above that level of assets, whether State- or Federally-chartered, is required to obtain an annual independent audit of its financial statements performed in accordance with generally accepted auditing standards (GAAS). Furthermore, that audit must be performed by an independent certified public accountant or public accountant licensed to do so by the appropriate State or jurisdiction. 12 U.S.C. 1782(a)(6)(D)(i). (This audit engagement is popularly termed an ''opinion audit,''

[1] In lieu of GAAP, the NCUA Board may prescribe ''an accounting principle * * * that is no less stringent than [GAAP].'' 12 U.S.C. 1782(a)(6)(C)(ii).

but is hereinafter referred to as a ''financial statement audit.'')

A federally-chartered credit union having total assets of less than $500 million but more than $10 million is subject to only one requirement under subsection (D). If that credit union elects to obtain the financial statement audit required of a credit union having assets of $500 million or more, the audit must be performed consistent with the accountancy laws and licensing requirements of the appropriate State or jurisdiction.[2] 12 U.S.C. 1782(a)(6)(D)(ii). The appropriate State or jurisdiction normally will be the State in which the credit union is located.

Subsection (D) imposes no audit requirements on federally-chartered credit unions having total assets of less than $500 million but more than $10 million which *do not* voluntarily elect to obtain a financial statement audit performed in accordance with GAAS (as credit unions having assets of $500 million or more *must* obtain under subsection (D)(i)). *See* § 715.2(f) (GAAS definition). Only in the case of a financial statement audit performed in accordance with GAAS, whether by choice or by law, do State accountancy laws and licensing requirements apply.[3] Subsection (D) is silent regarding audits of federally-chartered credit unions having assets of $10 million or less, and FISCUs having assets of less than $500 million.

The threshold set by subsection (D) at $500 million for requiring a financial statement audit puts federally-insured credit unions in parity with other federally-insured depository institutions. Institutions supervised by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Office of Comptroller of the Currency, and the Federal Reserve Board are required to obtain a financial statement audit if they have assets of $500 million or more.[4] 12 CFR part 363. For institutions having assets of less than $500 million, the Federal Financial Institutions Examination Council (FFIEC) recently proposed audit options identical or similar to those proposed here. FFIEC, *Policy Statement on External Auditing Programs of Banks and Savings Associations*, 63 FR 7796 (Feb. 17, 1998) (*FFIEC Policy Statement*).

II. Section-Within-Subject Analysis of Proposed Rule

For ease of access to the proposed rules implementing section 201 of CUMAA, NCUA has consolidated and restructured its current audit rule. Current sections 701.12 [supervisory committee audits and verifications] and 701.13 [requirements for an outside audit] have been eliminated and the surviving provisions of each have been combined in a proposed new Part 715 of NCUA's rules and regulations [supervisory committee audits and verifications], 12 CFR 715. Part 715 incorporates the statutory auditing requirements introduced in CUMAA. The references within section 741.202 have been revised to apply Part 715 to FISCUs. *See* 12 U.S.C. 1781(b)(9), 1789(a)(11) (application to FISCUs). Section 741.6 [financial and statistical and other reports], 12 CFR 741.6, remains intact but for the revision of Call Report filing dates in subsection (a) and the introduction of new subsections (b) and (c) requiring the use of GAAP in those reports.

A. Scope and Definitions

Section 715.1—Scope of This Part. For the convenience of the reader, this section provides a guide to what is, and is not, covered in proposed Part 715. Citations to statutory authority are included. This section makes clear that both the new and existing auditing regulations are combined within the scope of this Part. It directs the reader to Part 741.6 for regulations revising certain Call Report filing dates and mandating GAAP as the measurement requirement for Call Reports.

Section 715.2—Definitions Used In This Part. This section imports all of the defined terms from current § 701.12(a) that will be used in this Part. All but one of the imported definitions are virtually identical in form and substance to their predecessors. The exception is the definition of ''State-licensed person'' at § 715.2(k), which has been revised to reflect the statutory language in 12 U.S.C. 1782(a)(6)(D). Two new terms are introduced in this section which refer to new audit options in § 715.9(a)–(b)—''balance sheet audit'' as defined at § 715.2(a), and ''review and evaluation of internal controls'' as defined at § 715.2(j). This section identifies alternative terms which are popularly used in place of defined technical terms, although popular terms are not used in this Part. *See, e.g.*, § 715.2(d) and (l). In many instances within the substantive text of the rules a defined term is expanded to include a phrase from the definition of that term. The purpose of this is to reduce the need for readers to cross-reference this section for definitions when reading the substantive provisions of this Part.

B. Supervisory Committee Responsibilities

Section 715.3—General Responsibilities of the Supervisory Committee. This section divides the Supervisory Committee's responsibilities into three categories. Subsection (a) sets forth the Committee's two basic, overall duties—to ensure that required financial reporting objectives are met and safeguards are in place to protect members' assets. To carry out these basic responsibilities, subsection (b) sets forth four specific criteria which the Committee must oversee—internal controls, accurate preparation of records and reports, administration of plans, policies and control procedures, and the adequacy of those plans, policies and procedures to protect the credit union against wrongdoing. Finally, subsection (c) sets forth four specific actions the Supervisory Committee must take to

---

[2] According to the CCH Accountancy Law Reporter, State-licensing requirements for persons who perform audits are as follows:

- 4 states permit anyone to render accounting and auditing services but restrict the use of the titles ''Certified Public Accountant'' (CPA) and Public Accountant (PA) to persons licensed as such (Arizona, Kansas, North Carolina, and Wyoming).
- 36 states have a ''grandfathered'' class of licensed accountants—non CPAs who were practicing public accounting on the effective date of their current accountancy laws.
- 10 states license a class of accountants in addition to CPAs variously entitled ''accounting practitioner,'' ''registered public accountant,'' ''licensed public accountant,'' or ''public accountants'' (Delaware, Georgia, Indiana, Iowa, Maine, Montana, Oklahoma, Oregon, South Carolina, and Vermont).
- All 50 states allow unlicensed persons to provide the general public with a variety of accounting and bookkeeping services, including the preparation of financial statements without reports, provided that such individuals do not use certain titles, perform services prohibited by law, or otherwise hold themselves out as licensed by the State.

[3] Section 202(a)(6)(D)(ii), 12 U.S.C. 1782(a)(6)(D)(ii), provides: ''If a Federal credit union that is not required to conduct an audit under clause (i), and that has total assets of more than $10,000,000 conducts *such an audit* for any purpose, using an independent auditor who is compensated for this or her audit services with respect to that audit, the audit shall be performed consistent with the accountancy laws of the appropriate State or jurisdiction, including licensing requirements.'' (emphasis added.) ''Such an audit'' refers back to ''an audit under clause (i)'' of section 202(a)(6)(D). A clause (i) audit is a financial statement audit performed in accordance with GAAS. The clause (ii) requirement to follow State accountancy and licensing laws is triggered only when a credit union voluntarily chooses a financial statement audit.

[4] The statute authorizing 12 CFR 363, originally established a $150 million asset floor for requiring a financial statement audit. 12 U.S.C. 1831m(j)(2). However, the banking agencies exercised their statutory authority to increase the asset floor to $500 million, thereby exempting two-thirds of all institutions required under § 1831m to obtain a financial statement audit. 12 CFR 363.1(a); 58 FR 31332 (June 2, 1993).

fulfill its responsibilities—ensure that management properly prepares and files reports with the NCUA Board (e.g., Forms 5300 and 5310 Call Reports per 12 CFR 741.6), obtain a supervisory committee audit annually, conduct a verification of members' passbooks and accounts, and ensure that the credit union complies with this Part. This section is similar in substance to current § 701.12(b) except for revisions to conform to the supervisory committee audit options in § 715.9(c).

Section 715.4—Audit Responsibility of the Supervisory Committee. This section sets forth the specific audit responsibilities of the Supervisory Committee of a federally insured credit union. Subsection (a), which restates the annual audit requirement in 12 U.S.C. 1761d, parallels current § 701.12(c)(1). Subsection (b) is the first of several places in this Part which point out that, regardless of the asset and charter criteria in the immediately following sections, a financial statement audit is always considered to fall within the definition of a supervisory committee audit, § 715.2(m) , and if performed adequately, will always satisfy a credit union's audit responsibility. For those credit unions that do not choose to obtain a financial statement audit, subsection (c) introduces minimum audit requirements according to asset size and charter type. For the convenience of the reader, these are summarized in a diagram preceding § 715.5, the first of four sections setting forth minimum audit requirements.

C. Minimum Audit Requirements

Section 715.5—Audit of Federally-Insured Credit Unions Having Total Assets of $500 Million or Greater. This section sets forth the new ''large credit union audit requirement'' imposed by CUMAA. 12 U.S.C. 1782(a)(6)(D)(i). Credit unions having total assets of $500 million or greater, whether State-or Federally-chartered, must obtain a financial statement audit to satisfy their supervisory committee audit responsibility. By definition, a financial statement audit must be performed in accordance with GAAS, and must be performed by a person who is licensed to do so by an appropriate State or jurisdiction, *i.e.*, in which the credit union is located. This section imposes the single most significant revision to current § 701.12—establishing the financial statement audit as the minimum audit for large credit unions. The effect of this section is to codify the level of audit engagement that nearly all of the affected credit unions already obtain voluntarily.

Section 715.6—Audit of Federally-Insured State-Chartered Credit Unions Having Total Assets of Less Than $500 Million. This section addresses Federally-insured State-chartered credit unions (FISCUs) only, which have total assets of less than $500 million and thus are not considered to be ''large credit unions'' for purposes of § 715.4. CUMAA is silent regarding audits of credit unions in this category. Accordingly, this section provides that a FISCU having assets of less than $500 million may fulfill its supervisory committee audit responsibility either by ''obtain[ing] an annual supervisory committee audit as prescribed in section 715.9 or 715.4(b), or an audit as prescribed by the State or jurisdiction in which the credit union is located, *whichever is more stringent.*'' [5] (Emphasis added.) Theoretically, this presents the FISCU with a choice among three audit options-a financial statement audit, one of the § 715.9 options, or a State-prescribed audit. Unless the credit union voluntarily chooses to obtain a financial statement audit, however, the result is effectively predetermined simply by whether the audit prescribed by State law or regulation is ''more stringent'' than that available under § 715.9(c).[6]

Section 715.7—Audit of Federally-Chartered Credit Unions Having Total Assets of Less Than $500 Million But More Than $10 Million. This section addresses Federally-chartered credit unions only, which have total assets of less than $500 million but more than $10 million. It provides that a credit union which does not choose to obtain a financial statement audit under § 715.4(b) must obtain a supervisory committee audit under § 715.9. Credit unions in this category are allowed to voluntarily obtain a financial statement audit. If a credit union voluntarily chooses to obtain a financial statement audit, the audit must be performed consistent with the accountancy laws and licensing requirements of the State in which the credit union is located. *See supra* note 3 and accompanying text. By its terms, this is the only requirement that 12 U.S.C. 1782(a)(6)(D)(ii) imposes on credit unions in this category. Nothing in that provision restricts a credit union from using the alternatives to a financial statement audit that are available in § 715.9.

Section 715.8—Audit of Federally-Chartered Credit Unions Having Less Than $10 Million. CUMAA is silent about audits of federally-chartered credit unions having less than $10 million in assets. Accordingly, this section requires credit unions in this category to obtain a supervisory committee audit under § 715.9.

Section 715.9—Supervisory Committee Audit Requirements If Not A Financial Statement Audit. This section applies to federally-insured credit unions that are not required, and have not chosen, to obtain a financial statement audit. Three options are provided for credit unions in this category to fulfill their supervisory committee audit responsibility, two of which are analogous to options proposed by the FFIEC for other Federally-insured financial institutions.

The first option is an ''opinion on the balance sheet'' of the credit union. § 715.9(a). Like a financial statement audit, this engagement must be performed in accordance with GAAS by a person who is licensed by State law to do so. This engagement consists of an examination of assets, liabilities and equity and requires an opinion by the auditor on the fairness of the balance sheet only. (In contrast, a financial statement audit requires an opinion addressing additional financial statements such as the income statement, statement of changes in equity (including comprehensive income) and statement of cash flows.) This option is identical to that of the same name proposed by the FFIEC. *FFIEC Policy Statement,* 63 FR at 7797, 7800.

---

[5] The doctrine of Federal preemption permits NCUA to establish *minimum* audit requirements for federally-insured credit unions, as § 715.9 does, which preempt *conflicting* audit requirements prescribed by State law or regulation. However, this does not preclude the States from imposing additional,non-conflicting audit requirements on FISCUs, making their audits ''more stringent'' that those NCUA prescribes.

For purposes of clarification to aid the reader, this preamble and proposed rule expressly references certain powers that Federal law and NCUA regulations grant to the States (or their credit union supervisors), *e.g.*, §§ 715.6, 741.6(b); 12 U.S.C. 1782(a)(6)(C)(iii). The absence of express reference to State powers elsewhere in this preamble and proposed rule does not diminish or preclude the power of States to act pursuant to State laws that do not conflict with Federal law or NCUA rules. *See, e.g.*, Colo. Rev. Stat. § 11–30–106(3); Wash Rev. Code § 31.12.569 (authorizing Statute supervisory authority to require FISCUs to follow GAAP or other standards).

[6] NCUA does not define ''stringent'' except to suggest that it might involve enhanced audit scope and depth. ''Stringent'' is not defined in 12 U.S.C. 1782(a)(6)(C)(iii), which refers to an accounting principle that is ''no less stringent'' than GAAP.

In comparison to NCUA's current supervisory committee audit rule, § 701.12, State-prescribed audits for credit unions generally fall into three categories: (1) States which prescribe audits substantially similar to 12 U.S.C. 1761d and/or § 701.12; (2) States which prescribe audits which differ in some respects from 12 U.S.C. 1761d and/or § 701.12, but which are not necessarily ''more stringent,'' including four States which determine the type of audit by asset size, e.g., Mich. Comp. Laws § 490.11(2); and (3) States in which a financial statement audit is prescribed for certain credit unions.

The second option is a ''review and evaluation of internal controls over Call Reporting,'' § 715.9(b), which is available to all credit unions but those deemed ''complex'' under 12 U.S.C. 1790d(d)(1) for purposes of prompt corrective action.[7] This engagement consists of an examination of management's written assertions concerning the effectiveness of internal controls over data reported in Call Reports (NCUA Form 5300) which addresses the following high risk areas: loans, investments, and cash and deposit activity. The result of this engagement is a report by the auditor on management's assertions on the effectiveness of internal controls on the data limited to these high risk areas. This option is comparable to the FFIEC-proposed option of an ''attestation report on internal control assertions.'' 63 FR at 7797, 7800.

The principal difference between NCUA's ''review and evaluation of internal controls over Call Reporting'' and FFIEC's ''attestation report on internal control assertions'' concerns who is qualified to perform the engagement. NCUA's ''review and evaluation'' may be performed by an independent, State-licensed person or other ''qualified person'' unless the credit union is deemed ''complex'' under 12 U.S.C. 1790d(d)(1) (in which case *only* an independent, State-licensed person may perform the engagement). In contrast, FFIEC's ''attestation report'' option always must be performed by an independent, State-licensed person. The reason for relaxing the level of qualification for persons performing NCUA's ''review and evaluation of internal controls over Call Reporting'' is that its scope is far narrower than that of FFIEC's ''attestation report.'' The NCUA ''review and evaluation'' is limited to certain data reported in three Call Report schedules—that which concerns loans, investments, and cash and deposit activity. In contrast, FFIEC's ''attestation report'' goes much further—it encompasses ''all or specified schedules of the institution's regulatory reports'' concerning loans and lease financing receivables; past due and nonaccrual loans, leases, and other assets; allowance for credit losses; securities; and in some cases trading assets and liabilities and off-balance sheet items. 63 FR 7800. Accordingly, for a credit union which is not deemed ''complex,'' NCUA permits a ''review and evaluation of internal controls over Call Reporting'' to be performed by a ''qualified person,'' which includes the Supervisory Committee itself, the credit union's internal auditor (provided that person reports directly to the Committee), or by an independent, State-licensed person.[8]

The final option offered by NCUA is the audit program prescribed in NCUA's *Supervisory Committee Guide (Guide)*, as revised to conform to Part 715. § 715.9(c). This engagement is similar to a ''Directors' Examination'' used by some Federally-insured banks. Like the ''review and evaluation of internal controls over Call Reporting,'' a *Guide* engagement may be performed by an independent, State-licensed person or other ''qualified person.'' The *Guide* will be amended to detail the minimum scope and procedures of the engagement, and to clearly distinguish a *Guide* engagement from a financial statement audit engagement.

Credit unions having assets of $500 million or more now *must* obtain a financial statement audit, and June 1998 NCUA Call Report data shows that 80% of Federally-insured credit unions above $50 million in assets already do so by choice. NCUA encourages all credit unions, regardless of asset size, to obtain financial statement audits,[9] but recognizes that financial statement audits may not be practical for all credit unions. Accordingly, NCUA seeks to preserve less burdensome audit alternatives for credit unions which do not obtain financial statement audits. NCUA believes this section accomplishes that objective without compromising the Supervisory Committee's ability to carry out its oversight responsibilities.

This section is a significant departure from the supervisory committee audit standards and scope set forth in current section 701.12(c). But it is consistent with the overall objective of proposed Part 715 to clearly delineate the differences in scope, and therefore in burden, between a financial statement audit—which is warranted for large credit unions—and the alternatives for a supervisory committee audit, which are suited to credit unions of moderate and smaller size.

D. Verification of Accounts

Section 715.10—Requirements for Verification of Accounts and Passbooks. As mandated by 12 U.S.C. 1761d, this section requires the Supervisory Committee to conduct a verification of the passbooks and accounts of the members against the records of the credit union at least once every two years. This section is identical to current § 701.12(h) except that it has been restructured and reworded to enhance clarity.

E. Other Audit Requirements

Section 715.11—Assistance From Outside Compensated Person. This section sets the independence and engagement letter requirements that are triggered when the Supervisory Committee engages an outside person who is compensated to perform, or to assist in the performance of, a supervisory committee audit under this Part. Subsection (a), which concerns the auditor's independence from credit union officials, is identical in substance to current § 701.12(g), but has been reworded to enhance clarity and eliminate the need to cross-reference the ''Definitions'' section of this Part. Subsection (b) sets forth the general requirement for an engagement letter between the Supervisory Committee and the outside auditor memorializing the terms and conditions of the audit engagement. It is identical to current § 701.12(d)(1), except that a sentence has been relocated to this section to emphasize that ''the engagement must be contracted directly with the Supervisory Committee.'' The purpose of this addition is to clarify that the engagement must be with the Supervisory Committee, not the credit union's board of directors or management. However, this does not preempt State laws requiring the board of directors to authorize compensation for auditing assistance sought by the Supervisory Committee. *See, e.g.*, Colo. Rev. Stat. § 11–30–109(1)(i). Subsection (c) sets forth the required contents of an engagement letter; it retains all eight items in current § 701.12(d)(i)–(viii) with minor revisions to conform to § 715.9.

Subsections (d) and (e) together retain an innovation from current § 701.12(d)(2)–(3) that has effectively solved the problem of after-the-fact

[7] NCUA is required to adopt rules defining a ''complex'' credit union for prompt corrective action purposes no later than August 7, 2000, to become effective January 1, 2001. CUMAA § 301(d)(2)(B) and (e)(2).

[8] Because there are no specific standards to follow in a ''review and evaluation of internal controls over Call Reporting,'' this engagement is subject to an NCUA examiner's finding that the auditor's report is unacceptable on a subjective basis due to, for example, insufficient scope or depth. In that event, the credit union may be required by NCUA to have its audit re-done, either by the same person or by an independent State-licensed person, or to obtain a financial statement audit engagement. §§ 715.13(a)(2), 715.14.

[9] Credit unions (through their voluntary boards of directors) should recognize that they will receive greater degree of comfort from a financial statement audit performed by a State-licensed person who must follow specific auditing standards, is subject to peer reviews (available for inspection prior to hiring a licensed auditor), and is required to satisfy continuing education requirements in order to remain licensed.

disputes between the credit union and its outside auditor over which components of an audit were to be included in the engagement, and which were to be excluded. Thus, subsection (d) requires that the auditor give notice in the engagement letter when all items within the scope of an audit will be addressed in the engagement, thus yielding a complete supervisory committee audit under § 715.9(b) or (c). Conversely, subsection (e) requires the engagement letter to identify any items that will be excluded from the engagement, and which will render the supervisory committee audit incomplete unless the Supervisory Committee itself addresses the excluded items.

Section 715.12—Audit Report and Working Paper Maintenance and Access. This section combines two sets of requirements—the procedure for distributing the audit report produced either by the Supervisory Committee or by an outside person who performed the audit, and the responsibility for maintenance of, and access to, the auditor's ''working papers'' once the engagement is complete. Subsection (a), which concerns distribution of the audit report, is identical to current § 701.12(e)(1) with a single exception—it expressly states that credit union members must be provided with a report of the results of an audit (which can be oral or written) if not with a copy of the audit report itself. This revision conforms to 12 U.S.C. 1761d and reflects current practice. It is consistent with the view that most members are interested in the results of the audit, but not in receiving a report of the audit. Subsection (b), which concerns maintenance and access to audit working papers, is identical in form and substance to current § 701.12(e)(2).

F. Sanctions and Remedies

Section 715.13—Sanctions For Failure To Comply With This Part. This section imposes sanctions when a Supervisory Committee or its independent compensated auditor violates a provision of this Part or of an engagement letter prescribed by this Part. A Regional Director is permitted to reject an audit or to impose the same conditions on the audit as § 715.4 prescribes, and the NCUA Board is permitted to seek formal administrative sanctions such as a cease and desist order or a civil money penalty. This section is identical in form and substance to current § 701.12(f).

Section 715.14—Statutory Audit Remedies for Federal Credit Unions. This section provides the NCUA Board with a pair of additional remedies which, if certain conditions are met, apply to federally-chartered credit unions by statute, 12 U.S.C. 1782(a)(6)(A), and to State-chartered credit unions by regulation. § 701.13(a)(2). The remedies are the authority to compel a credit union in this category to have its audit performed by a State-licensed person, § 715.14(a), or to compel the credit union to obtain a financial statement audit even when it is not otherwise required to do so. § 715.14(b). This section is identical to current § 701.13, with two exceptions. First, subsection (b), which makes ''serious and persistent recordkeeping deficiencies'' a basis for compelling a credit union to obtain a financial statement audit, now includes a sentence describing the objective of such an audit: ''to reconstruct the records of the credit union sufficient to allow an unqualified or, if necessary, a qualified opinion on the credit union's financial statements. An adverse opinion should be the exception rather than the norm.'' Second, subsection (c), which defines ''serious and persistent recordkeeping deficiencies,'' is restructured to define ''serious'' and ''persistent'' separately.

G. Call Reporting Requirements

Section 741.6—Financial and Statistical and Other Reports. This section sets deadlines for filing Call Reports with NCUA. The proposed rule revises filing dates in subsection (a), adds two new subsections (b) and (c), and redesignates current subsection (b) as a new subsection (d). In subsection (a), the filing dates for semiannual Call Reports are changed from ''on or before January 31 and on or before July 31'' to ''on or before January 22 and on or before July 22,'' respectively, to reflect current practice. New subsection (b) incorporates accounting principles mandated by 12 U.S.C. 1782(a)(6)(C) for reports or statements required to be filed with the NCUA Board under subsection (a). Call Reports filed by credit unions having assets of $10 million or more now must adhere to measurement principles consistent with GAAP. 12 U.S.C. 1782(a)(6)(C)(i); *see also supra* note 1. This includes Call Reports filed by corporate credit unions. State credit union supervisors may require Federally-insured State-chartered credit unions to follow GAAP regardless of asset size. 12 U.S.C. 1782(a)(6)(C)(iii); *see supra* note 7 and accompanying text. For the convenience of affected credit unions, subsection (c) cross-references the definition of GAAP at § 715.2(d), distinguishes GAAP from GAAS, and identifies authoritative sources for the pronouncements of GAAP.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The NCUA Board has determined and certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Thus, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Paperwork Reduction Act imposes no additional information collection requirements beyond those in the current rule. Therefore, no Paperwork Reduction Act analysis is required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed amendment will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of rights and responsibilities among the various levels of government.

List of Subjects

12 CFR Parts 701 and 741

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 715

Audits, Credit unions, Reporting and recordkeeping requirements, Supervisory committee.

By the National Credit Union Administration Board on December 17, 1998.

Becky Baker,

Secretary of the Board.

Accordingly, it is proposed that 12 CFR, parts 701, 715 and 741 be amended as set forth below:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and 1798. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§§ 701.12 and 701.13 [Removed]

2. Sections 701.12 and 701.13 are removed.

3. Part 715 is added to read as follows:

PART 715—SUPERVISORY COMMITTEE AUDITS AND VERIFICATIONS

Sec.

Authority: 12 U.S.C. 1761d, 1782(a)(6).

§ 715.1 Scope of this part.

This part implements section 202(a)(6)(D) of the Federal Credit Union Act, 12 U.S.C. 1782(a)(6)(D), as added by section 201(a) of the Credit Union Membership Access Act, Pub. L. No. 105–219, 112 Stat. 918 (1998). This part prescribes the responsibilities of the Supervisory Committee to obtain an annual audit of the credit union according to its charter type and asset size, and to conduct a verification of members' accounts. Revised filing dates and required accounting principles for Call Reports (NCUA Forms 5300 and 5310) can be found in § 741.6 of this chapter.

§ 715.2 Definitions used in this part.

As used in this part:

(a) *Balance sheet audit* refers to the examination of a credit union's assets, liabilities, and equity under generally accepted auditing standards (GAAS) by an independent public accountant for the purpose of opining on the fairness of the presentation on the balance sheet. The opinion under this type of engagement would not address the fairness of the presentation of the credit union's income statement, statement of changes in equity (including comprehensive income), or statement of cash flows.

(b) *Compensated person* refers to any accounting/auditing professional, excluding a credit union employee, who is compensated for performing more than one supervisory committee audit and/or verification of members' accounts per calendar year.

(c) *Financial statements* refers to a presentation of financial data, including accompanying notes, derived from accounting records of the credit union, and intended to disclose a credit union's economic resources or obligations at a point in time, or the changes therein for a period of time, in conformity with GAAP, as defined herein, or regulatory accounting procedures. Each of the following is considered to be a financial statement: a balance sheet or statement of financial condition; statement of income or statement of operations; statement of undivided earnings; statement of cash flows; statement of changes in members' equity; statement of assets and liabilities that does not include members' equity accounts; statement of revenue and expenses; and statement of cash receipts and disbursements.

(d) *Financial statement audit* (popularly known as an ''opinion audit'') refers to an audit of the financial statements of a credit union performed in accordance with GAAS by an independent auditor who is licensed by the appropriate State or jurisdiction. The objective of a financial statement audit is to express an opinion as to whether those financial statements of the credit union present fairly, in all material respects, the financial position and the results of its operations and its cash flows in conformity with GAAP, as defined herein, or regulatory accounting practices.

(e) *GAAP* is an acronym for ''generally accepted accounting principles'' which refers to the conventions, rules, and procedures which define accepted accounting practice. GAAP includes both broad general guidelines and detailed practices and procedures, provides a standard by which to measure financial statement presentations, and encompasses not only accounting principles and practices but also the methods of applying them.

(f) *GAAS* is an acronym for ''generally accepted auditing standards'' which refers to the standards approved and adopted by the American Institute of Certified Public Accountants which apply when an ''independent, licensed certified public accountant'' audits financial statements. Auditing standards differ from auditing procedures in that ''procedures'' address acts to be performed, whereas ''standards'' measure the quality of the performance of those acts and the objectives to be achieved by use of the procedures undertaken. In addition, auditing standards address the auditor's professional qualifications as well as the judgment exercised in performing the audit and in preparing the report of the audit.

(g) *Independent* means the impartiality necessary for the dependability of the compensated auditor's findings. Independence requires the exercise of fairness toward credit union officials, members, creditors and others who may rely upon the report of a supervisory committee audit report.

(h) *Internal controls* refers to the process, established by the credit union's board of directors, officers and employees, designed to provide reasonable assurance of reliable financial reporting and safeguarding of assets against unauthorized acquisition, use, or disposition. A credit union's internal control structure consists of five components: control environment; risk assessment; control activities; information and communication; and monitoring. Reliable financial reporting refers to preparation of Call Reports (NCUA Forms 5300 and 5310) that meet management's financial reporting objectives. Internal control over safeguarding of assets against unauthorized acquisition, use, or disposition refers to prevention or timely detection of transactions involving such unauthorized access, use, or disposition of assets which could result in a loss that is material to the financial statements.

(i) *Reportable conditions* refers to a matter coming to the attention of the independent, compensated auditor which, in his or her judgment, represents a significant deficiency in the design or operation of the internal control structure of the credit union, which could adversely affect its ability to record, process, summarize, and report financial data consistent with the representations of management in the financial statements.

(j) *Review and evaluation of internal controls over Call Reporting* refers to an engagement under which management reviews its internal controls over Call Reporting with a concentration in the following high risk areas: loans, investments and cash and deposit activity, and documents its review. Management would then provide a written assertion stating whether it

believes its internal controls are effective. The credit union's auditor would examine management's assertion and provide an appropriate report assessing that assertion.

(k) *State-licensed person* refers to a person who is licensed by the State or jurisdiction where the credit union is located to perform accounting or auditing services for that credit union.

(l) *Supervisory committee* refers to a supervisory committee as defined in Section 111(b) of the Federal Credit Union Act, 12 U.S.C. 1786(r). For some federally-insured state chartered credit unions, the ''audit committee'' designated by state statute or regulation is the equivalent of a supervisory committee.

(m) *Supervisory committee audit* refers to an examination under either § 715.4(b) or § 715.9 of this part. An financial statement audit, as defined herein, fulfills the requirements of a ''supervisory committee audit.''

(n) *Working papers* refers to the principal record, in any form, of the work performed by the auditor and/or supervisory committee to support its findings and/or conclusions concerning significant matters. Examples include the written record of procedures applied, tests performed, information obtained, and pertinent conclusions reached in the engagement, proprietary audit programs, analyses, memoranda, letters of confirmation and representation, abstracts of credit union documents, reviewer's notes, if retained, and schedules or commentaries prepared or obtained by the independent, compensated auditor.

§ 715.3 General responsibilities of the supervisory committee.

(a) *Basic.* The supervisory committee is responsible for ensuring that the board of directors and management of the credit union meet required financial reporting objectives and establish practices and procedures sufficient to safeguard members' assets.

(b) *Specific.* To carry out the responsibilities set forth in paragraph (a) of this section, the supervisory committee must determine whether:

(1) Internal controls are established and effectively maintained to achieve the credit union's financial reporting objectives which must be sufficient to satisfy the requirements of the supervisory committee audit, verification of members' accounts and its additional responsibilities;

(2) The credit union's accounting records and financial reports are promptly prepared and accurately reflect operations and results;

(3) The relevant plans, policies, and control procedures established by the board of directors are properly administered; and

(4) Policies and control procedures are sufficient to safeguard against error, conflict of interest, self-dealing and fraud.

(c) *Mandates.* In carrying out the responsibilities set forth in paragraphs (a) and (b) of this section, the supervisory committee must:

(1) Adhere to the measurement and filing requirements for reports filed with the NCUA Board under § 741.6;

(2) Ensure that the credit union fulfills its responsibility to obtain a supervisory committee audit, as prescribed in § 715.4 of this part;

(3) Ensure that the credit union verifies members' passbooks and accounts against the records of the credit union, as prescribed in § 715.10 of this part;

(4) Act to avoid sanctions for failure to comply with the requirements of this part, as prescribed in §§ 715.13 and 715.14 of this part.

§ 715.4 Audit responsibility of the supervisory committee.

(a) *Annual audit requirement.* A federally-insured credit union is required to obtain an annual supervisory committee audit which occurs at least once every calendar year (period of performance) and must cover the period elapsed since the last audit period (period effectively covered).

(b) *Financial statement audit option.* Any federally-insured credit union, whether federally- or State-chartered and regardless of asset size, may choose to fulfill its supervisory committee audit responsibility by obtaining an annual audit of its financial statements performed in accordance with GAAS by an independent person who is licensed to do so by the State or jurisdiction in which the credit union is located. (A ''financial statement audit'' is distinct from a ''supervisory committee audit,'' although a financial statement audit is included among the options for fulfilling the supervisory committee audit requirement. *Compare* § 715.2(c) and (j).)

(c) *Other audit options.* A federally-insured credit union which does not choose to obtain a financial statement audit as permitted by subsection (b) must fulfill its supervisory audit responsibility under either of §§ 715.6, 715.7 or 715.8 of this part, as required. *See* Table 1.

TABLE 1.—MINIMUM AUDIT REQUIREMENTS BY CHARTER TYPE AND ASSET SIZE

Type of charter	Asset size	Minimum audit required to fulfill supervisory committee audit responsibility [1]	Part 715 section
Federal or State	$500 Million or more	Financial statement audit per GAAS by independent, State-licensed person.	715.5
State	Less than $500 Million	Supervisory committee audit per § 715.9 or State-prescribed audit, whichever is more stringent.	715.6
Federal	Less than $500 Million but greater than $10 Million.	Supervisory committee audit per § 715.9	715.7
Federal	$10 Million or less	Supervisory committee audit per § 715.9	715.8

[1] The Supervisory Committee audit responsibility under part 715 can always be fulfilled by obtaining a financial statement audit. § 715.4(b).

§ 715.5 Audit of federally-insured credit unions having total assets of $500 million or greater.

To fulfill its supervisory committee audit responsibility, a federally-insured credit union, whether federally- or State-chartered, having total assets of $500 million or greater must obtain an annual audit of its financial statements performed in accordance with GAAS by an independent person who is licensed to do so by the State or jurisdiction in which the credit union is located.

§ 715.6 Audit of federally-insured State-chartered credit unions having total assets of less than $500 million.

To fulfill its supervisory committee audit responsibility, a federally-insured State-chartered credit union having total assets of less than $500 million must obtain an annual supervisory committee

audit as prescribed under either § 715.9 or § 715.4(b), or an audit as prescribed by the State or jurisdiction in which the credit union is located, whichever is more stringent.

§ 715.7 Audit of federally-chartered credit unions having total assets of less than $500 million but more than $10 million.

To fulfill its supervisory committee audit responsibility, a federally-chartered credit union having total assets of less than $500 million but more than $10 million which does not choose to obtain an audit under § 715.4(b), must obtain an annual supervisory committee audit as prescribed in § 715.9.

§ 715.8 Audit of federally-chartered credit unions having total assets of $10 million or less.

To fulfill its supervisory committee audit responsibility, a federally-chartered credit union having total assets of $10 million or less must obtain an annual supervisory committee audit as prescribed in § 715.9.

§ 715.9 Other Supervisory Committee audit requirements if not a financial statement audit.

A credit union which is not required to obtain a financial statement audit may fulfill its supervisory committee responsibility by having its Supervisory Committee or other qualified person perform any one of the following engagements:

(a) *Balance sheet audit.* A balance sheet audit, as defined by § 715.2(a), performed by a person who is licensed to do so by the State or jurisdiction in which the credit union is located; or

(b) *Review and evaluation of internal controls over call reporting.* A ''review and evaluation of internal controls over Call Reporting'' (NCUA Form 5300), as defined in § 715.2(j) (except that this engagement may be performed only by an independent, State-licensed person if the credit union is deemed ''complex'' pursuant to 12 U.S.C. 1790d(d)(1)); or

(c) *Audit per supervisory committee Guide.* An audit performed in accordance with the procedures prescribed in NCUA's Supervisory Committee Guide published after final adoption of this part.

§ 715.10 Requirements for verification of accounts and passbooks.

(a) *Verification obligation.* The supervisory committee shall, at least once every two years, cause the passbooks (including any book, statements of account, or other record approved by the NCUA Board) and accounts of the members to be verified against the records of the treasurer of the credit union.

(b) *Methods.* Any of the following methods may be used to verify members' passbooks and accounts, as appropriate:

(1) *Controlled verification.* A controlled verification of 100 percent of members' share and loan accounts;

(2) *Statistical method.* A sampling method which provides for:

(i) Random selection;

(ii) A sample which is representative of the population from which it was selected;

(iii) An equal chance of selecting each dollar in the population;

(iv) Sufficient accounts in both number and scope to provide assurance that the General Ledger accounts are fairly stated to meet management's financial reporting objectives; and

(v) Additional procedures to be performed if the auditor concludes that evidence provided by confirmations alone is not sufficient.

(3) *Non-statistical method.* When the verification is performed by an independent auditor licensed by the State or jurisdiction in which the credit union is located, the auditor may choose among the sampling methods set forth in paragraphs (b)(1) and (2) of this section and non-statistical sampling methods consistent with GAAS if such methods provide for:

(i) Sufficient accounts in both number and scope to provide assurance that the General Ledger accounts are fairly stated in relation to the financial statements taken as a whole;

(ii) Additional procedures to be performed if the auditor concludes that evidence provided by confirmations alone is not sufficient; and

(iii) Documentation of the sampling procedures used and of their consistency with GAAS (to be provided to the NCUA Board upon request).

(c) *Retention of records.* The supervisory committee must retain the records of each verification of members' passbooks and accounts until it completes the next verification of members' passbooks and accounts.

§ 715.11 Assistance from outside, compensated person.

(a) *Unrelated to officials.* A compensated auditor who performs a supervisory committee audit on behalf of a credit union shall not be related by blood or marriage to any employee, or member of either the board of directors, the supervisory committee or the credit committee, or loan officer of that credit union, or to the spouse, child, parent, grandchild, grandparent, brother or sister of such employee, member or officer.

(b) *Engagement letter.* The engagement of a compensated auditor to perform all or a portion of the scope of a financial statement audit or supervisory committee audit shall be evidenced by an engagement letter. In all cases, the engagement must be contracted directly with the supervisory committee. The engagement letter must be signed by the compensated auditor and acknowledged therein by the Supervisory Committee prior to commencement of the engagement.

(c) *Contents of letter.* The engagement letter shall:

(1) Specify the terms, conditions, and objectives of the engagement;

(2) Identify the basis of accounting to be used;

(3) If not a financial statement audit or balance sheet audit, include an appendix setting forth the procedures to be performed;

(4) Specify the rate of, or total, compensation to be paid for the audit;

(5) Provide that the auditor shall, upon completion of the engagement, deliver to the Supervisory Committee a written report of the audit and notice in writing, either within the report or communicated separately, of any internal control reportable conditions and/or irregularities or illegal acts, if any, which come to the auditor's attention during the normal course of the audit (i.e., no notice required if none noted);

(6) Specify a target date of delivery of the written reports;

(7) Certify that NCUA staff and/or the State credit union supervisor, or designated representatives of each, will be provided unconditional access to the complete set of original working papers, either at the offices of the credit union or at a mutually agreed upon location, for purposes of inspection; and

(8) Acknowledge that working papers shall be retained for a minimum of three years from the date of the written audit report.

(d) *Complete scope.* If the engagement is to perform a supervisory committee audit that will address all of the requirements of § 715.9(b) or (c), the engagement letter shall certify that the audit addresses the complete scope of a supervisory committee audit.

(e) *Exclusions from scope.* If the engagement is to perform a supervisory committee audit which will exclude any item required by § 715.9(b) or (c), the engagement letter shall:

(1) Identify the excluded items;

(2) State that, because of the exclusion(s), the resulting audit will not, by itself, fulfill the scope of a supervisory committee audit; and

(3) Caution that the supervisory committee will remain responsible for fulfilling the scope of a supervisory committee audit with respect to the excluded items.

§ 715.12 Audit report and working paper maintenance and access.

(a) *Audit report.* Upon completion and/or receipt of the written report of a financial statement audit or a supervisory committee audit, the Supervisory Committee must verify that the audit was performed and reported in accordance with the terms of the engagement letter prescribed herein. The Supervisory Committee must submit the report(s) to the board of directors, and submit a report of the results of the audit to the members of the credit union at the next annual meeting of the credit union. The Supervisory Committee shall, upon request, provide to the National Credit Union Administration a copy of each of the audit reports it receives or produces.

(b) *Working papers.* The supervisory committee shall be responsible for preparing and maintaining, or making available, a complete set of original working papers supporting each supervisory committee audit. The supervisory committee shall, upon request, provide NCUA staff unconditional access to such working papers, either at the offices of the credit union or at a mutually agreeable location, for purposes of inspecting such working papers.

§ 715.13 Sanctions for failure to comply with this part.

(a) *Sanctions.* Failure of a supervisory committee and/or its independent compensated auditor or other person to comply with the requirements of this section, or the terms of an engagement letter required by this section, is grounds for:

(1) The regional director to reject the supervisory committee audit;

(2) The regional director to impose the remedies available in § 715.14 of this part, 12 CFR 715.14, provided any of the conditions specified therein is present; and

(3) The NCUA Board to seek formal administrative sanctions against the supervisory committee and/or its independent, compensated auditor pursuant to section 206(r) of the Federal Credit Union Act, 12 U.S.C. 1786(r).

(b) *State charters.* In the case of a federally-insured State-chartered credit union, NCUA shall provide the state regulator an opportunity to timely impose a remedy satisfactory to NCUA before seeking to impose a sanction permitted under paragraph (a) of this section.

§ 715.14 Statutory audit remedies for Federal credit unions.

(a) *Independent auditor required.* The NCUA Board may compel a federal credit union to obtain a supervisory committee audit which meets the minimum requirements of § 715.4(c), and which is performed by an independent person who is licensed by the State or jurisdiction in which the credit union is located, for any fiscal year in which any of the following three conditions is present:

(1) The supervisory committee has not obtained an annual financial statement audit or performed a supervisory committee audit; or

(2) The supervisory committee has obtained a financial statement audit or performed a supervisory committee audit which does not meet the requirements of part 715 including those of § 715.10.

(3) The credit union has experienced serious and persistent recordkeeping deficiencies as defined in paragraph (c) of this section.

(b) *Financial statement audit required.* The NCUA Board may compel a federal credit union to obtain a financial statement audit performed in accordance with GAAS by an independent person who is licensed by the State or jurisdiction in which the credit union is located (even if such audit is not required by section 715.5), for any fiscal year in which the credit union has experienced serious and persistent recordkeeping deficiencies as defined in paragraph (c) of this section. The objective of a financial statement audit performed under this subsection is to reconstruct the records of the credit union sufficient to allow an unqualified or, if necessary, a qualified opinion on the credit union's financial statements. An adverse opinion should be the exception rather than the norm.

(c) ''*Serious and persistent recordkeeping deficiencies.*'' A recordkeeping deficiency is ''serious'' if the NCUA Board reasonably believes that the board of directors and management of the credit union have not timely met financial reporting objectives and established practices and procedures sufficient to safeguard members' assets. A serious recordkeeping deficiency is ''persistent'' when it continues beyond a usual, expected or reasonable period of time.

PART 741—REQUIREMENTS FOR INSURANCE

4. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, and 1781–1790. Section 741.4 is also authorized by 31 U.S.C. 3717.

5. Section 741.6 is amended to change the phrase in paragraph (a) from ''before January 31 and on or before July 31'' to ''before January 22 and on or before July 22''; and to redesignate paragraph (b) as paragraph (d) and to add paragraphs (b) and (c) to read as follows:

§ 741.6 Financial and statistical and other reports.

* * * * *

(b) *Consistency with GAAP.* The financial statements and reports required to be filed quarterly or semiannually under paragraph (a) of this section must reflect measurement principles consistent with GAAP if the credit union has total assets of $10 Million or greater, but may reflect measurement principles which differ from GAAP if the credit union has total assets of less than $10 Million (except that a Federally-insured State-chartered credit union may be required by its state credit union supervisor to follow GAAP regardless of asset size).

(c) *GAAP sources.* GAAP means generally accepted accounting principles, as defined in § 715.2(e) of this chapter. GAAP is distinct from GAAS, which means generally accepted auditing standards, as defined in § 715.2(f) of this chapter. Authoritative sources of GAAP include, but are not limited to, pronouncements of the Financial Accounting Standards Board (FASB) and its predecessor organizations, the Accounting Standards Executive Committee (AcSEC) of the American Institute of Certified Public Accountants (AICPA), the FASB's Emerging Issues Task Force (EITF), and the applicable AICPA Audit and Accounting Guide.

* * * * *

§ 741.202 [Amended]

6. Section 741.202 is amended to change: the references in paragraph (a) from ''§§ 701.12 and 701.13'' to ''§ 715.2 through § 715.6 and § 715.9 through § 715.14''; to add at the ending of paragraph (a) after ''of this chapter'' the phrase ''or applicable state law, if more stringent.''; and to change references in paragraph (b) from ''§§ 701.12(e) and 701.13'' to ''§§ 715.10, 715.13, and 715.14''.

[FR Doc. 99–150 Filed 1–5–99; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–27–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, that currently requires repetitive visual inspections to detect cracks in the flight deck canopy area, and repair, if necessary; and repetitive detailed visual and eddy current inspections to detect cracks of the top sill members at station 82.5, and replacement of cracked parts with new parts, or repair of the top sill members. This action would continue to require detailed visual and eddy current inspections to detect cracks of the top sill members at station 82.5. This action also would add a requirement for a one-time inspection to determine the type of fasteners installed in certain holes of the joint strap installation, and replacement of rivets with bolts, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct cracking in the flight deck canopy area, which could result in reduced structural integrity of the flight deck frame and adjacent fuselage structure.

DATES: Comments must be received by February 5, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–27–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal 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–NM–27–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–27–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 12, 1996, the FAA issued AD 96–06–07, amendment 39–9544 (61 FR 11534, March 21, 1996), applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, to require repetitive visual inspections to detect cracks in the flight deck canopy area, and repair, if necessary. That AD also requires repetitive detailed visual and eddy current inspections to detect cracks of the top sill members at station 82.5, and replacement of cracked parts with new parts, or repair of the top sill members. That action was prompted by reports of cracking found in the structural members in the flight deck canopy area of the affected airplanes. The requirements of that AD are intended to ensure that cracking in the flight deck canopy area is detected and corrected in a timely manner; such cracking could result in reduced structural integrity of the cockpit frame and the adjacent fuselage structure.

Explanation of New Service Information

Since the issuance of AD 96–06–07, British Aerospace has issued Alert Service Bulletin 53–A–PM5994, Issue 4, dated August 23, 1996, and Issue 5, dated April 18, 1997. Issue 4 of the alert service bulletin continues to describe procedures for a detailed visual inspection to detect cracks of the top sill joint strap at station 82.5, of the frame at station 113, and of the frame at station 160.5 (left-hand side only) between stringers 13 and 15; an eddy current inspection to detect cracks of the top sill members at station 82.5; replacement of cracked parts with new parts; and repair of the top sill members, if necessary. Issue 4 of the alert service bulletin also adds procedures for a one-time inspection to determine the type of fasteners installed in certain holes on the top sill members, and replacement of rivets on the top sill members with bolts, if necessary. Such replacement is to be accomplished prior to the eddy current inspection for cracking of the top sill members at station 82.5. Issue 5 of the alert service bulletin is essentially identical to Issue 4, except it corrects a part number for the replacement bolts, and clarifies the instructions for accomplishing the eddy current inspection.

Accomplishment of the actions specified in Issue 4 or Issue 5 of the alert service bulletin is intended to adequately address the identified unsafe condition. The Civil Aviation Authority (CAA), which is the foreign civil airworthiness authority of the United Kingdom, classified these issues of the alert service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination

Paragraph (a) of AD 96–06–07 requires repetitive visual inspections to detect cracks of the flight deck canopy area. Accomplishment of the repetitive detailed visual and eddy current inspections to detect cracks of the top sill members at station 82.5, required by paragraph (c) of AD 96–06–07, terminates the requirements of paragraph (a) of that AD.

The FAA has determined that because the repetitive detailed visual and eddy current inspections eliminate the need for the repetitive visual inspections, and because the initial compliance threshold is lower for the detailed visual and eddy current inspections than for the visual inspection (14,000 or 20,000 total landings versus 30,000 total landings), the repetitive visual inspections to detect cracks of the flight deck canopy area are no longer necessary to ensure the safety of the transport airplane fleet. Therefore, paragraph (a) and paragraph (b), which specifies follow-on corrective actions for paragraph (a), of AD 96–06–07 are not included in this proposal.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 96–06–07 to continue to require detailed visual and eddy current inspections to detect cracks of the top sill members at station 82.5, and replacement of cracked parts with new parts, or repair of the top sill members. The proposed AD also would require a one-time inspection to determine the type of fasteners installed in certain holes of the joint strap installation, and replacement of rivets with bolts, if necessary. The new actions would be required to be accomplished in accordance with Issue 5 of the alert service bulletin described previously, except as discussed below.

Differences Between the Proposed AD and the Alert Service Bulletin

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or the CAA (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the CAA (or its delegated agent) would be acceptable for compliance with this proposed AD.

Cost Impact

There are approximately 42 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 96–06–07, and retained in this proposed AD, take approximately 19 work hours per airplane to accomplish (including access and close), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $47,880, or $1,140 per airplane, per inspection cycle.

The new inspection that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new inspection proposed by this AD on U.S. operators is estimated to be $2,520, or $60 per airplane.

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

Should an operator be required to accomplish the necessary replacement of rivets with bolts, it would take approximately 3 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary replacement of rivets is estimated to be $180 per airplane.

Regulatory Impact

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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 draft regulatory 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.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 39–9544 (61 FR 11534, March 21, 1996), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Docket 98–NM–27–AD. Supersedes AD 96–06–07, Amendment 39–9544.

Applicability: All Model BAC 1–11 200 and 400 series airplanes, 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 as indicated, unless accomplished previously.

To prevent reduced structural integrity of the flight deck frame and adjacent fuselage structure, accomplish the following:

(a) Perform a detailed visual inspection to detect cracks of the top sill joint strap at station 82.5, of the frame at station 113, and of the frame at station 160.5 (left-hand side only) between stringers 13 and 15; and an eddy current inspection to detect cracks of the top sill members at station 82.5. Perform these inspections in accordance with British Aerospace Alert Service Bulletin 53–A–PM5994, Issue 3, dated April 8, 1993; Issue 4, dated August 23, 1996; or Issue 5, dated April 18, 1997; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. After the effective date of this AD, only Issue 5 shall be used.

(1) For airplanes operating at a maximum cabin differential pressure not exceeding 7.5 pounds per square inch (psi): Perform the inspections at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD. Thereafter, repeat these inspections at intervals not to exceed 5,000 landings or 7,500 hours time-in-service, whichever occurs first.

(i) Prior to the accumulation of 20,000 total landings. Or

(ii) Within 1,200 landings or 12 months after April 22, 1996 (the effective date of AD 96–06–07, amendment 39–9544), whichever occurs later.

(2) For airplanes operating at a maximum cabin differential pressure greater than 7.5 psi, but not exceeding 8.2 psi, including those airplanes having incorporated British Aerospace Airbus Limited Modification PM3187: Perform the inspections at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD. Thereafter, repeat these inspections at intervals not to exceed 3,500 landings or 5,250 hours time-in-service, whichever occurs first.

(i) Prior to the accumulation of 14,000 total landings. Or

(ii) Within 800 landings or 12 months after April 22, 1996, whichever occurs later.

Note 2: British Aerospace Airbus Limited Modification PM3187 increases the cabin differential pressure from the normal 7.5 psi to 8.2 psi. If Modification PM3187 has been incorporated on the airplane, that airplane is considered to be subject to the requirements of paragraph (a)(2) of this AD.

(b) Concurrent with the next detailed visual inspection performed after the effective date of this AD in accordance with paragraph (a) of this AD, perform a one-time visual inspection to determine the type of fasteners installed in the two hole locations specified in Figure 2 of British Aerospace Alert Service Bulletin 53–A–PM5994, Issue 5, dated April 18, 1997.

(1) If bolts are found installed in the two hole locations specified in Figure 2 of the alert service bulletin: Prior to further flight, remove the bolts and perform the eddy current inspection specified in paragraph (a) of this AD to detect cracking of the top sill members at station 82.5, in accordance with the alert service bulletin. Repeat the detailed visual and eddy current inspections thereafter as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable; in accordance with the alert service bulletin.

(i) If no cracking is detected, prior to further flight, reinstall the bolts.

(ii) If any cracking is detected, prior to further flight, repair in accordance with paragraph (c) of this AD, and reinstall the bolts.

(2) If rivets are found installed in the two hole locations specified in Figure 2 of the alert service bulletin: Prior to further flight, remove the rivets, and perform the eddy current inspection specified in paragraph (a) of this AD to detect cracking of the top sill members at station 82.5, in accordance with the alert service bulletin. Repeat the detailed visual and eddy current inspections thereafter as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable; in accordance with the alert service bulletin.

(i) If no cracking is detected, prior to further flight, oversize the holes specified in Figure 2 of the alert service bulletin, and install bolts in place of the rivets.

(ii) If any cracking is detected, prior to further flight, repair in accordance with paragraph (c) of this AD, oversize the holes specified in Figure 2 of the alert service bulletin, and install bolts in place of the rivets.

Note 3: As specified in British Aerospace Alert Service Bulletin 53–A–PM5994, Issue 4, dated August 23, 1996, and Issue 5, dated April 18, 1997, the procedures for the eddy current inspection necessitate removal of the bolts from the holes specified in Figure 2 of the alert service bulletin.

(c) If any crack is found during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, accomplish the requirements of paragraph (c)(1), (c)(2), or (c)(3) of this AD, as applicable.

(1) For cracking of the joint strap, doubler, or angle at the sill joint at station 82.5: Replace the cracked part with a new part in accordance with British Aerospace Alert Service Bulletin 53–A–PM5994, Issue 3, dated April 8, 1993; Issue 4, dated August 23, 1996; or Issue 5, dated April 18, 1997. After the effective date of this AD, only Issue 5 shall be used.

(2) For cracking of the frame at station 113: Repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Civil Aviation Authority (or its delegated agent).

(3) For cracking of the frame at station 160.5: Repair in accordance with the Structural Repair Manual, as specified in British Aerospace Alert Service Bulletin 53–A–PM5994, Issue 3, dated April 8, 1993; Issue 4, dated August 23, 1996; or Issue 5, dated April 18, 1997. After the effective date of this AD, only Issue 5 shall be used.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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.

Issued in Renton, Washington, on December 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–180 Filed 1–5–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–76–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG (IAE) V2500–A1 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to International Aero Engines (IAE) V2500–A1 series turbofan engines. This proposal would require initial and repetitive inspections of certain High Pressure Turbine (HPT) stage 1 and stage 2 disks utilizing an improved ultrasonic method when the disks are exposed during a normal shop visit, and if a subsurface anomaly is found, removal from service and replacement with a serviceable part. This proposal is prompted by the results of a stage 1 HPT disk fracture investigation which has identified a population of HPT stage 1 and 2 disks that may have subsurface anomalies formed during a forging process. The actions specified by the proposed AD are intended to prevent

HPT disk fracture, which could result in an uncontained engine failure, and damage to the aircraft.

DATES: Comments must be received by February 5, 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–76–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. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rolls-Royce Commercial Aero Engine Limited, P. O. Box 31, Derby, England, DE2488J, Attention: Publication Services ICL–TP; telephone number 011–44–1–33–22–46553; fax number 011–44–1–33–22–46302. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal 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–76–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–76–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) received a report of an uncontained high pressure turbine (HPT) disk failure on an International Aero Engines (IAE) V2500–A1 series turbofan engine installed on an Airbus A320 series aircraft. Based on the results of the preliminary investigation, which indicated that the fracture initiated from material contamination, the FAA issued airworthiness directive (AD) 98–20–18, which immediately removed from service 6 HPT disks made from the same batch of material as the fractured disk. Further investigation revealed that no material contamination was present in the fracture initiation area of the failed disk. The subsurface defect was a ''clean linear'' anomaly within the parent material formed during a specific forging process. The current ultrasonic inspection methods utilized during the disk manufacturing of the failed disk may not have been capable of detecting this defect due to its orientation and shape. Therefore, the suspect population has been expanded to include all HPT stage 1 and stage 2 disks manufactured between 1983 and early 1992, using the same specific forging process. HPT disks manufactured after early 1992 are not suspect because a different forging process was utilized. There is a total of 302 disks in this suspect population. This condition, if not corrected, could result in an HPT disk fracture, which could result in a uncontained engine failure, and an inflight engine shutdown.

The FAA has reviewed and approved the technical contents of IAE Service Bulletin (SB) No. V2500–ENG–72–0344, dated December 18, 1998, that describes inspection procedures and criteria for certain stage 1 and 2 HPT disks.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require initial and repetitive inspections of certain stage 1 and stage 2 HPT disks using an improved ultrasonic method whenever the disk is accessible during a shop visit. At this time, only one source is capable of performing the necessary inspection procedure. Therefore, the disks will be sent to this source, as specified in the Service Bulletin, to accomplish the inspections. Those HPT disks rejected at inspection may not be reinstalled and must be replaced with a serviceable part. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 302 affected disks installed in engines in the worldwide fleet. The FAA estimates that 38 stage 1 HPT disks and 30 stage 2 HPT disks are installed in 38 engines on aircraft of U.S. registry that would be affected by this proposed AD. The FAA estimates that the shipping cost per disk to the facility which will inspect the disk and its return will be approximately $140, that the inspection would take approximately 8 work hours per disk to accomplish the proposed actions, and that the average labor rate is $60 per work hour. On average the disk will be exposed and inspected three times in its service life. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $113,480. The manufacturer has advised the FAA that all costs associated with performing these inspections may be reimbursed to the operator.

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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 draft regulatory 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.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

International Aero Engines AG: Docket No. 98–ANE–76–AD.

Applicability: International Aero Engines AG (IAE) Models V2500–A1 series turbofan engines, installed on Airbus A320 series aircraft.

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 (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 as indicated, unless accomplished previously.

To prevent high pressure turbine (HPT) disk fracture, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Ultrasonic inspect for subsurface anomalies those HPT stage 1 and stage 2 disks, with serial numbers listed in Tables 1, 2, 3, and 4 of IAE Service Bulletin (SB) V2500–ENG–72–0344, dated December 18, 1998, at the first opportunity when the engine is disassembled sufficiently to afford access to the High Pressure Turbine (HPT) subassembly, or no later than 10,000 cycles in service (CIS) from the effective date of this AD, whichever occurs first, in accordance with Paragraphs F (1) and (2) of IAE SB V2500–ENG–72–0344, dated December 18, 1998.

(b) Thereafter, repetitively ultrasonic inspect for subsurface anomalies those HPT disks identified in paragraph (a) whenever the engine is disassembled sufficiently to afford access to the HPT subassembly, or no later than 12,000 CIS since last ultrasonic inspection, whichever occurs first, in accordance with Paragraph F (1) and (2) of IAE SB V2500–ENG–72–0344, dated December 18, 1998.

(c) Those HPT disks rejected at inspection may not be reinstalled and must be replaced with a serviceable part.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request 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.

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

Issued in Burlington, Massachusetts, on December 30, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–254 Filed 1–5–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161, 250, and 284

[Docket Nos. RM98–10–000 and RM98–12–000]

Regulation of Short-Term Natural Gas Transportation Services Regulation of Interstate Natural Gas Transportation Services; Correction: Order Granting Extension of Time for Filing Comments

December 30, 1998.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Correction of order granting extension of time for filing comments.

SUMMARY: On December 30, 1998, the Commission published in the **Federal Register** an Order Granting Extension of Time for Filing Comments (63 FR 71806, December 30, 1998) on its Notice of Proposed Rulemaking (NOPR) in Docket No. RM98–10–000 and its Notice of Inquiry (NOI) in Docket No. RM98–12–000 which dealt with the regulation of short-term and interstate natural gas transportation services. The dates for filing comments which were shown under the **DATES** caption in the preamble are being corrected to provide for one filing date for submitting comments on both the Commission's NOPR and the NOI. This date will conform with the correct date which was shown in the order itself.

DATES: Comments on both the NOPR and the NOI are due on or before April 22, 1999.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: David P. Boergers, Secretary, 888 First Street, NE, Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–162 Filed 1–5–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF STATE

22 CFR Part 171

[Public Notice 2952]

Privacy Act of 1974; Implementation

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to amend its Privacy Act regulations exempting portions of a newly created record system from certain provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a). Certain portions of the Records of the Office of White House Liaison (STATE–34) contain confidential source information and are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I), and (f) pursuant to 5 U.S.C. 552a(k)(5).

DATES: Comments must be submitted on or before February 16, 1999.

ADDRESSES: Written comments may be mailed or delivered to Rosemary Melendy, Acting Chief; Programs and Policies Division; Office of IRM Programs and Services; Room 1239; Department of State; 2201 C Street, NW; Washington, DC 20520–1512.

FOR FURTHER INFORMATION CONTACT: Rosemary Melendy, 202–647–6020.

SUPPLEMENTARY INFORMATION: A notice of a proposal to create a new system of records (Public Notice 2953) is published elsewhere in this **Federal Register**. This system principally supports the Office of White House Liaison's role in processing applicants and candidates for non-career

Presidential appointments in the Department of State. The Records of the Office of White House Liaison contain information relating to the application and ultimate appointment of non-career Presidential appointments including, but not limited to, communications between: The Department of State and the White House and/or the applicant and his/her references; and the Office of White House Liaison and other internal bureaus of the Department.

This system of records contains investigatory material compiled for the purpose of determining suitability, eligibility or qualifications for federal civilian employment and may contain the identity of a source who provided information with an expressed or implied promise that their identity would be kept confidential.

List of Subjects in 22 CFR Part 171

Privacy.

Title 22, part 171 covering certain records in STATE–34 is proposed to be amended as follows:

PART 171—[AMENDED]

1. The authority citation for part 171 continues to read as follows:

Authority: The Freedom of Information Act, 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; the Administrative Procedures Act, 5 U.S.C. 551, *et seq.*; the Ethics in Government Act, 5 U.S.C. App. 201; Executive Order 12958, 60 FR 19825; and Executive Order 12600, 52 FR 23781.

§ 171.32 [Amended]

2. In § 171.32, paragraph (j)(5) will be amended by adding ''Records of the Office of White House Liaison, STATE–34,'' after ''Records of the Inspector General and Automated Individual Cross-Reference System, STATE–53.''

Dated: December 23, 1998.

Jerome E. Tolson,

Acting Assistant Secretary for the Bureau of Administration.

[FR Doc. 99–168 Filed 1–5–99; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–114841–98]

RIN 1545–AW57

Separate Share Rules Applicable to Estates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide that substantively separate and independent shares of different beneficiaries are to be treated as separate estates for purposes of computing the distributable net income. These proposed regulations also provide that a surviving spouse's statutory elective share of a decedent's estate is a separate share. Further, a revocable trust that elects to be treated as part of a decedent's estate is a separate share. Section 1307 of the Taxpayer Relief Act of 1997 amended section 663 of the Internal Revenue Code by extending the separate share rules to estates. These proposed regulations affect estates of decedents. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by April 6, 1999. Outlines of topics to be discussed at the public hearing scheduled for April 22, 1999, at 10 a.m. must be received by April 1, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–114841–98), 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–114841–98), 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. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Laura Howell, (202) 622–3060; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Michael L. Slaughter, Jr., (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Prior to amendment by Section 1307 of the Taxpayer Relief Act of 1997, Pub. L. 105–34, August 5, 1997, (TRA 1997), section 663(c) of the Internal Revenue Code (Code) provided that, for the purpose of determining the amount of distributable net income in the application of sections 661 and 662, in the case of a single trust having more than one beneficiary, substantially separate and independent shares of different beneficiaries (or classes of beneficiaries) of the trust shall be treated as separate trusts. The application of the separate share rule is mandatory where separate shares exist. Section 1.663(c)–1(d) and H.R. Conf. Rep. No. 2014, 105th Cong. 1st Sess. 712–13 and fn. 18.

Section 1307 of TRA 1997 amended section 663(c) of the Code by extending the separate share rule to estates. Prior to this amendment, a distribution to an estate beneficiary in the ordinary course of administration often resulted in the beneficiary being taxed on a disproportionate share of the estate's income. The extension of the separate share rule to estates promotes fairness by more rationally allocating the income of the estate among the estate and its beneficiaries thereby reducing the distortion that may occur when a disproportionate distribution of estate assets is made to one or more estate beneficiaries in a year when an estate has distributable net income. Under the separate share rule, a beneficiary is taxed only on the amount of income that belongs to that beneficiary's separate share.

In addition, section 1305 of TRA 1997 added section 645 to the Code (originally enacted as section 646 and redesignated as section 645 by the Internal Revenue Service Restructuring and Reform Act of 1998). Under section 645, both the executor (if any) of an estate and the trustee of a qualified revocable trust may elect to treat the revocable trust as part of the decedent's probate estate for income tax purposes. The legislative history for section 1305 provides that the separate share rule applicable to estates will apply when a qualified revocable trust elects to be treated as part of the decedent's estate.

Explanation of Provisions

The proposed regulations conform the current regulations to the statutory changes. In addition, the proposed regulations address two specific matters involving separate share treatment of interests in estates: the treatment of the spousal elective share and the treatment of an electing revocable trust under section 645 of the Code.

General Separate Share Rule

If an estate has multiple beneficiaries, substantially separate and independent shares of different beneficiaries (or classes of beneficiaries) are to be treated

as separate estates only for purposes of computing distributable net income. There are separate shares in an estate when the governing instrument of the estate and applicable local law create separate economic interests in one beneficiary or class of beneficiaries such that the economic interests of those beneficiaries (e.g., rights to income or gains from specified items of property) are not affected by the economic interests accruing to another separate beneficiary or class of beneficiaries. Thus, there are separate shares in an estate when a beneficiary or class of beneficiaries has an interest in a decedent's estate (whether corpus or income, or both) that no other beneficiary or class of beneficiaries has in the decedent's estate. The application of the separate share rule to estates is mandatory where separate shares exist. The separate share rule requires that the estate's income and deductions be allocated among the separate shares as if they were separate estates. The section 661 deduction to the estate and the section 662 inclusion in the gross income of the beneficiary are limited by the distributable net income allocable to each separate share.

These proposed regulations do not change the rules involving specific gifts and bequests described in section 663(a).

Surviving Spouse's Elective Share

Most non-community property states have some form of elective share statute which replaces common law dower and curtesy (the common law protection for surviving spouses). Generally, an elective share statute gives the surviving spouse the right to claim a share of the deceased spouse's estate if the surviving spouse is disinherited or dissatisfied with what the spouse would have received under the will or otherwise. In most states the elective share consists of a fraction, ranging from one-fourth to one-half of the decedent's estate. Elective share statutes vary as to when the share vests and whether the share includes a portion of the estate income, as well as whether the share participates in the appreciation or depreciation of the estate's assets.

Rev. Rul. 64–101 (1964–1 C.B. 77) addresses the Florida statutory dower interest which, at the time of the revenue ruling, entitled the widow to the dower interest and mesne profits thereon. The ruling holds that the value of assets transferred to the widow as dower is not a distribution to a beneficiary subject to sections 661(a) and 662(a) of the Code. Instead, the transfer of assets is governed by section 102.

Rev. Rul. 71–167 (1971–1 C.B. 163) modifies Rev. Rul. 64–101 by holding that the amount distributed to the widow representing mesne profits is subject to sections 661(a) and 662(a) of the Code. Therefore, an amount corresponding to the allowable deduction to the estate under section 661(a) is includible in the gross income of the widow under section 662(a).

Recently, two cases, *Deutsch* v. *Commissioner*, TCM 1997–470, and *Brigham* v. *United States*, 983 F. Supp. 46, (D. Mass. 1997), have addressed how to treat payments to the surviving spouse in satisfaction of the spouse's elective share amount. In *Deutsch*, the surviving spouse elected to take against the decedent's will as provided by the Florida elective share statute. Under the statute, the surviving spouse was entitled to 30 percent of the net estate based upon date of death values, but was not entitled to any income of the estate, and did not participate in appreciation or depreciation of the estate assets. The Tax Court, noting Rev. Rul. 64–101, held that payments to the surviving spouse in satisfaction of her elective share amount were not subject to sections 661(a) and 662(a). Rather, the payments were governed by section 102.

In *Brigham*, the surviving spouse elected to take against the decedent's will as provided by the New Hampshire elective share statute. Under the statute, the surviving spouse was entitled to one-third of the personalty and one-third of the real estate. The court held that the payments made to the surviving spouse in satisfaction of her elective share amount were subject to sections 661(a) and 662(a). Thus, the court held that all of the estate's distributable net income was taxable to the surviving spouse because she was the only beneficiary to receive a distribution for the year in question and her distribution exceeded the amount of the estate's distributable net income.

In light of the uncertainty concerning the proper treatment of payments in satisfaction of a surviving spouse's elective share, and also given that Rev. Ruls. 64–101 and 71–167 are outdated because dower has been replaced by elective share statutes in most states, the Internal Revenue Service and Treasury have concluded that regulatory guidance is needed to provide uniform treatment.

These proposed regulations provide that the surviving spouse's elective share constitutes a separate share of the estate for the sole purpose of determining the amount of distributable net income in application of sections 661(a) and 662(a). Therefore, only the income that is (1) allocable to the surviving spouse's separate share for a taxable year, and (2) distributed to the surviving spouse in satisfaction of the elective share will be treated as a distribution subject to sections 661(a) and 662(a). This approach results in the surviving spouse being taxed on the estate's income earned during administration only to the extent of the surviving spouse's right to share in the estate's income under state law. Comments are requested on whether there are situations in which an elective share or dower interest would not be a separate share under the separate economic interest test set forth in the proposed regulations.

Electing Revocable Trust To Be a Part of Estate

These proposed regulations provide that a qualified revocable trust that elects to be treated as part of the decedent's estate constitutes a separate share for the sole purpose of determining the amount of distributable net income in the application of sections 661 and 662. A separate proposed regulation project will provide further guidance concerning qualified revocable trusts that are treated as part of an estate.

Proposed Effective Date

These regulations apply to estates of decedents dying after the date that the Treasury decision adopting these rules as final regulations is published in the **Federal Register**.

Effect on Other Documents

When these regulations are finalized, Rev. Rul. 64–101 (1964–1 C.B. 77) and Rev. Rul. 71–167 (1971–1 C.B. 163) will be obsolete.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12886. 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 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.

Comments and 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 eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulation and how it may be made easier to understand. All comments will be available for public inspection and copying. We especially request comments concerning the treatment of pecuniary bequests (including formula pecuniary bequests) as separate shares.

A public hearing has been scheduled for April 22, 1999, beginning at 10 a.m. The hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by April 6, 1999, and submit an outline of topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by April 1, 1999.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Laura Howell of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). 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.

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 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.663(c)–1 also issued under 26 U.S.C. 663(c).

Section 1.663(c)–2 also issued under 26 U.S.C. 663(c).

Section 1.663(c)–3 also issued under 26 U.S.C. 663(c).

Section 1.663(c)–4 also issued under 26 U.S.C. 663(c).

Section 1.663(c)–5 also issued under 26 U.S.C. 663(c).

Section 1.663(c)–6 also issued under 26 U.S.C. 663(c). * * *

Par. 2. Section 1.663(c)–1 is amended as follows:

1. The section heading is revised.

2. The first sentence of paragraph (a) is amended by removing the language ''trust'' and adding the language ''trust (or estate)'' in its place and removing the language ''trusts'' and adding the language ''trusts (or estates)'' in its place. The second sentence of paragraph (a) is amended by removing the language ''trusts'' and adding the language ''trusts (or estates)'' in its place.

3. Paragraph (b)(2) is removed.

4. Paragraphs (b)(3) and (b)(4) are redesignated as paragraphs (b)(2) and (b)(3).

5. Paragraph (b) introductory text, is amended by removing the language ''trusts'' and adding the language ''trusts (or estates)'' each place it appears.

6. Paragraph (c) and the last sentence of paragraph (d) are amended by removing the language ''trust'' and adding the language ''trust (or estate)'' in its place.

The revision reads as follows:

§ 1.663(c)–1 Separate shares treated as separate trusts or as separate estates; in general.

* * * * *

Par. 3. Section 1.663(c)–2 is revised to read as follows:

§ 1.663(c)–2 Computation of distributable net income.

The amount of distributable net income for any share under section 663(c) is computed for each share as if each share constituted a separate trust or estate. Accordingly, any deduction or any loss which is applicable solely to one separate share of the trust or estate is not available to any other share of the same trust or estate.

Par. 4. Section 1.663(c)–3 is amended by revising the section heading and removing paragraph (f) to read as follows:

§ 1.663(c)–3 Applicability of separate share rule to trusts.

* * * * *

§ 1.663(c)–4 [Redesignated as § 1.663(c)–5]

Par. 5. Section 1.663(c)–4 is redesignated as § 1.663(c)–5 and a new § 1.663(c)–4 is added to read as follows:

§ 1.663(c)–4 Applicability of separate share rule to estates.

(a) *General rule.* The applicability of the separate share rule to estates provided by section 663(c) will generally depend upon whether the governing instrument and applicable local law create separate economic interests in one beneficiary or class of beneficiaries of the decedent's estate such that the economic interests of the beneficiary or class of beneficiaries are not affected by economic interests accruing to another beneficiary or class of beneficiaries. A separate share should be allocated only the share of the estate's income and deductions that the beneficiary (or beneficiaries) of such separate share is (or are) entitled to (if any) under the terms of the governing instrument or local law. The separate share rule does not affect rules under section 663(a) concerning specific gifts and bequests.

(b) *Examples of separate shares.* Separate shares include—

(1) A surviving spouse's elective share;

(2) A revocable trust that elects to be part of the decedent's estate under section 645;

(3) The residuary estate, or some portion of the residuary estate, if the requirements of paragraph (a) of this section are met; and

(4) A gift or bequest of a specific sum of money or of specific property that is paid or credited in more than three installments, if the requirements of paragraph (a) of this section are met.

(c) *Shares with multiple beneficiaries and beneficiaries of multiple shares.* A share may be considered as separate even though more than one beneficiary has an interest in it. For example, two beneficiaries may have equal, disproportionate, or indeterminate interests in one share which is economically separate and independent from another share in which one or more beneficiaries have an interest. Moreover, the same person may be a beneficiary of more than one separate share.

Par. 6. Newly designated § 1.663(c)–5 is amended by:

1. Revising the section heading and introductory text.

2. Redesignating the ''Example.'' as ''Example 1.'' and redesignating paragraphs (a), (b), (c), (d), and (e) in newly designated Example 1 as paragraphs (i), (ii), (iii), (iv), and (v).

3. Adding *Example 2, Example 3, and Example 4.*

The revisions and addition read as follows:

§ 1.663(c)–5 Examples.

Section 663(c) may be illustrated by the following examples:

Example 1. * * *

Example 2. (i) *Facts.* (A) Testator died domiciled in State X on January 30, 1999, leaving an estate of $40,000,000 after debts, expenses, and estate taxes, and survived by a spouse and three adult children from a previous marriage. Testator's will directed the executrix to pay the surviving spouse $1,000,000 in cash and divide the residue, after payment of debts, expenses, and estate taxes, equally among Testator's three children.

(B) The surviving spouse filed an election under State X's elective share statute. The court determined that the surviving spouse's election was valid and ordered the executrix to pay the elective share. Under State X's elective share statute, a surviving spouse is entitled to one-fourth of a decedent's estate after debts, expenses, and estate taxes if the decedent had children. Further, the surviving spouse is entitled to a proportional amount of the estate net income and participates proportionally in appreciation or depreciation of the estate's assets.

(C) The executrix elected the calendar year for the estate. On June 30, 1999, the executrix distributed $5,000,000 to the surviving spouse in partial satisfaction of the elective share. During the 1999 taxable year, the estate received dividend income of $2,000,000 and paid expenses of $50,000. For the 1999 taxable year, the value of the estate neither appreciated nor depreciated. The executrix made no other distributions during the 1999 taxable year.

(ii) *Holding.* Separate share treatment applies to each of the three residuary bequests, and to the surviving spouse's elective share.

(iii) *Application.* (A) After determining the income and expenses for the estate, the executrix allocated a portion of the income and expenses to each separate share based upon each share's percentage of the estate. Thus, while the surviving spouse's elective share initially constituted 25% of the estate, after the partial distribution of $5,000,000 made on June 30, 1999, the elective share constituted a smaller percentage of the estate. Accordingly, the percentage of the estate's income and expenses allocated to the elective share after June 30, 1999, was correspondingly reduced in accordance with the executrix's determination of the proper allocation of income and expenses to the elective share.

(B) For the 1999 taxable year, the estate is treated as having distributed to the surviving spouse the distributable net income that was allocated to the elective share. In accordance with section 662, the surviving spouse must include in gross income for the 1999 taxable year an amount equal to the distributable net income allocated to the surviving spouse's separate share and distributed to the surviving spouse for the 1999 taxable year. The estate will, accordingly, be allowed a deduction under section 661 for the amount of distributable net income allocated to the elective share and distributed to the surviving spouse.

Example 3. (i) *Facts.* (A) Assume the same facts as in Example 2 except that Testator died domiciled in State Y leaving an estate of $60,000,000 after debts, expenses, and estate taxes. Under State Y's elective share statute, the surviving spouse is entitled to the date of death value of one-third of the decedent's estate after debts, expenses, and taxes. The statute also provides that the surviving spouse is not entitled to any of the estate's income and does not participate in appreciation or depreciation of the estate's assets. Further, under the statute, the surviving spouse is entitled to interest on the elective share from the date of the court order directing the executrix to make payments.

(B) The executrix elected the calendar year for the estate. During the 1999 taxable year, the estate received dividend income of $3,000,000, and paid administration expenses of $60,000 and paid the surviving spouse $1,000,000 of interest payments on the elective share. Also, during the 1999 taxable year, the executrix distributed $5,000,000 to the surviving spouse in partial satisfaction of the elective share. The executrix made no other distributions during the 1999 taxable year.

(ii) *Holding.* Separate share treatment applies to each of the three residuary bequests and to the surviving spouse's elective share.

(iii) *Application.* The distributable net income of each child's residuary bequest is $980,000 (a 33.33% share of estate income less a 33.33% share of estate expenses). Because the surviving spouse was not entitled to any estate income under state law, no income is allocated to the spouse's separate share. The distribution in satisfaction of the spouse's elective share does not consist of any distributable net income and is not included in the spouse's gross income under section 662. The $1,000,000 of interest payment to the surviving spouse must be included in gross income of the spouse under section 61. Therefore, the estate is treated as having distributed to the surviving spouse $5,000,000 of amounts other than 1999 estate income. Accordingly, the estate is not allowed a deduction under section 661 for the distribution made to the surviving spouse. The taxable income of the estate for the 1999 taxable year is $2,939,400 ($3,000,000 (dividend income) minus $60,000 (expenses) and $600 (personal exemption)). The $1,000,000 interest payment is a nondeductible personal interest expense described in section 163(h).

Example 4. (i) *Facts.* (A) Testator died domiciled in State Z on February 14, 1999, survived by a spouse and two children. Testator's will contains a nonproportional funding fractional formula marital bequest for the surviving spouse with a residuary credit shelter trust for the lifetime benefit of the surviving spouse, and remainder to the two children on the surviving spouse's death. The date of death value of the estate is $1,650,000.

(B) The executrix elected the calendar year for the estate. Under the fractional formula, the marital bequest constitutes 60% of the estate and the credit shelter trust constitutes 40% of the estate. Accordingly, the executrix claims a marital deduction of $990,000 on the estate tax return for the amount passing to the spouse under the fractional formula. On December 31, 1999, the executrix made a partial proportionate distribution of $1,000,000, $600,000 to the surviving spouse outright and $400,000 to the credit shelter trust. As of December 31, 1999, prior to the distribution, the value of Testator's estate had appreciated to $2,000,000.

(C) During the 1999 taxable year, the estate made no other distributions, received dividend income of $20,000, and paid expenses of $8,000.

(ii) *Holding.* Separate share treatment applies to the fractional formula marital bequest and the credit shelter trust.

(iii) *Application.* (A) Because Testator provided for a fractional formula marital bequest in the will, the income and any appreciation in the value of the estate assets is proportionately allocated between the marital bequest share and the credit shelter trust share. Therefore, the distributable net income must be allocated 60% for the marital separate share and 40% for the credit shelter separate share.

(B) The distributable net income allocable to the marital share is $7,200 (60% of estate income less 60% of estate expenses). Correspondingly, the distributable net income allocable to the credit shelter share is $4,800 (40% of estate income less 40% of estate expenses). Because the $600,000 amount distributed in partial satisfaction of the marital bequest exceeds the distributable net income of $7,200 allocated to the marital share, the estate is treated as having distributed to the surviving spouse $7,200 of 1999 distributable net income and $592,800 of other amounts. Similarly, because the $400,000 distributed in partial satisfaction of the amount payable to the credit shelter trust exceeds the distributable net income of $4,800 allocated to the credit shelter trust share, the estate is treated as having distributed to the credit shelter trust $4,800 of 1999 distributable net income and $395,200 of other amounts. Accordingly, the estate is allowed a deduction of $12,000 under section 661 for the 1999 taxable year. The taxable income of the estate is $0, computed as follows:

Dividends		$20,000
Deductions:		
Distribution to surviving spouse share	$7,200	
Distribution to credit shelter trust share	4,800	
Expenses	8,000	

Personal exemption	600
	20,600
	(600)

(C) In accordance with section 662, the surviving spouse must include in gross income for the 1999 taxable year an amount equal to the distributable net income of the marital bequest share ($7,200) that was distributed to the surviving spouse. The credit shelter trust must include in gross income for the 1999 taxable year an amount equal to the distributable net income of the credit shelter trust share ($4,800) that was distributed to the credit shelter trust.

Par. 7. Section 1.663(c)–6 is added to read as follows:

§ 1.663(c)–6 Effective date.

Sections 1.663(c)–1 through 1.663(c)–5 concerning the application of the separate share rules to estates apply to estates of decedents dying after the final regulations are published in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–176 Filed 1–5–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106388–98]

RIN 1545–AW65

Education Tax Credits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and requests to hold a videoconference public hearing.

SUMMARY: This document contains proposed regulations relating to the Hope Scholarship Credit and the Lifetime Learning Credit in section 25A of the Internal Revenue Code. These proposed regulations provide guidance to individuals who may claim the Hope Scholarship Credit or the Lifetime Learning Credit for certain postsecondary educational expenses. This document also announces that a public hearing will be held on the proposed regulations upon request and that persons outside the Washington, DC, area who wish to testify at the hearing may request that the IRS videoconference the hearing to their sites.

DATES: Written or electronically generated comments must be received by April 6, 1999. Requests to videoconference the hearing to other sites must be received by March 8, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–106388–98), 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–106388–98), 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. The IRS will publish the time and date of the public hearing and the locations of any videoconferencing sites in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Donna Welch, (202) 622–4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, contact Michael L. Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by March 8, 1999. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.25A–1(d) and (f). Taxpayers must elect to claim an education credit by attaching Form 8863, ''Education Credits (Hope and Lifetime Learning Credits),'' to a timely filed (including extensions) federal income tax return for the taxable year in which a credit is claimed. This collection of information is required in order for a taxpayer to elect to claim an education credit. This information will be used to carry out the internal revenue laws. The likely respondents are individuals.

The reporting burden contained in § 1.25A–1(d) and (f) is reflected in the burden of Form 8863, ''Education Credits (Hope and Lifetime Learning Credits),'' and Form 1040, ''U.S. Individual Income Tax Return.''

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The Taxpayer Relief Act of 1997 (Public Law 105–34 (111 Stat. 788) (TRA '97)) added section 25A to the Internal Revenue Code to provide the Hope Scholarship Credit and the Lifetime Learning Credit (education credits). In general, the Hope Scholarship Credit and the Lifetime Learning Credit allow taxpayers to claim a nonrefundable credit against their federal income taxes for certain postsecondary educational expenses. On November 17, 1997, the IRS published Notice 97–60 (1997–46 I.R.B. 8) to provide general guidance on the higher education tax incentives enacted by TRA '97, including the Hope Scholarship Credit and the Lifetime Learning Credit. This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to provide detailed guidance on the education credits in section 25A.

TRA '97 also added section 6050S to the Code, which requires eligible educational institutions to file

information returns to assist taxpayer and the IRS in determining the education credit that taxpayers may claim under section 25A. The IRS has published several notices outlining the limited information returns that are required for 1998 and 1999. On December 22, 1997, the IRS published Notice 97–73 (1997–51 I.R.B. 16), which describes the information that must be reported for 1998. On September 8, 1998, the IRS published Notice 98–46 (1998–36 I.R.B. 21), which extends the application of Notice 97–73 to information returns required under section 6050S for 1999. Finally, on December 7, 1998, the IRS published Notice 98–59 (1998–49 I.R.B. 16), which modified the two prior Notices by providing that an eligible educational institution is not required to file information returns under section 6050S for 1998 or 1999 with respect to either: (1) students who are enrolled during the year only in courses for which the student receives no academic credit from the educational institution; or (2) nonresident alien students, unless requested to do so by the student. The IRS and the Treasury Department intend to issue separate regulations on the information reporting required under section 6050S for years after 1999.

Explanation of Provisions

1. Calculation of Education Credit and General Eligibility Requirements

Under the proposed regulations, a taxpayer may claim a nonrefundable education credit equal to the total of the Hope Scholarship Credit and the Lifetime Learning Credit allowed for the taxpayer, the taxpayer's spouse, and any claimed dependents. An education credit in excess of a taxpayer's tax liability for the taxable year can not be refunded. As with other personal credits, section 25A does not allow a carryforward of an unused education credit or a carryforward of excess qualified expenses.

The proposed regulations provide rules for the coordination of the Hope Scholarship Credit and the Lifetime Learning Credit. The proposed regulations provide that, in the same taxable year, a taxpayer may claim a Hope Scholarship Credit for each eligible student's qualified tuition and related expenses and a Lifetime Learning Credit for one or more other students' qualified tuition and related expenses. The regulations provide that a taxpayer may claim either the Hope Scholarship Credit or the Lifetime Learning Credit, but not both, for the qualified tuition and related expenses of the same student in the same taxable year. A Hope Scholarship Credit may be claimed for the qualified tuition and related expenses (up to a specified limit described below) of each eligible student. The Lifetime Learning Credit may be claimed for the aggregate amount of qualified tuition and related expenses (up to a specified limit described below) of those students for whom no Hope Scholarship Credit is claimed.

Consistent with the income limitations in section 25A(d), the proposed regulations provide that the education credit allowed is phased out for taxpayers with modified adjusted gross income between $40,000 and $50,000 ($80,000 and $100,000 for taxpayers filing a joint return) for the taxable year. For taxable years beginning after 2001, these amounts will be adjusted for inflation. Based on the definition in section 25A(d)(3), the regulations define *modified adjusted gross income* as the adjusted gross income (as defined in section 62) of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933 (relating to income earned abroad or from certain U.S. possessions or Puerto Rico). The amount of an otherwise allowable education credit for a taxable year that is reduced solely by reason of the modified adjusted gross income limitation can not be carried forward and claimed in a subsequent taxable year.

Consistent with the requirements in section 25A(e)(1), the proposed regulations provide that a taxpayer must elect to claim the education credit. The election must be made by attaching Form 8863, ''Education Credits (Hope and Lifetime Learning Credits),'' to the taxpayer's federal income tax return for the taxable year in which the credit is claimed. Consistent with the identification requirements in section 25A(g)(1), the regulations provide that a taxpayer must include on the federal income tax return the name and taxpayer identification number of each student for whom the credit is claimed.

Consistent with the requirements in section 25A(e)(2), the proposed regulations provide that no education credit is allowed for a taxable year for the qualified tuition and related expenses of a student if: (1) During the taxable year, a distribution is made to, or on behalf of, the student from an education individual retirement account described in section 530(b); and (2) any portion of the distribution is excluded from gross income under section 530(d)(2).

The proposed regulations provide guidance on the rules for claiming an education credit in the case of a dependent. The regulations provide that, if the student is a claimed dependent of another taxpayer, only that taxpayer may claim the education credit for the student's qualified tuition and related expenses. The regulations explain that, if the taxpayer is eligible to, but does not, claim the student as a dependent, only the student may claim the education credit for the student's qualified tuition and related expenses.

2. Definitions

The proposed regulations provide that a *claimed dependent* is a dependent (as defined in section 152) for whom a deduction under section 151 is allowed on the taxpayer's federal income tax return for the taxable year in which the credit is claimed.

Based on the requirements of section 25A(f)(2), the proposed regulations provide that an *eligible educational institution* means a college, university, vocational school, or other postsecondary educational institution that: (1) Is described in section 481 of the Higher Education Act of 1965 (HEA) (20 U.S.C. 1088) as in effect on August 5, 1997 (generally all accredited public, nonprofit, and proprietary postsecondary institutions); and (2) participates in a federal student financial aid program under title IV of the HEA (20 U.S.C. 1070 *et seq.*) or is certified by the Department of Education as eligible to participate in such a program but chooses not to participate.

The proposed regulations provide that *academic period* means a quarter, semester, trimester, or other period of study (such as a summer school session) as reasonably determined by the eligible educational institution. Neither section 25A nor its legislative history defines the term *academic period.* Additionally, the Department of Education does not have a recognized definition of *academic period.* The definition in the regulation is intended to include institutions that use traditional academic terms and institutions that do not use academic terms, but for example use clock hours or credit hours. The IRS and Treasury invite comments on this definition of *academic period* as well as suggestions on alternative definitions.

Based on the definition in section 25A(f)(1), the proposed regulations define *qualified tuition and related expenses* as the tuition and fees required for the enrollment or attendance of a student for courses of instruction at an eligible educational institution. This definition is generally consistent with the definition of *tuition and fees* contained in section 472(1) of

the HEA (20 U.S.C. 1087ll(1)). See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess., at p. 321 (1998). The regulations provide that, in general, the test for determining whether a fee is treated as a qualified tuition and related expense is whether the fee is required to be paid to the eligible educational institution by students as a condition of the students' enrollment or attendance at the institution. The regulations specifically provide that qualified tuition and related expenses include fees for books, supplies, and equipment used in a course of study only if the fees must be paid to the eligible educational institution for the enrollment or attendance of the student at the institution. Similarly, the regulations provide that, in general, qualified tuition and related expenses include nonacademic fees (fees charged by an eligible educational institution that are not used directly for, or allocated to, an academic course of study) only if the fees must be paid to the eligible educational institution for the enrollment or attendance of the student at the institution.

However, based on the legislative history to section 25A, the proposed regulations provide that qualified tuition and related expenses do not include the costs of room and board, insurance, medical expenses (such as student health fees), transportation, and similar personal, living, or family expenses, regardless of whether the fees must be paid to the eligible educational institution for the enrollment or attendance of the student at the institution. See H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess., at pp. 343, 346 (1997). Further, based on the limitations in section 25A (f)(1)(B) and (c)(2)(B), the regulations provide that qualified tuition and related expenses do not include expenses that relate to any course of instruction or other education that involves sports, games, hobbies, or any noncredit course, unless the course is part of the student's degree program or, in the case of the Lifetime Learning Credit, is taken by the student to acquire or improve job skills.

3. Hope Scholarship Credit

The Hope Scholarship Credit is a per student credit that may be claimed for each eligible student. Consistent with the provisions of section 25A(b)(1), the proposed regulations provide that for taxable years beginning before 2002 the maximum Hope Scholarship Credit amount is $1,500 (100 percent of the first $1,000 of the qualified tuition and related expenses paid during the taxable year for education furnished to an eligible student during any academic period beginning in the taxable year or treated as beginning in the taxable year, plus 50 percent of the next $1,000 of such expenses paid with respect to that student). For taxable years beginning after 2001, the $1,000 amounts will be adjusted for inflation. Consistent with the provisions of section 25A(b)(2)(A), the regulations provide that the Hope Scholarship Credit is allowed for only two taxable years for each eligible student.

Based on the requirements in section 25A(b) (2) and (3), the proposed regulations define an *eligible student* for purposes of the Hope Scholarship Credit as a student who meets all of the following requirements: (1) For at least one academic period during the taxable year, the student enrolls at an eligible educational institution in a program leading toward a postsecondary degree, certificate, or other recognized postsecondary educational credential (*degree requirement*); (2) for at least one academic period during the taxable year, the student enrolls for at least half of the normal full-time work load for the course of study the student is pursuing (*work load requirement*); (3) as of the beginning of the taxable year, the student has not completed the first two years of postsecondary education at an eligible educational institution (*year of study requirement*); and (4) the student has not been convicted of a federal or state felony offense for the possession or distribution of a controlled substance as of the end of the taxable for which the credit is claimed (*felony drug conviction restriction*).

The proposed regulations explain that the student meets the *work load requirement* if the student is enrolled for at least half of the normal full-time work load, as determined by the eligible educational institution. The regulations provide that the educational institution's standards for a half-time work load must equal or exceed the standards established by the Department of Education under the HEA and set forth in 34 CFR 674.2(b) for a half-time undergraduate student.

The proposed regulations explain that whether a student has completed the first two years of postsecondary education as of the beginning of the taxable year is based on whether the eligible educational institution the student is enrolled in awards the student two years of academic credit for postsecondary course work completed by the student prior to the beginning of the taxable year. However, the regulations provide that any academic credit awarded by the educational institution solely on the basis of the student's performance on proficiency examinations is not taken into account.

The proposed regulations provide that the Hope Scholarship Credit is effective for expenses paid after December 31, 1997, for education furnished in academic periods beginning after that date.

4. Lifetime Learning Credit

The Lifetime Learning Credit is a per taxpayer credit, rather than a per student credit. For taxable years beginning before 2003, the maximum Lifetime Learning Credit amount is $1,000 (20 percent of up to $5,000 of the aggregate qualified tuition and related expenses paid during the taxable year for education furnished to the taxpayer, the taxpayer's spouse, and any claimed dependent during any academic period beginning in the taxable year or treated as beginning in the taxable year). For taxable years beginning on or after 2003, the maximum credit amount is $2,000 (20 percent of up to $10,000 of the aggregate qualified tuition and related expenses paid during the taxable year for education furnished to the taxpayer, the taxpayer's spouse, and any claimed dependent during any academic period beginning in the taxable year or treated as beginning in the taxable year).

In contrast to the Hope Scholarship Credit, the Lifetime Learning Credit is allowed for an unlimited number of years for each student and does not have a degree requirement, year of study requirement, work load requirement, or a felony drug conviction restriction. See H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess., at p. 346–347 (1997). Therefore, a taxpayer may claim a Lifetime Learning Credit for a student's qualified tuition and related expenses even if the taxpayer could not claim a Hope Scholarship Credit for those expenses.

Based on the provisions of section 25A(c)(2)(B) and the legislative history to section 25A, the proposed regulations provide that, for purposes of claiming a Lifetime Learning Credit, amounts that a taxpayer is required to pay for a course at an eligible educational institution are qualified tuition and related expenses if the course is either part of a postsecondary degree program or is part of a nondegree program that is taken by the student to acquire or improve job skills. The legislative history explains that the Lifetime Learning Credit is available with respect to any course of instruction at any eligible educational institution (whether the student is enrolled on a full-time, half-time, or less than half-time basis) to acquire or improve job skills of the student. See

H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess., at p. 346–347 (1997).

The proposed regulations provide that the Lifetime Learning Credit is effective for expenses paid after June 30, 1998, for education furnished in academic periods beginning after that date.

5. Special Rules Relating to Characterization and Timing of Payments

The proposed regulations provide guidance on qualified tuition and related expenses paid by a third party. The regulations provide that, solely for purposes of section 25A, if a third party makes a payment directly to an eligible educational institution to pay for a student's qualified tuition and related expenses, the student is treated as receiving the payment from the third party, and, in turn, paying the qualified tuition and related expenses to the institution.

Consistent with the provisions of section 25A(g)(3), the proposed regulations provide that qualified tuition and related expenses paid by a student are treated as paid by the taxpayer if the student is a claimed dependent of the taxpayer.

The proposed regulations provide rules for adjustments to qualified tuition and related expenses for certain excludable educational assistance. Consistent with the provisions of section 25A(g)(2) and the legislative history, the regulations provide that the amount of otherwise allowable qualified tuition and related expenses paid during a taxable year must be reduced by the following amounts paid to, or on behalf of, a student during the taxable year: (1) a qualified scholarship that is excludable from gross income under section 117; (2) a veterans' or member of the armed forces' educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, U.S.C., or chapter 1606 of title 10, U.S.C.; (3) employer-provided educational assistance that is excludable from gross income under section 127; and (4) any other educational assistance that is excludable from gross income (other than as a gift, bequest, devise, or inheritance within the meaning of section 102(a)). See H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess., at p. 343, 347 (1997).

The proposed regulations provide rules for allocating scholarships and fellowship grants among expenses. The regulations provide that a scholarship or fellowship grant is treated as a qualified scholarship excludable from income under section 117 (and thereby reduces the amount of qualified tuition and related expenses that a taxpayer may otherwise include in claiming an education credit) unless either: (1) the student reports the grant as income on the student's federal income tax return; or (2) the grant must be applied, by its terms, to expenses other than qualified tuition and related expenses within the meaning of section 117(b)(2), such as room and board.

The proposed regulations provide guidance on the timing rules for claiming an education credit. Consistent with the general rule in section 25A(b)(1) and (c)(1), the regulations provide that an education credit generally is allowed only for payments of qualified tuition and related expenses that cover an academic period beginning in the same taxable year as the year the payment is made. However, consistent with the specific prepayment rule in section 25A(g)(4), the regulations provide that, if qualified tuition and related expenses are paid during a taxable year to cover an academic period that begins during the first three months of the taxpayer's next taxable year, an education credit is allowed only in the taxable year in which the expenses are paid. Note, however, that because the Hope Scholarship Credit does not apply to expenses paid before January 1, 1998, and the Lifetime Learning Credit does not apply to expenses paid before July 1, 1998, the prepayment rule does not apply for tuition paid in 1997 to cover an academic period beginning in 1998.

Consistent with the legislative history to section 25A, the proposed regulations provide that an education credit may be claimed for the qualified tuition and related expenses paid with the proceeds of a loan only in the taxable year in which the expenses are paid, and not in the taxable year in which the loan is repaid. See H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess., at p. 342, 346 (1997). In order to provide taxpayers with a date certain for payment, the regulations provide that loan proceeds disbursed directly to an educational institution are treated as paid on the date of the disbursement. However, if the taxpayer does not know the date of the disbursement, the taxpayer must treat qualified tuition and related expenses as paid on the last date prescribed for payment by the educational institution.

Consistent with the directive in section 25A(i), the proposed regulations provide rules for refunds of qualified tuition and related expenses. The regulations provide that, if a payment and a refund of qualified tuition and related expenses occur in the same taxable year, the amount of qualified tuition and related expenses for the taxable year is calculated by adding all qualified tuition and related expenses paid for the taxable year, and subtracting any refund of the expenses received from the eligible educational institution during the same taxable year.

The proposed regulations provide that, if, in a taxable year, a taxpayer (or the taxpayer's spouse or a claimed dependent) receives a refund from an eligible educational institution of qualified tuition and related expenses paid in a prior taxable year and the refund is received before the taxpayer files a federal income tax return for the prior taxable year, the amount of the qualified tuition and related expenses for the prior taxable year must be reduced by the amount of the refund.

Similar to the tax benefit rule, the proposed regulations provide that, if, in a taxable year, a taxpayer (or the taxpayer's spouse or a claimed dependent) receives a refund of qualified tuition and related expenses for which the taxpayer claimed an education credit in a prior taxable year, the tax for the subsequent taxable year is increased by the recapture amount. The recapture amount is the difference between the credit claimed in the prior taxable year and the redetermined credit. The redetermined credit is computed by reducing the amount of the qualified tuition and related expenses for which a credit was claimed in the prior taxable year by the amount of the refund of the qualified tuition and related expenses (redetermined qualified expenses), and computing the credit using the redetermined qualified expenses and the relevant facts and circumstance of the prior taxable year, such as modified adjusted gross income.

The proposed regulations provide that, if, in a taxable year, any excludable educational assistance is received for the qualified tuition and related expenses paid during a prior taxable year, the educational assistance is treated as a refund of qualified tuition and related expenses. In this situation, if a taxpayer (or the taxpayer's spouse or a claimed dependent) receives any excludable educational assistance before the taxpayer files a federal income tax return for the prior taxable year, the amount of the qualified tuition and related expenses for the prior taxable year is reduced by the amount of the excludable educational assistance. However, if a taxpayer (or the taxpayer's spouse or claimed dependent) receives excludable educational assistance after the taxpayer has filed a federal income tax return for the prior taxable year, any education credit claimed for the prior taxable year is subject to recapture.

6. Proposed Effective Date

These regulations are proposed to be effective on the date they are published in the **Federal Register** as final regulations. Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in the proposed regulations, the future guidance will be applied without retroactive effect.

Special Analyses

It has been determined that these proposed regulations are 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), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written and electronic comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The IRS recognizes that persons outside the Washington, DC, area may also wish to testify at the public hearing through videoconferencing. Requests to include videoconferencing sites must be received by March 8, 1999. If the IRS receives sufficient indications of interest to warrant videoconferencing to a particular city, and if the IRS has videoconferencing facilities available in that city on the date the public hearing is to be scheduled, the IRS will try to accommodate the requests.

The IRS will publish the time and date of the public hearing and the locations of any videoconferencing sites in an announcement in the **Federal Register**.

Drafting information. The principal author of the regulations is Donna Welch, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

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 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.25A–0 also issued under section 26 U.S.C. 25A(i).
Section 1.25A–1 also issued under section 26 U.S.C. 25A(i).
Section 1.25A–2 also issued under section 26 U.S.C. 25A(i).
Section 1.25A–3 also issued under section 26 U.S.C. 25A(i).
Section 1.25A–4 also issued under section 26 U.S.C. 25A(i).
Section 1.25A–5 also issued under section 26 U.S.C. 25A(i). * * *

Par. 2. Sections 1.25A–0 through 1.25A–5 are added to read as follows:

§ 1.25A–0 Table of contents.

This section lists captions contained in §§ 1.25A–1, 1.25A–2, 1.25A–3, 1.25A–4, and 1.25A–5.

(2) Payment of qualified tuition and related expenses in one taxable year and refund in subsequent taxable year before return filed for prior taxable year.

(3) Payment of qualified tuition and related expenses in one taxable year and refund in subsequent taxable year.

(i) In general.

(ii) Recapture amount.

(4) Excludable educational assistance received in a subsequent taxable year treated as refund.

(5) Examples.

§ 1.25A–1 Calculation of education credit and general eligibility requirements.

(a) *Amount of education credit.* An individual taxpayer is allowed a nonrefundable education credit against income tax imposed by chapter 1 of the Internal Revenue Code for the taxable year. The amount of the education credit is the total of the Hope Scholarship Credit (as described in § 1.25A–3) plus the Lifetime Learning Credit (as described in § 1.25A–4). For limitations on the credits allowed by subpart A of part IV of subchapter A of chapter 1, see section 26.

(b) *Coordination of Hope Scholarship Credit and Lifetime Learning Credit*—(1) *In general.* In the same taxable year, a taxpayer may claim a Hope Scholarship Credit for each eligible student's qualified tuition and related expenses (as defined in § 1.25A–2(d)) and a Lifetime Learning Credit for one or more other students' qualified tuition and related expenses. However, a taxpayer may not claim both a Hope Scholarship Credit and a Lifetime Learning Credit with respect to the same student in the same taxable year.

(2) *Hope Scholarship Credit.* Subject to certain limitations, a Hope Scholarship Credit may be claimed for the qualified tuition and related expenses paid during a taxable year with respect to each eligible student (as defined in § 1.25A–3(d)). Qualified tuition and related expenses paid during a taxable year with respect to any student for whom a Hope Scholarship Credit is claimed may not be taken into account in computing the amount of the Hope Scholarship Credit with respect to any other student or the Lifetime Learning Credit.

(3) *Lifetime Learning Credit.* Subject to certain limitations, a Lifetime Learning Credit may be claimed for the aggregate amount of qualified tuition and related expenses paid during a taxable year with respect to students for whom no Hope Scholarship Credit is claimed.

(4) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. In 1999, Taxpayer A pays qualified tuition and related expenses for his dependent, B, to attend College Y during 1999. Assuming all other relevant requirements are met, Taxpayer A may claim either a Hope Scholarship Credit or a Lifetime Learning Credit with respect to dependent B, but not both. See § 1.25A–3(a) and § 1.25A–4(a).

Example 2. In 1999, Taxpayer C pays $2,000 in qualified tuition and related expenses for her dependent, D, to attend College Z during 1999. In 1999, Taxpayer C also pays $500 in qualified tuition and related expenses to attend a computer course during 1999 to improve Taxpayer C's job skills. Assuming all other relevant requirements are met, Taxpayer C may claim a Hope Scholarship Credit for the $2,000 of qualified tuition and related expenses attributable to dependent D (see § 1.25A–3(a)) and a Lifetime Learning Credit for the $500 of qualified tuition and related expenses incurred to improve her job skills.

Example 3. The facts are the same as in *Example 2*, except that Taxpayer C pays $3,000 in qualified tuition and related expenses for her dependent, D, to attend College Z during 1999. Although a Hope Scholarship Credit is available only with respect to the first $2,000 of qualified tuition and related expenses paid with respect to D (see § 1.25A–3(a)), Taxpayer C may not add the $1,000 of excess expenses to her $500 of qualified tuition and related expenses in computing the amount of the Lifetime Learning Credit.

(c) *Limitation based on modified adjusted gross income*—(1) *In general.* The education credit that a taxpayer may otherwise claim is phased out ratably for taxpayers with modified adjusted gross income between $40,000 and $50,000 ($80,000 and $100,000 for married individuals who file a joint return). Thus, taxpayers with modified adjusted gross income above $50,000 (or $100,000 for joint filers) may not claim an education credit.

(2) *Modified adjusted gross income defined.* The term *modified adjusted gross income* means the adjusted gross income (as defined in section 62) of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933 (relating to income earned abroad or from certain U.S. possessions or Puerto Rico).

(3) *Inflation adjustment.* For taxable years beginning after 2001, the amounts in paragraph (c)(1) of this section will be increased for inflation occurring after 2000 in accordance with section 1(f)(3). If any amount adjusted under this paragraph (c)(3) is not a multiple of $1,000, the amount will be rounded to the next lowest multiple of $1,000.

(d) *Election.* No education credit is allowed unless a taxpayer elects to claim the credit on the taxpayer's timely filed (including extensions) federal income tax return for the taxable year in which the credit is claimed. The election is made by attaching Form 8863, ''Education Credits (Hope and Lifetime Learning Credits),'' (or its successor) to that federal income tax return.

(e) *Coordination with Education IRA.* No education credit is allowed for a taxable year for the qualified tuition and related expenses of a student if—

(1) During the taxable year, a distribution is made to, or on behalf of, the student from an education individual retirement account described in section 530(b) (Education IRA); and

(2) Any portion of the distribution is excluded from gross income under section 530(d)(2).

(f) *Identification requirement.* No education credit is allowed unless a taxpayer includes on the federal income tax return claiming the credit the name and the taxpayer identification number of the student for whom the credit is claimed. For rules relating to assessment for an omission of a correct taxpayer identification number, see section 6213(b) and (g)(2)(J).

(g) *Claiming the credit in the case of a dependent*—(1) *In general.* If a student is a claimed dependent of another taxpayer, only that taxpayer may claim the education credit for the student's qualified tuition and related expenses. However, if the taxpayer is eligible to, but does not, claim the student as a dependent, only the student may claim the education credit for the student's qualified tuition and related expenses.

(2) *Examples.* The following examples illustrate the rules of this paragraph (g):

Example 1. In 1999, Taxpayer A pays qualified tuition and related expenses for his dependent, B, to attend University Y during 1999. Taxpayer A claims B as a dependent on his federal income tax return. Therefore, assuming all other relevant requirements are met, Taxpayer A is allowed an education credit on his federal income tax return, and B is not allowed an education credit on B's federal income tax return. The result would be the same if B paid the qualified tuition and related expenses. See § 1.25A–5(b).

Example 2. In 1999, Taxpayer C has one dependent, D. In 1999, D pays qualified tuition and related expenses to attend University Z during 1999. Although Taxpayer C is eligible to claim D as a dependent on her federal income tax return, she does not do so. Therefore, assuming all other relevant requirements are met, D is allowed an education credit on D's federal income tax return, and Taxpayer C is not allowed an education credit on her federal income tax return, with respect to D's education expenses. The result would be the same if C paid the qualified tuition and related expenses on behalf of D. See § 1.25A–5(a).

(h) *Married taxpayers.* If a taxpayer is married (within the meaning of section 7703), no education credit is allowed unless the taxpayer and the taxpayer's

spouse file a joint federal income tax return for the taxable year.

(i) *Nonresident alien taxpayers and dependents.* If a taxpayer or the taxpayer's spouse is a nonresident alien for any portion of the taxable year, no education credit is allowed unless the nonresident alien is treated as a resident alien by reason of an election under section 6013(g) or (h). In addition, if a student is a nonresident alien, a taxpayer may not claim an education credit with respect to the qualified tuition and related expenses of the student unless the student is a dependent as defined in section 152. Among other requirements under section 152, the nonresident alien student must be a resident of a country contiguous to the United States in order to be treated as a dependent.

§ 1.25A–2 Definitions.

(a) *Claimed dependent.* A *claimed dependent* means a dependent (as defined in section 152) for whom a deduction under section 151 is allowed on a taxpayer's federal income tax return for the taxable year.

(b) *Eligible educational institution*—(1) *In general.* In general, an *eligible educational institution* means a college, university, vocational school, or other postsecondary educational institution that is—

(i) Described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) as in effect on August 5, 1997, (generally all accredited public, nonprofit, and proprietary postsecondary institutions); and

(ii) Participating in a federal financial aid program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) or is certified by the Department of Education as eligible to participate in such a program but chooses not to participate.

(2) *Rules on federal financial aid programs.* For rules governing an educational institution's eligibility to participate in federal financial aid programs, see 20 U.S.C. 1070 et seq.; 20 U.S.C. 1094; and 34 CFR 600 and 668.

(c) *Academic period. Academic period* means a quarter, semester, trimester, or other period of study (such as a summer school session) as reasonably determined by an eligible educational institution.

(d) *Qualified tuition and related expenses*—(1) *In general. Qualified tuition and related expenses* means tuition and fees required for the enrollment or attendance of a student for courses of instruction at an eligible educational institution.

(2) *Required fees*—(i) *In general.* Except as provided in paragraph (d)(3) of this section, the test for determining whether any fee is a qualified tuition and related expense is whether the fee is required to be paid to the eligible educational institution as a condition of the student's enrollment or attendance at the institution.

(ii) *Books, supplies, and equipment.* Qualified tuition and related expenses include fees for books, supplies, and equipment used in a course of study only if the fee must be paid to the eligible educational institution for the enrollment or attendance of the student at the institution.

(iii) *Nonacademic fees.* Except as provided in paragraph (d)(3) of this section, qualified tuition and related expenses include fees charged by an eligible educational institution that are not used directly for, or allocated to, an academic course of instruction only if the fee must be paid to the eligible educational institution for the enrollment or attendance of the student at the institution.

(3) *Personal expenses.* Qualified tuition and related expenses do not include the costs of room and board, insurance, medical expenses, transportation, and similar personal, living, or family expenses, regardless of whether the fee must be paid to the eligible educational institution for the enrollment or attendance of the student at the institution.

(4) *Treatment of comprehensive fees.* If a student is required to pay a comprehensive fee to an eligible educational institution that includes charges for tuition, fees, and personal expenses described in paragraph (d)(3) of this section, the portion of the comprehensive fee that is allocable to personal expenses is not a qualified tuition and related expense. The allocation must be made by the institution using a reasonable method.

(5) *Hobby courses.* Qualified tuition and related expenses do not include expenses that relate to any course of instruction or other education that involves sports, games, or hobbies, or any noncredit course, unless the course or other education is part of the student's degree program or, in the case of the Lifetime Learning Credit, is taken by the student to acquire or improve job skills.

(6) *Examples.* The following examples illustrate the rules of this paragraph (d). In each example, assume that all other relevant requirements to claim an education credit are met. The examples are as follows:

Example 1. University V offers a degree program in dentistry. In addition to tuition, all students enrolled in the program are required to pay a fee to University V for the rental of dental equipment. Because the equipment rental fee must be paid to University V for enrollment and attendance, the tuition and the equipment rental fee are qualified tuition and related expenses.

Example 2. First-year students at College W are required to obtain books and other reading materials used in its mandatory first-year curriculum. The books and other reading materials are not required to be purchased from College W and may be borrowed from other students or purchased from off-campus bookstores, as well as from College W's bookstore. College W bills students for any books and materials purchased from College W's bookstore. The fee that College W charges for the first-year books and materials purchased at its bookstore is not a qualified tuition and related expense because the books and materials are not required to be purchased from College W for enrollment or attendance at the institution.

Example 3. All students who attend College X are required to pay a separate student activity fee in addition to their tuition. The student activity fee is used solely to fund on-campus organizations and activities run by students, such as the student newspaper and the student government (no portion of the fee covers personal expenses). Although labeled as a student activity fee, the fee is required for enrollment or attendance at College X. Therefore, the fee is a qualified tuition and related expense.

Example 4. The facts are the same as in *Example 3,* except that College X offers an optional athletic fee that students may pay to receive discounted tickets to sports events. The athletic fee is not required for enrollment or attendance at College X. Therefore, the fee is not a qualified tuition and related expense.

Example 5. College Y requires all students to live on campus. It charges a single comprehensive fee to cover tuition, required fees not allocable to personal expenses, and room and board. Based on College Y's reasonable allocation, sixty percent of the comprehensive fee is allocable to tuition and other required fees not allocable to personal expenses, and the remaining forty percent of the comprehensive fee is allocable to charges for room and board. Therefore, only sixty percent of College Y's comprehensive fee is a qualified tuition and related expense.

Example 6. As a degree student at College Z, Student A is required to take a certain number of courses outside of her chosen major in Economics. To fulfill this requirement, Student A enrolls in a square dancing class offered by the Physical Education Department. Because Student A receives credit toward her degree program for the square dancing class, the tuition for the square dancing class is included in qualified tuition and related expenses.

§ 1.25A–3 Hope Scholarship Credit.

(a) *Amount of the credit*—(1) *In general.* Subject to the phase out of the education credit described in § 1.25A–1(c), the Hope Scholarship Credit amount is the total of—

(i) 100 percent of the first $1,000 of qualified tuition and related expenses

paid during the taxable year for education furnished to an eligible student (as defined in paragraph (d) of this section) who is the taxpayer, the taxpayer's spouse, or any claimed dependent during any academic period beginning in the taxable year (or treated as beginning in the taxable year, see § 1.25A–5(e)(2)); plus

(ii) 50 percent of the next $1,000 of such expenses paid with respect to that student.

(2) *Maximum credit.* For taxable years beginning before 2002, the maximum Hope Scholarship Credit allowed for each eligible student is $1,500. For taxable years beginning after 2001, the amounts in paragraph (a)(1) of this section to determine the maximum credit will be increased for inflation occurring after 2000 in accordance with section 1(f)(3). If any amount adjusted under this paragraph (a)(2) is not a multiple of $100, the amount will be rounded to the next lowest multiple of $100.

(b) *Per student credit*—(1) *In general.* A Hope Scholarship Credit may be claimed for the qualified tuition and related expenses of each eligible student (as defined in paragraph (d) of this section).

(2) *Example.* The following example illustrates the rule of this paragraph (b). In the example, assume that all the requirements to claim an education credit are met. The example is as follows:

Example. In 1999, Taxpayer A has two dependents, B and C, both of whom are eligible students. Taxpayer A pays $1,600 in qualified tuition and related expenses for dependent B to attend a community college. Taxpayer A pays $5,000 in qualified tuition and related expenses for dependent C to attend University X. Taxpayer A may claim a Hope Scholarship Credit of $1,300 ($1,000 + (.50 × $600)) for dependent B, and the maximum $1,500 Hope Scholarship Credit for dependent C, for a total Hope Scholarship Credit of $2,800.

(c) *Credit allowed for only two taxable years.* For each eligible student, the Hope Scholarship Credit may be claimed for no more than two taxable years.

(d) *Eligible student*—(1) *Eligible student defined.* For purposes of the Hope Scholarship Credit, the term *eligible student* means a student who satisfies all of the following requirements—

(i) *Degree requirement.* For at least one academic period that begins during the taxable year, the student enrolls at an eligible educational institution in a program leading toward a postsecondary degree, certificate, or other recognized postsecondary educational credential;

(ii) *Work load requirement.* For at least one academic period that begins during the taxable year, the student enrolls for at least half of the normal full-time work load for the course of study the student is pursuing. The standard for what is half of the normal full-time work load is determined by each eligible educational institution. However, the standard for half-time may not be lower than standards for half-time established by the Department of Education under the Higher Education Act of 1965 and set forth in 34 CFR 674.2(b) for a half-time undergraduate student;

(iii) *Year of study requirement.* As of the beginning of the taxable year, the student has not completed the first two years of postsecondary education at an eligible educational institution. Whether a student has completed the first two years of postsecondary education at an eligible educational institution as of the beginning of a taxable year is determined based on whether the institution in which the student is enrolled in a degree program (as described in paragraph (d)(1)(i) of this section) awards the student two years of academic credit at that institution for postsecondary course work completed by the student prior to the beginning of the taxable year. Any academic credit awarded by the eligible educational institution solely on the basis of the student's performance on proficiency examinations is disregarded in determining whether the student has completed two years of postsecondary education; and

(iv) *No felony drug conviction.* The student has not been convicted of a federal or state felony offense for possession or distribution of a controlled substance as of the end of the taxable year for which the credit is claimed.

(2) *Examples.* The following examples illustrate the rules of this paragraph (d). In each example, assume that the student has not been convicted of a felony drug offense, that the institution is an eligible educational institution unless otherwise stated, that the qualified tuition and related expenses are paid during the same taxable year that the academic period begins, and that a Hope Scholarship Credit has not previously been claimed for the student (see paragraph (c) of this section). The examples are as follows:

Example 1. Student A graduates from high school in June 1998 and enrolls full-time in an undergraduate degree program at College U for the 1998 Fall semester. For the 1999 Spring semester, Student A again enrolls at College U on a full-time basis. For the 1999 Fall semester, Student A enrolls in less than half the normal full-time course work for her degree program. Because Student A is enrolled in an undergraduate degree program on at least a half-time basis for at least one academic period that begins during 1998 and at least one academic period that begins during 1999, Student A is an eligible student for taxable years 1998 and 1999 (including the 1999 Fall semester when Student A enrolls at College U on less than a half-time basis).

Example 2. Prior to 1998, Student B attended college for several years on a full-time basis. Student B transfers to College V for the 1998 Spring semester. College V awards Student B credit for some (but not all) of the courses he previously completed, and College V classifies Student B as a first-semester sophomore. During both the Spring and Fall semesters of 1998, Student B enrolls in half the normal full-time work load for his degree program. Because College V does not classify Student B as having completed the first two years of postsecondary education as of the beginning of 1998, Student B is an eligible student for taxable year 1998.

Example 3. The facts are the same as in *Example 2.* After taking classes on a half-time basis for the 1998 Spring and Fall semesters, Student B enrolls in a full-time work load at College V for the 1999 Spring semester. College V classifies Student B as a second-semester sophomore for the 1999 Spring semester and as a first-semester junior for the 1999 Fall semester. Because College V does not classify Student B as having completed the first two years of postsecondary education as of the beginning of 1999, Student B is an eligible student for taxable year 1999.

Example 4. At the time that Student C enrolls in a degree program at College W for the 1998 Fall semester, Student C takes examinations to demonstrate her proficiency in several subjects. On the basis of Student C's performance on these examinations, College W classifies Student C as a second-semester sophomore as of the beginning of the 1998 Fall semester. Student C takes a full-time work load during the 1998 Fall semester and during the 1999 Spring and Fall semesters. Because Student C was not enrolled in a college or other eligible educational institution prior to 1998 (but rather was classified as a second-semester sophomore by College W as of the start of the 1998 Fall semester solely because of proficiency examinations), Student C is not treated as having completed the first two years of postsecondary education at an eligible educational institution as of the beginning of 1998 or as of the beginning of 1999. Therefore, Student C is an eligible student for both taxable years 1998 and 1999.

Example 5. During the 1998 Fall semester, Student D is a high school student who takes classes on a half-time basis at College X. Student D is not enrolled as part of a degree program at College X because College X does not admit students to a degree program unless the student has a high school diploma or equivalent. Because Student D is not enrolled in a degree program at College X during 1998, Student D is not an eligible student for taxable year 1998.

Example 6. The facts are the same as in *Example 5.* During the 1999 Spring semester,

Student D again attends College X but not as part of a degree program. Student D graduates from high school in June 1999. For the 1999 Fall semester, Student D enrolls in College X as part of a degree program, and College X awards Student D credit for her prior course work at College X.

During the 1999 Fall semester, Student D takes more than half the normal full-time work load of courses for her degree program at College X. Because Student D is enrolled in a degree program at College X for the 1999 Fall term on more than a half-time basis, Student D is an eligible student for all of taxable year 1999.

Therefore, the qualified tuition and required fees paid for classes taken at College X during both the 1999 Spring semester (during which Student D was not enrolled in a degree program) and the 1999 Fall semester are taken into account in computing any Hope Scholarship Credit.

Example 7. Student E completed two years of undergraduate study at College S located in Country S. College S is not an eligible educational institution for purposes of the education credits. At the end of 1998, Student E moves to the United States and enrolls in an undergraduate degree program at College Z on a full-time basis for the 1999 Spring semester. College Z awards Student E two years of academic credit for his previous course work at College S and classifies Student E as a first-semester junior for the 1999 Spring semester. Student E is treated as having completed the first two years of postsecondary education at an eligible educational institution as of the beginning of 1999. Therefore, Student E is not an eligible student for taxable year 1999.

Example 8. Student F was born and raised in Country R, and she received a degree in 1998 from College R located in Country R. College R is not an eligible educational institution for purposes of the education credits. During 1999, Student F moves to the United States and enrolls for the 1999 Fall semester on a full-time basis in a graduate-degree program at College Y. By admitting Student F to its graduate degree program, College Y treats Student F as having completed the first two years of postsecondary education as of the beginning of 1999. Therefore, Student F is not an eligible student for taxable year 1999.

(e) *Academic period for prepayments*—(1) *In general.* For purposes of determining whether a student meets the requirements in paragraph (d) of this section for a taxable year, if qualified tuition and related expenses are paid during one taxable year for an academic period that begins during January, February or March of the next taxable year (for taxpayers on a fiscal taxable year, use the first three months of the next taxable year), the academic period is treated as beginning during the taxable year in which the payment is made.

(2) *Example.* The following example illustrates the rule of this paragraph (e). In the example, assume that all the requirements to claim a Hope Scholarship Credit are met. The example is as follows:

Example. Student G graduates from high school in June 1998. After graduation, Student G works full-time for several months to earn money for college. Student G enrolls full-time in an undergraduate degree program at University W, an eligible educational institution, for the 1999 Spring semester, which begins in January 1999. Student G pays tuition to University W for the 1999 Spring semester in December 1998. Because the tuition paid by Student G in 1998 relates to an academic period that begins during the first three months of 1999, Student G's eligibility to claim a Hope Scholarship Credit in 1998 is determined as if the 1999 Spring semester began in 1998. Thus, assuming Student G has not been convicted of a felony drug offense as of December 31, 1998, Student G is an eligible student for 1998.

(f) *Effective date.* The Hope Scholarship Credit is applicable for qualified tuition and related expenses paid after December 31, 1997, for education furnished in academic periods beginning after December 31, 1997.

§ 1.25A–4 Lifetime Learning Credit.

(a) *Amount of the credit*—(1) *Taxable years beginning before January 1, 2003.* Subject to the phase out of the education credit described in § 1.25A–1(c), for taxable years beginning before 2003, the Lifetime Learning Credit amount is 20 percent of up to $5,000 of qualified tuition and related expenses paid during the taxable year for education furnished to the taxpayer, the taxpayer's spouse, and any claimed dependent during any academic period beginning in the taxable year (or treated as beginning in the taxable year, see § 1.25A–5(e)(2)).

(2) *Taxable years beginning after December 31, 2002.* Subject to the phase out of the education credit described in § 1.25A–1(c), for taxable years beginning after 2002, the Lifetime Learning Credit amount is 20 percent of up to $10,000 of qualified tuition and related expenses paid during the taxable year for education furnished to the taxpayer, the taxpayer's spouse, and any claimed dependent during any academic period beginning in the taxable year (or treated as beginning in the taxable year, see § 1.25A–5(e)(2)).

(3) *Coordination with the Hope Scholarship Credit.* Expenses paid with respect to a student for whom the Hope Scholarship Credit is claimed are not eligible for the Lifetime Learning Credit.

(4) *Examples.* The following examples illustrate the rules of this paragraph (a). In each example, assume that all the requirements to claim a Lifetime Learning Credit or a Hope Scholarship Credit, as applicable, are met. The examples are as follows:

Example 1. In 1999, Taxpayer A pays qualified tuition and related expenses of $3,000 for dependent B to attend an eligible educational institution, and he pays qualified tuition and related expenses of $4,000 for dependent C to attend an eligible educational institution. Taxpayer A does not claim a Hope Scholarship Credit with respect to either B or C. Although Taxpayer A paid $7,000 of qualified tuition and related expenses during the taxable year, Taxpayer A may claim the Lifetime Learning Credit with respect to only $5,000 of such expenses. Therefore, the maximum Lifetime Learning Credit Taxpayer A may claim for 1999 is $1,000 (.20 × $5,000).

Example 2. In 1999, Taxpayer D pays $6,000 of qualified tuition and related expenses for dependent E, and $2,000 of qualified tuition and related expenses for dependent F, to attend eligible educational institutions. Dependent F has already completed the first two years of postsecondary education. For 1999, Taxpayer D claims the maximum $1,500 Hope Scholarship Credit with respect to dependent E. In computing the amount of the Lifetime Learning Credit, Taxpayer D may not include any of the $6,000 of qualified tuition and related expenses paid on behalf of dependent E but may include the $2,000 of qualified tuition and related expenses of dependent F.

(b) *Credit allowed for unlimited number of taxable years.* There is no limit to the number of taxable years that a taxpayer may claim a Lifetime Learning Credit with respect to any student.

(c) *Both degree and nondegree courses are eligible for the credit*—(1) *In general.* For purposes of the Lifetime Learning Credit, amounts paid for a course at an eligible educational institution are qualified tuition and related expenses if the course is either part of a postsecondary degree program or is not part of a postsecondary degree program but is taken by the student to acquire or improve job skills.

(2) *Examples.* The following examples illustrate the rule of this paragraph (c). In each example, assume that all the requirements to claim a Lifetime Learning Credit are met. The examples are as follows:

Example 1. Taxpayer A, a professional photographer, enrolls in an advanced photography course at a local community college. Although the course is not part of a degree program, Taxpayer A enrolls in the course to improve her job skills. The course fee paid by Taxpayer A is a qualified tuition and related expense for purposes of the Lifetime Learning Credit.

Example 2. Taxpayer B, a stockbroker, plans to travel abroad on a ''photo-safari'' for his next vacation. In preparation for the trip, Taxpayer B enrolls in a noncredit photography class at a local community college. Because Taxpayer B is not taking the

photography course as part of a degree program or to acquire or improve his job skills, amounts paid by Taxpayer B for the course are not qualified tuition and related expenses for purposes of the Lifetime Learning Credit.

(d) *Effective date.* The Lifetime Learning Credit is applicable for qualified tuition and related expenses paid after June 30, 1998, for education furnished in academic periods beginning after June 30, 1998.

§ 1.25A–5 Special rules relating to characterization and timing of payments.

(a) *Payments of educational expenses by a third party*—(1) *In general.* Solely for purposes of section 25A, if a third party (someone other than the taxpayer, the taxpayer's spouse, or a claimed dependent) makes a payment directly to an eligible educational institution to pay for a student's qualified tuition and related expenses, the student is treated as receiving the payment from the third party, and, in turn, paying the qualified tuition and related expenses to the institution.

(2) *Example.* The following example illustrates the rule of this paragraph (a). In the example, assume that all the requirements to claim an education credit are met. The example is as follows:

Example. Grandparent D makes a direct payment to an eligible educational institution for Student E's qualified tuition and related expenses. Student E is not a claimed dependent in 1999. For purposes of claiming an education credit, Student E is treated as receiving the money from her grandparent and, in turn, paying her qualified tuition and related expenses.

(b) *Expenses paid by dependent*—(1) *In general.* Qualified tuition and related expenses paid by a student are treated as paid by a taxpayer if the student is a claimed dependent of the taxpayer for the taxable year in which the expenses are paid.

(2) *Example.* The following example illustrates the rule of this paragraph (b). In the example, assume that all the requirements to claim an education credit are met. The example is as follows:

Example. Under a court-approved divorce decree, Parent A is required to pay Student C's college tuition. Parent A makes a direct payment to an eligible educational institution for Student C's 1999 tuition. Under paragraph (a) of this section, Student C is treated as receiving the money from Parent A and, in turn, paying his qualified tuition and related expenses. Under the divorce decree, Parent B has custody of Student C for 1999. Parent B properly claims Student C as a dependent on Parent B's 1999 federal income tax return. Parent B may claim an education credit for the qualified tuition and related expenses paid directly to the institution by Parent A.

(c) *Adjustment to qualified tuition and related expenses for certain excludable educational assistance*—(1) *In general.* In determining the amount of an education credit, qualified tuition and related expenses paid during the taxable year must be reduced by any amount paid to, or on behalf of, a student during the taxable year with respect to attendance at an eligible educational institution during an academic period beginning in that taxable year that is—

(i) A qualified scholarship that is excludable from income under section 117;

(ii) A veterans' or member of the armed forces' educational assistance allowance under chapter 30, 31, 32, 34 or 35 of title 38, United States Code, or under chapter 1606 of title 10, United States Code;

(iii) Employer-provided educational assistance that is excludable from income under section 127; or

(iv) Any other educational assistance that is excludable from gross income (other than as a gift, bequest, devise, or inheritance within the meaning of section 102(a)).

(2) *No adjustment for excludable educational assistance attributable to expenses paid in a prior year.* A reduction is not required under paragraph (c)(1) of this section if the amount of excludable educational assistance received during the taxable year is treated as a refund of qualified tuition and related expenses paid in a prior taxable year. See paragraph (f)(4) of this section.

(3) *Allocation of scholarships and fellowship grants.* For purposes of paragraph (c)(1) of this section, a scholarship or fellowship grant is treated as a qualified scholarship excludable from income under section 117 unless—

(i) The student reports the grant as income on the student's federal income tax return; or

(ii) The grant must be applied, by its terms, to expenses other than qualified tuition and related expenses within the meaning of section 117(b)(2), such as room and board.

(4) *Examples.* The following examples illustrate the rules of this paragraph (c). In each example, assume that all the requirements to claim an education credit are met. The examples are as follows:

Example 1. University X charges Student A, who lives on X's campus, $3,000 for tuition and $5,000 for room and board. University X awards a $2,000 scholarship to Student A, which University X applies against Student A's $8,000 total bill. The terms of the scholarship permit it to be used to pay any of a student's costs of attendance at University X, including tuition and room and board. Student A pays the $6,000 balance of her bill from University X with a combination of savings and amounts she earns from a summer job. University X does not require A to pay any additional fees beyond the $3,000 in tuition in order to enroll in classes. Student A does not report any portion of the scholarship as income on Student A's federal income tax return. The scholarship is a qualified scholarship that is excludable from Student A's income under section 117 and is allocable first to Student A's qualified tuition and related expenses. Therefore, for purposes of calculating an education credit, Student A is treated as having paid only $1,000 ($3,000 tuition −$2,000 scholarship) in qualified tuition and related expenses to University X.

Example 2. The facts are the same as in *Example 1,* except that in addition to the scholarship that University X awards to Student A, University X also provides Student A with a student loan and pays Student A for working in a work/study job in the campus dining hall. The loan is not excludable educational assistance. In addition, wages paid to a student who is performing services for the payor are neither a qualified scholarship nor otherwise excludable from gross income. Therefore, Student A is not required to reduce her qualified tuition and related expenses by the amounts she receives from the student loan or as wages from her work/study job.

Example 3. In 1999, Student B pays University Y $1,000 in tuition for the 1999 Spring semester. University Y does not require Student B to pay any additional fees beyond the $1,000 in tuition in order to enroll in classes. Student B is an employee of Company Z. At the end of the academic period and during the same taxable year that Student B paid tuition to University Y, Student B provides Company Z with proof that he has satisfactorily completed his courses at University Y. Pursuant to an educational assistance program described in section 127(b), Company Z reimburses Student B for all of the tuition paid to University Y. Because the reimbursement from Company Z is employer-provided educational assistance that is excludable from Student B's gross income under section 127, the reimbursement reduces Student B's qualified tuition and related expenses. Therefore, for purposes of calculating an education credit, Student B is treated as having paid no qualified tuition and related expenses to University Y during 1999.

Example 4. The facts are the same as in *Example 3,* except that the reimbursement from Company Z is not pursuant to an educational assistance program described in section 127(b), is not otherwise excludable from Student B's gross income, and is taxed as additional wages to Student B. Because the reimbursement is not excludable employer-provided educational assistance, Student B is not required to reduce his qualified tuition and related expenses by the $1,000 reimbursement he received from his

employer. Therefore, for purposes of calculating an education credit, Student B is treated as paying $1,000 in qualified tuition and related expenses to University Y during 1999.

(d) *No double benefit.* Qualified tuition and related expenses do not include any expense for which a deduction is allowed under section 162 or any other provision of chapter 1 of the Internal Revenue Code.

(e) *Timing rules*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, an education credit is allowed only for payments of qualified tuition and related expenses for an academic period beginning in the same taxable year as the year the payment is made. Except for certain individuals who do not use the cash receipts and disbursements method of accounting, qualified tuition and related expenses are treated as paid in the year in which the expenses are actually paid. See § 1.461–1(a)(1).

(2) *Prepayment rule*—(i) *In general.* If qualified tuition and related expenses are paid during one taxable year for an academic period that begins during the first three months of the taxpayer's next taxable year (i.e., in January, February, or March of the next taxable year for calendar year taxpayers), an education credit is allowed with respect to the qualified tuition and related expenses only in the taxable year in which the expenses are paid.

(ii) *Example.* The following example illustrates the rule of this paragraph (e)(2). In the example, assume that all the requirements to claim an education credit are met. The example is as follows:

Example. In December 1998, Taxpayer A, a calendar year taxpayer, pays College Z $1,000 in qualified tuition and related expenses to attend the 1999 Spring semester, which begins in January 1999. Taxpayer A may claim an education credit only in 1998 for payments made in 1998 for the 1999 Spring semester.

(3) *Expenses paid with loan proceeds.* An education credit may be claimed for the qualified tuition and related expenses paid with the proceeds of a loan only in the taxable year in which the expenses are paid, and may not be claimed in the taxable year in which the loan is repaid. Loan proceeds disbursed directly to an eligible educational institution will be treated as paid on the date of disbursement. If a taxpayer does not know the date of disbursement, the taxpayer must treat the qualified tuition and related expenses as paid on the last date for payment prescribed by the institution.

(f) *Refund of qualified tuition and related expenses*—(1) *Payment and refund of qualified tuition and related expenses in the same taxable year.* With respect to any student, the amount of qualified tuition and related expenses for a taxable year is calculated by adding all qualified tuition and related expenses paid for the taxable year, and subtracting any refund of such expenses received from the eligible educational institution during the same taxable year.

(2) *Payment of qualified tuition and related expenses in one taxable year and refund in subsequent taxable year before return filed for prior taxable year.* If, in a taxable year, a taxpayer, (or the taxpayer's spouse or a claimed dependent) receives a refund from an eligible educational institution of qualified tuition and related expenses paid in a prior taxable year and the refund is received before the taxpayer files a federal income tax return for the prior taxable year, the amount of the qualified tuition and related expenses for the prior taxable year is reduced by the amount of the refund.

(3) *Payment of qualified tuition and related expenses in one taxable year and refund in subsequent taxable year*—(i) *In general.* If, in a taxable year (refund year), a taxpayer (or the taxpayer's spouse or a claimed dependent) receives a refund of qualified tuition and related expenses for which the taxpayer claimed an education credit in a prior taxable year, the tax imposed by chapter 1 of the Internal Revenue Code for the refund year is increased by the recapture amount.

(ii) *Recapture amount.* The recapture amount is the difference between the credit claimed in the prior taxable year and the redetermined credit. The redetermined credit is computed by reducing the amount of the qualified tuition and related expenses for which a credit was claimed in the prior taxable year by the amount of the refund of the qualified tuition and related expenses (redetermined qualified expenses), and computing the credit using the redetermined qualified expenses and the relevant facts and circumstances of the prior taxable year, such as modified adjusted gross income (redetermined credit). Any redetermination of the tax liability for the prior taxable year (by audit or amended return) will be taken into account in computing the redetermined credit.

(4) *Excludable educational assistance received in a subsequent taxable year treated as a refund.* If, in a taxable year, any excludable educational assistance (described in paragraph (c)(1) of this section) is received for the qualified tuition and related expenses paid during a prior taxable year (or attributable to enrollment at an eligible educational institution during a prior taxable year), the educational assistance is treated as a refund of qualified tuition and related expenses for purposes of paragraphs (f)(2) and (3) of this section. If a taxpayer (or the taxpayer's spouse or a claimed dependent) receives any excludable educational assistance before the taxpayer files a federal income tax return for the prior taxable year, the amount of the qualified tuition and related expenses for the prior taxable year is reduced by the amount of the excludable educational assistance as provided in paragraph (f)(2) of this section. If a taxpayer (or the taxpayer's spouse or a claimed dependent) receives excludable educational assistance after the taxpayer has filed a federal income tax return for the prior taxable year, any education credit claimed for the prior taxable year is subject to recapture as provided in paragraph (f)(3) of this section.

(5) *Examples.* The following examples illustrate the rules of this paragraph (f). In each example, assume that all the requirements to claim an education credit are met. The examples are as follows:

Example 1. In January 1998, Student A, a full-time freshman at University X, pays $2,000 for qualified tuition and related expenses for a 16-hour work load for the 1998 Spring semester. Prior to beginning classes, Student A withdraws from 6 course hours. On February 15, 1998, Student A receives an $800 refund from University X. In September 1998, Student A pays University X $1,000 to enroll half-time for the 1998 Fall semester. Prior to beginning classes, Student A withdraws from a 2-hour course, and she receives a $200 refund in October 1998. Student A computes the amount of qualified tuition and related expenses she may claim for 1998 by:

(i) Adding all qualified expenses paid during the taxable year ($2,000 + 1,000 = $3,000);

(ii) Adding all refunds of qualified tuition and related expenses received during the taxable year ($800 + $200 = $1,000); and, then

(iii) Subtracting (ii) from (i) ($3,000—$1,000 = $2,000). Therefore, Student A's qualified tuition and related expenses for 1998 are $2,000.

Example 2. (i) In December 1998, Student B, a senior at College Y, pays $2,000 for qualified tuition and related expenses for a 16-hour work load for the 1999 Spring semester. Prior to beginning classes, Student B withdraws from a 4-hour course. On January 15, 1999, Student B files her 1998 income tax return and claims a $400 Lifetime Learning Credit for the $2,000 qualified expenses paid in 1998.

(ii) She calculates the increase in tax for 1999 by:

(A) Calculating the redetermined qualified expenses ($2,000—$500 = $1,500);

(B) Calculating the redetermined credit for the redetermined qualified expenses ($1,500 × .20 = $300); and

(C) Subtracting the redetermined credit from the credit claimed in 1998 ($400—$300 = $100).

(iii) Therefore, Student B must increase the tax on her 1999 federal income tax return by $100.

Example 3. In September 1998, Student C pays College Z $1,200 in qualified tuition and related expenses to attend evening classes during the 1998 Fall semester. Student C is an employee of Company R. On January 15, 1999, Student C files a federal income tax return for 1998 claiming a Lifetime Learning Credit of $240 (.20 × $1,200). Pursuant to an educational assistance program described in section 127(b), Company R reimburses Student C in February 1999 for the $1,200 of qualified tuition and related expenses paid by Student C in 1998. The $240 education credit claimed by Student C for 1998 is subject to recapture. Because Student C paid no net qualified tuition and related expenses in 1998, the redetermined credit for 1998 is zero. Student C must increase the amount of Student C's 1999 taxes by the recapture amount, which is $240 (the education credit claimed for 1998 ($240) minus the redetermined credit for 1998 ($0)). Because the $1,200 reimbursement is taken into account in calculating the $240 recapture amount for 1999, the reimbursement does not reduce the amount of any qualified tuition and related expenses that Student C paid in 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–177 Filed 1–5–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104072–97]

RIN 1545–AV07

Recharacterizing Financing Arrangements Involving Fast-pay Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that recharacterize, for tax purposes, financing arrangements involving fast-pay stock. The regulations are necessary to prevent taxpayers from using fast-pay stock to achieve inappropriate tax avoidance. The regulations affect corporations that issue fast-pay stock, holders of fast-pay stock, and other shareholders that may claim tax benefits purported to result from arrangements involving fast-pay stock. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written and electronic comments must be received by April 6, 1999. Outlines of topics to be discussed at the public hearing scheduled for April 8, 1999, at 10 a.m. must be received by March 18, 1999.

ADDRESSES: Send submissions: to CC:DOM:CORP:R (REG–104072–97), 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–104072–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments via the Internet by selecting the ''Tax Regs'' option of the IRS Home Page or by submitting them directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html. The public hearing will be held in room 2615, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jonathan Zelnik at (202) 622–3940; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita VanDyke at (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by March 8, 1999. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the collection will have a practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information is in § 1.7701(l)–3(f) and § 1.7701(l)–3(g). The collection of information is mandatory. The likely respondents are individuals, businesses, and other organizations.

Estimated total annual burden: 50 hours

Estimated average annual burden per respondent: 1 hour

Estimated number of respondents: 50

Estimated annual frequency of responses: Annually

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax information are confidential, as required by 26 U.S.C. 6103.

Background

On February 27, 1997, the IRS issued Notice 97–21, 1997–1 C.B. 407, which relates to financing arrangements involving fast-pay stock. Among other things, the notice informs the public that the IRS and Treasury Department expect to issue regulations recharacterizing these arrangements to prevent tax avoidance. Notice 97–21 requested comments, but none have been received.

Explanation of Provisions

A. Tax-Avoidance Arrangements Using Fast-Pay Stock

Notice 97–21 addresses two-party financing arrangements that are structured as multi-party arrangements to let one or more of the parties avoid tax. Instead of one party directly providing financing to the other, they both acquire stock (with different characteristics) in a conduit entity. The arrangement is structured so that the party providing the financing has a decreasing claim on the conduit entity

(and its assets) while the party receiving the financing has an increasing claim on the conduit entity (and its assets). Economically, both parties benefit from the conduit entity's income. For tax purposes, however, the entity's income is allocated almost entirely to the party providing the financing, allowing the other party to claim unwarranted tax benefits.

Notice 97–21 describes in detail a typical fast-pay stock financing arrangement. The parties to the arrangement include: (1) a person seeking financing (the sponsor), (2) investors who are willing to provide financing and typically are not subject to federal income tax (the investors), and (3) a corporation that is generally subject to tax only at the shareholder level (a conduit entity). The conduit entity issues a class of self-amortizing stock (the fast-pay stock) to the investors and a class of other stock (the benefited stock) to the sponsor. The fast-pay stock is structured so that during an initial period, the dividends made with respect to the stock are substantial and relatively certain while the dividends made with respect to the benefited stock are insignificant. After the initial period, the dividend rate of the fast-pay stock, the stock's effective redemption value, or both, decline.

Economically, the fast-pay stock is self-amortizing because the distributions made with respect to the fast-pay stock are in part a return on the investors' investment and in part a return of their investment. For tax purposes, however, the parties characterize the fast-pay stock distributions entirely as dividends (that is, entirely as a return on the investment). Consequently, the investors' reported taxable income — overstated dividend income followed by an overstated capital loss on disposition of the fast-pay stock—fails to clearly reflect their economic income. (Investors that are tax-exempt suffer no disadvantage from this arrangement.)

Characterizing the distributions made with respect to the fast-pay stock solely as dividends has the corresponding effect of understating the taxable income on the benefited stock (the stock held by the sponsor) during the initial period. Instead of receiving dividends attributable to its share of the conduit entity's income, the sponsor's economic income takes the form of an increasing ownership interest in the conduit entity. Because the fast-pay stock is economically self-amortizing, each distribution reduces the investors' claim on the conduit entity (and its assets) and increases the sponsor's claim. By treating a fast-pay arrangement according to its form, the sponsor reports taxable income that fails to clearly reflect its economic income. An individual sponsor, for example, reports little or no dividend income. Instead, the individual reports gain on disposing of its benefited stock; thus, deferring tax on its economic income and converting that income from ordinary to capital. A corporate sponsor not only reports little or no dividend income, but can avoid reporting gain on the disposition of its benefited stock, thereby entirely eliminating tax on its economic income. (If a corporate sponsor has a sufficient interest in the conduit entity, the sponsor may succeed to the conduit entity's assets tax-free by liquidating or reorganizing the conduit entity; thus, avoiding a taxable disposition of the benefited stock).

In substance, the investors (the fast-pay shareholders) are financing the sponsor's investment in the conduit entity. Although nominally shareholders in the conduit entity, the investors have a limited, diminishing claim to the entity (and its assets). The sponsor's claim, by contrast, is residual and long-term. Thus, a fast-pay arrangement is effectively a leveraged arrangement in which the sponsor uses untaxed income from the conduit entity to repay the investors.

B. The Proposed Regulations

1. In General

To prevent the avoidance of tax, the Secretary may issue regulations under section 7701(l) recharacterizing any multiple-party financing transaction as a transaction directly among any two or more of the parties. The proposed regulations exercise this authority by recharacterizing certain fast-pay arrangements. A fast-pay arrangement is any financing arrangement in which a corporation has outstanding two or more classes of stock, one of which is fast-pay stock. The regulations identify fast-pay arrangements and recharacterize certain of them as arrangements directly between the holders of the fast-pay stock and the other shareholders (the benefited shareholders) in the corporation. The regulations also impose reporting requirements on certain corporations with outstanding fast-pay stock and on certain shareholders that participate in fast-pay arrangements. These reporting requirements apply to all fast-pay arrangements, whether or not they are subject to recharacterization.

Notice 97–21 describes specific models for recharacterizing fast-pay arrangements. For purposes of determining the income of the shareholders of a corporation with outstanding fast-pay stock, these models ignore the separate existence of the corporation and treat the fast-pay shareholders and benefited shareholders as owning the corporation's underlying assets. Although this approach prevents tax avoidance, the IRS and Treasury Department have concluded that it may not best reflect the financing relationship between the fast-pay shareholders and the benefited shareholders. In addition, the approach of the notice may be difficult for taxpayers to apply if the corporation has a complex capital structure, multiple assets (including active businesses), or both.

To address these concerns, the proposed regulations treat the fast-pay shareholders as acquiring instruments issued by the benefited shareholders instead of acquiring interests in the assets of the corporation. This approach better reflects the financing relationship between the fast-pay shareholders and the benefited shareholders. It also removes the burden of determining each party's ownership interest in the assets of the corporation. Thus, the regulations provide an approach that is easier to apply and more narrowly tailored than the models described in Notice 97–21.

2. Fast-Pay Stock and Benefited Stock

Under the proposed regulations, stock is fast-pay stock if it is structured to provide for dividends that economically represent a return (in whole or in part) of the holder's investment rather than only a return on the holder's investment. Stock is presumed to be fast-pay stock if it has, by design, a dividend rate that is reasonably expected to decline, or an issue price that exceeds the amount at which the holder can be compelled to dispose of the stock. A taxpayer may rebut these presumptions only by clearly showing that no dividend represents an economic return (in whole or in part) of the holder's investment.

Generally, whether stock is fast-pay stock must be determined based on all the facts and circumstances, including any related agreements such as options or forward contracts. A related agreement is any direct or indirect, oral or written, agreement between the holder of the stock and the issuing corporation, or between the holder of the stock and one or more other shareholders in the corporation. The determination that stock is fast-pay stock is made when the stock is issued, and whenever there is a significant modification in the terms of the stock or the related agreements, or a significant change in the relevant facts and circumstances.

The proposed regulations define benefited stock by reference to fast-pay stock. With respect to a class of fast-pay stock, all other stock in the corporation (including any other class of fast-pay stock) is benefited stock. For fast-pay arrangements in which there is more than one class of benefited stock, the parties must apply the general recharacterization rules among the different classes as appropriate to match the arrangement's economic substance.

3. Fast-Pay Arrangements Subject to Recharacterization

Under the proposed regulations, if the corporation with outstanding fast-pay stock is either a regulated investment company (RIC) or a real estate investment trust (REIT), the fast-pay arrangement is automatically recharacterized. If the corporation is neither a RIC nor a REIT, the Commissioner may (at the Commissioner's discretion) recharacterize the fast-pay arrangement in cases where the Commissioner determines that a principal purpose for the structure of the fast-pay arrangement is the avoidance of tax. This rule applies to all parties to a fast-pay arrangement, without regard to whether such parties acquired their interests as part of an initial offering or later (by purchase or other transfer).

By not automatically recharacterizing all fast-pay arrangements, the regulations prevent taxpayers from using the recharacterization rules for other tax avoidance purposes. For example, shareholders of a controlled foreign corporation cannot circumvent the purposes of United States tax law (including treaties) by using the recharacterization rules to exploit inconsistencies between the treatment of a fast-pay arrangement by the United States and foreign jurisdictions. It is expected that the Commissioner will closely scrutinize fast-pay arrangements in which the corporation with outstanding fast-pay stock is a foreign corporation.

4. Model for Recharacterizing Fast-Pay Arrangements

a. In General

The proposed regulations treat the fast-pay shareholders as holding financing instruments issued by the benefited shareholders rather than as holding fast-pay stock in the corporation. The corporation is the paying agent on the financing instruments but has no other relationship to the fast-pay shareholders.

Under the proposed regulations, the financing instruments have the same payment terms as the fast-pay stock. The timing and amount of payments made with respect to the financing instruments, therefore, match the timing and amount of distributions made with respect to the fast-pay stock. Nothing in the regulations characterizes the financing instruments. The character of the financing instruments (for example, stock or debt) must be determined under general tax principles and depends on all the facts and circumstances.

The benefited shareholders are treated as first issuing the financing instruments in exchange for cash equal to the fair market value of the fast-pay stock (taking into account any related agreements), and then as contributing the cash to the corporation (thereby increasing their basis in the benefited stock). Distributions made with respect to the fast-pay stock are treated as first made with respect to the benefited stock, and then as used by the benefited shareholders to make payments on the financing instruments.

b. Rule for Multiple Classes of Benefited Stock

The proposed regulations do not describe detailed rules for fast-pay arrangements in which there is more than one class of benefited shareholders. Instead, as mentioned before, the regulations provide a general rule that requires recharacterization among the different classes as appropriate to match the economic substance of the fast-pay arrangement.

c. Rules for Disposition of Benefited Stock

The proposed regulations provide special rules for dispositions of benefited stock. On the sale of benefited stock, in addition to any consideration actually received, the seller is treated as receiving the amount necessary to terminate its position with respect to the financing instruments at fair market value. Similarly, the buyer is treated as paying that amount and as issuing new financing instruments to the fast-pay shareholders.

d. Rule Preserving Pre-effective Date Gain

The proposed regulations provide a special basis adjustment rule to ensure that unrealized gain on benefited stock is not inappropriately eliminated. Because the regulations do not apply to amounts accrued or paid in taxable years ending before February 27, 1997 (pre-effective years), a benefited shareholder will have economic income, but not taxable income, attributable to pre-effective years if the form of a fast-pay arrangement is respected for those years. This economic income is reflected as unrealized gain in the benefited stock.

Absent a special basis adjustment rule, the general recharacterization rule would eliminate this unrealized gain. Although the regulations do not apply to amounts accrued or paid in pre-effective years, the regulations recharacterize fast-pay arrangements from their inception. Thus, in cases in which the fast-pay arrangement was entered into in a pre-effective year, the general recharacterization rule increases a benefited shareholder's basis in its stock as of the inception of the transaction, even though the regulations do not require the benefited shareholder to include deemed dividend distributions attributable to the pre-effective years. Consequently, this increase in basis without corresponding dividend income eliminates the unrealized gain from the pre-effective years.

To preserve the unrealized gain resulting from the economic income attributable to pre-effective years, the proposed regulations provide a special basis adjustment rule. After taking into account any basis increase under the general rule, a benefited shareholder must decrease its basis in its benefited stock by the amount (if any) that (1) its taxable income attributable to the fast-pay arrangement for pre-effective years, computed by recharacterizing the fast-pay arrangement under the regulations, exceeds (2) its taxable income attributable to the fast-pay arrangement for pre-effective years, computed without applying the recharacterization rules of the regulations. In this way, a benefited shareholder's economic income attributable to taxable years before the effective date of the regulations is not eliminated by the basis provisions of the general recharacterization rules and may be realized when the benefited shareholder disposes of its benefited stock.

e. Rule Prohibiting the Affirmative Use of These Regulations To Avoid Tax Imposed by the Code

The proposed regulations prohibit a taxpayer from affirmatively using the automatic recharacterization rules if a principal purpose for using such rules is the avoidance of any tax imposed by the Code. With respect to such a taxpayer, the Commissioner may depart from the automatic recharacterization rules and treat (for all purposes of the Code) the fast-pay arrangement in accordance with its form or its economic substance. This anti-abuse rule applies on a taxpayer-by-

taxpayer basis. For example, if a foreign person acquires fast-pay stock in a REIT and a principal purpose for acquiring such stock is to reduce United States withholding taxes by applying the automatic recharacterization rules, the Commissioner may, for purposes of determining the foreign person's United States tax consequences (namely, withholding tax), depart from the automatic recharacterization rules and treat the foreign person as holding fast-pay stock in the REIT.

5. Withholding

A corporation that issues fast-pay stock is a withholding agent for payments made (or deemed made) under a fast-pay arrangement. Generally, if a fast-pay arrangement is recharacterized under the automatic recharacterization rules, a withholding agent must withhold in accordance with the transaction as recharacterized. A different rule applies, however, if the withholding agent knows or has reason to know that any taxpayer entered into the fast-pay arrangement with a principal purpose of using the recharacterization rules to avoid tax under section 871(a) or section 881. In that case, for each payment made (or deemed made) to such taxpayer under the arrangement, the withholding agent must withhold under section 1441 or section 1442 the higher of (1) the amount of withholding that applies to such payment determined under the form of the arrangement, or (2) the amount of withholding that applies to such payment determined under the automatic recharacterization rules. Also, when the withholding agent knows or has reason to know that the Commissioner has exercised the discretion to depart from the automatic recharacterization rules for a taxpayer, the withholding agent must withhold on payments made (or deemed made) to that taxpayer in accordance with the characterization of the fast-pay arrangement imposed by the Commissioner.

The withholding agent's liability to withhold on payments to foreign individuals is described in new proposed § 1.1441–7(g). The same rules apply to payments (or deemed payments) to foreign corporations under § 1.1442–1.

6. Reporting Requirements

In general, a corporation that has fast-pay stock outstanding at any time during the taxable year must attach a statement to its federal income tax return. This rule does not apply to a corporation that is a controlled foreign corporation (CFC) as defined in section 957, a foreign personal holding company (FPHC) as defined in section 552, or a passive foreign investment company (PFIC) as defined in section 1297. Instead, certain shareholders (and officers and directors of FPHCs) of those corporations must attach a statement to their returns.

The statement must identify the corporation that has outstanding fast-pay stock and must recite the terms of the fast-pay stock and the date on which the fast-pay stock was issued. In addition, to the extent the filing person knows or has reason to know such information, the statement must contain the names and the taxpayer identification numbers of the shareholders of any class of stock that is not traded on an established securities market as described in § 1.7704–1(b).

7. Election To Limit Taxable Income Attributable to a Recharacterized Fast-Pay Arrangement for Taxable Years Ending After February 26, 1997, and Before the Date These Regulations Are Published as Final Regulations in the **Federal Register**

The regulations are proposed to be effective February 27, 1997, and to cover all taxable years ending after February 26, 1997. Thus, the regulations will apply to all amounts accrued or paid on or after the first day of the first taxable year ending after February 26, 1997.

Because the proposed effective date relates to the date Notice 97–21 was issued to the public, and because the regulations adopt different recharacterization rules from the ones described in the notice, the regulations permit a shareholder of a recharacterized fast-pay arrangement to limit its taxable income attributable to the arrangement for certain taxable years. Specifically, for taxable years ending after February 26, 1997, and before the date these regulations are finalized, a shareholder may limit its taxable income attributable to a fast-pay arrangement recharacterized under the regulations, to the taxable income that would result if the fast-pay arrangement were recharacterized under Notice 97–21. Any amount excluded under the limit must be included as an adjustment to taxable income in the shareholder's first taxable year that includes the date the regulations are finalized. Under the regulations, a shareholder that has elected to apply the limit must include a statement in its books and records identifying each fast-pay arrangement for which the election was made, and the amount excluded from taxable income under the election for each fast-pay arrangement.

Shareholders who take advantage of the limit enjoy only a deferral of taxable income: Any amount excluded under the limit is later included as an adjustment. Thus, the sole benefit of making the election is a timing difference. This result is appropriate because over the life of a fast-pay arrangement a shareholder has the same amount of taxable income whether the fast-pay arrangement is recharacterized under Notice 97–21 or under the regulations. The IRS and Treasury Department invite comments concerning the limit and whether there are fast-pay arrangements in which any difference between a shareholder's taxable income determined under Notice 97–21 and the shareholder's taxable income determined under the regulations is other than a timing difference.

Notice 97–21 describes two types of fast-pay arrangements. Hence, calculating the limit requires appropriately recharacterizing the fast-pay arrangement under the notice. In the first type of fast-pay arrangement that the notice describes, the corporation with outstanding fast-pay stock holds income-producing assets issued by a third party. Notice 97–21 treats the benefited shareholders (one of which is called the ''sponsor'' in the notice) as acquiring the assets of the corporation directly from the sellers of those assets. The notice treats the fast-pay shareholders (called ''investors'' in the notice) as acquiring the assets of the corporation either from the sellers of those assets or from the benefited shareholders in an income ''stripping'' transaction. Thus, both the fast-pay shareholders and benefited shareholders are regarded as owning directly the corporation's assets.

In the second type of fast-pay arrangement that Notice 97–21 describes, the corporation with outstanding fast-pay stock holds a debt instrument issued by the sponsor (a benefited shareholder). In this situation, the notice treats the sponsor as having issued one or more instruments directly to the holders of the fast-pay stock. Thus, for purposes of determining the sponsor's taxable income, the sponsor's obligation under any asset held by the corporation is ignored.

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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities.

This certification is based on the understanding of the IRS and Treasury Department that the total number of fast-pay arrangements is fewer than 100, that the number of entities engaging in transactions affected by these regulations is not substantial and, of those entities, few or none are small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Therefore, a Regulatory Flexibility Analysis is not required. 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 comments on its impact on small businesses.

Comments and 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 eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand.

A public hearing has been scheduled for April 8, 1999, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by April 6, 1999 and submit an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by March 18, 1999.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Proposed Effective Date

These regulations are proposed to be effective February 27, 1997, and apply to taxable years ending after February 26, 1997. Thus, all amounts accrued or paid on or after the first day of the first taxable year ending after February 26, 1997, will be subject to the regulations, regardless of when a particular share of the stock or a particular debt instrument was issued.

The statement required under § 1.7701(l)–3(f) is proposed to apply to taxable years (of the taxpayer required to file the statement) ending after the date the regulations are published as final regulations in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Jonathan Zelnik and Marshall Feiring of the Office of the Assistant Chief Counsel (Financial Institutions & Products). 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.

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 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.7701(l)–3 also issued under 26 U.S.C. 7701(l). * * *

Par. 2. Section 1.1441–7 is amended as follows:

1. Paragraph (g) is redesignated as paragraph (h) and revised.

2. New paragraph (g) is added.

The addition and revision read as follows:

§ 1.1441–7 General provisions relating to withholding agents.

* * * * *

(g) *Fast-pay arrangements*—(1) *In general.* A corporation that issues fast-pay stock in a fast-pay arrangement described in § 1.7701(l)–3(b)(1) is a withholding agent with respect to fast-pay dividends paid under the arrangement and any deemed payments with respect to the arrangement under the recharacterization rules of § 1.7701(l)–3(c). Except as provided in this paragraph (g)(1) or in paragraph (g)(2) of this section, the withholding tax rules under section 1441 and section 1442 apply with respect to a fast-pay arrangement described in § 1.7701(l)–3(c)(1)(i) in accordance with the recharacterization rules provided in § 1.7701(l)–3(c). In all cases, notwithstanding paragraph (g)(2) of this section, if at any time the withholding agent knows or has reason to know that the Commissioner has exercised the discretion under § 1.7701(l)–3(d) to depart from the recharacterization rules of § 1.7701(l)–3(c) for a taxpayer, the withholding agent must withhold on payments made (or deemed made) to that taxpayer in accordance with the characterization of the fast-pay arrangement imposed by the Commissioner under § 1.7701(l)–3(d).

(2) *Exception.* If at any time the withholding agent knows or has reason to know that any taxpayer entered into a fast-pay arrangement with a principal purpose of applying the recharacterization rules of § 1.7701(l)–3(c) to avoid tax under section 871(a) or section 881, then for each payment made or deemed made to such taxpayer under the arrangement, the withholding agent must withhold, under section 1441 or section 1442, the higher of—

(i) The amount of withholding that would apply to such payment determined under the form of the arrangement; or

(ii) The amount of withholding that would apply to deemed payments determined under the recharacterization rules of § 1.7701(l)–3(c).

(3) *Liability.* Any person required to deduct and withhold tax under this paragraph (g) is made liable for that tax by section 1461, and is also liable for applicable penalties and interest for failing to comply with section 1461.

(4) *Examples.* The following examples illustrate the rules of this paragraph (g):

Example 1. REIT W issues shares of fast-pay stock to foreign individual A, a resident of Country C. United States source dividends paid to residents of C are subject to a 30 percent withholding tax. W issues all shares of benefited stock to foreign individuals who are residents of Country D. D's income tax convention with the United States reduces the United States withholding tax on dividends to 15 percent. Under § 1.7701(l)–3(c), the dividends paid by W to A are deemed to be paid by W to the benefited shareholders. W has reason to know that A entered into the fast-pay arrangement with a principal purpose of using the recharacterization rules of § 1.7701(l)–3(c) to reduce United States withholding tax. W must withhold at the 30 percent rate on the dividends deemed paid to its benefited shareholders because the amount of withholding that applies to such payments

determined under the form of the arrangement is higher than the amount of withholding that applies to such payments determined under § 1.7701(l)–3(c).

Example 2. The facts are the same as in *Example 1* of this paragraph (g)(4) except that W does not know, or have reason to know, that A entered the arrangement with a principal purpose of using the recharacterization rules of § 1.7701(l)–3(c) to reduce United States withholding tax. Further, the Commissioner has not exercised the discretion under § 1.7701(l)–3(d) to depart from the recharacterization rules of § 1.7701(l)–3(c). Accordingly, W must withhold tax at a 15 percent rate on the dividends deemed paid to the benefited shareholders.

(5) *Effective date.* This paragraph (g) applies to payments made (or deemed made) on or after January 6, 1999.

(h) *Effective date.* Except as otherwise provided in paragraph (f)(3) or (g)(5) of this section, this section applies to payments made after December 31, 1999.

Par. 3. Section 1.7701(l)–3 is added to read as follows:

§ 1.7701(l)–3 Recharacterizing financing arrangements involving fast-pay stock.

(a) *Purpose and scope.* This section is intended to prevent the avoidance of tax by persons participating in fast-pay arrangements (as defined in paragraph (b)(1) of this section) and should be interpreted in a manner consistent with this purpose. This section applies to all fast-pay arrangements. Paragraph (c) of this section recharacterizes certain fast-pay arrangements to ensure the participants are taxed in a manner reflecting the economic substance of the arrangements. Paragraph (f) of this section imposes reporting requirements on certain participants.

(b) *Definitions*—(1) *Fast-pay arrangement.* A fast-pay arrangement is any arrangement in which a corporation has outstanding for any part of its taxable year two or more classes of stock, at least one of which is fast-pay stock.

(2) *Fast-pay stock*—(i) *Defined.* Stock is fast-pay stock if it is structured so that dividends (as defined in section 316) paid by the corporation with respect to the stock are economically (in whole or in part) a return of the holder's investment (as opposed to only a return on the holder's investment). Unless clearly demonstrated otherwise, stock is presumed to be fast-pay stock if—

(A) It is structured to have a dividend rate that is reasonably expected to decline (as opposed to a dividend rate that is reasonably expected to fluctuate or remain constant); or

(B) It is issued for an amount that exceeds (by more than a de minimis amount, as determined under the principles of § 1.1273–1(d)) the amount at which the holder can be compelled to dispose of the stock.

(ii) *Determination.* The determination of whether stock is fast-pay stock is based on all the facts and circumstances, including any related agreements such as options or forward contracts. A related agreement is any direct or indirect agreement or understanding, oral or written, between the holder of the stock and the issuing corporation, or between the holder of the stock and one or more other shareholders in the corporation. The determination is made when the stock is issued and whenever there is a significant modification in the terms of the stock or the related agreements, or a significant change in the relevant facts and circumstances.

(3) *Benefited stock defined.* With respect to a class of fast-pay stock, all other stock in the corporation (including any other class of fast-pay stock) is benefited stock.

(c) *Recharacterization of certain fast-pay arrangements*—(1) *Scope.* This paragraph (c) applies to any fast-pay arrangement—

(i) In which the corporation that has outstanding fast-pay stock is a regulated investment company (RIC) (as defined in section 851) or a real estate investment trust (REIT) (as defined in section 856); or

(ii) If the Commissioner determines that a principal purpose for the structure of the fast-pay arrangement is the avoidance of any tax imposed by the Code. Application of this paragraph (c)(1)(ii) is at the Commissioner's discretion, and a determination under this paragraph (c)(1)(ii) applies to all parties to the fast-pay arrangement, including transferees.

(2) *Recharacterization.* A fast-pay arrangement described in paragraph (c)(1) of this section is recharacterized as an arrangement directly between the benefited shareholders and the fast-pay shareholders. The inception and resulting relationships of the recharacterized arrangement are deemed to be as follows:

(i) *Relationship between benefited shareholders and fast-pay shareholders.* The benefited shareholders issue financial instruments (the financing instruments) directly to the fast-pay shareholders in exchange for cash equal to the fair market value of the fast-pay stock at the time of issuance (taking into account any related agreements). The financing instruments have the same payment terms as the fast-pay stock. Thus, the timing and amount of the payments made with respect to the financing instruments always match the timing and amount of the distributions made with respect to the fast-pay stock.

(ii) *Relationship between benefited shareholders and corporation.* The benefited shareholders contribute to the corporation the cash they receive for issuing the financing instruments. Distributions made with respect to the fast-pay stock are distributions made by the corporation with respect to the benefited shareholders' benefited stock.

(iii) *Relationship between fast-pay shareholders and corporation.* For purposes of determining the relationship between the fast-pay shareholders and the corporation, the fast-pay stock is ignored. The corporation is the paying agent of the benefited shareholders with respect to the financing instruments.

(3) *Other rules*—(i) *Character of the financing instruments.* The character of a financing instrument (for example, stock or debt) is determined under general tax principles and depends on all the facts and circumstances.

(ii) *Multiple classes of benefited stock.* If there is more than one class of benefited stock, the recharacterization rules of this paragraph (c) apply among the different classes as appropriate to match the economic substance of the fast-pay arrangement.

(iii) *Sale of benefited stock.* If one person sells benefited stock to another—

(A) In addition to any consideration actually paid and received for the benefited stock, the buyer is deemed to pay and the seller is deemed to receive the amount necessary to terminate the seller's position in the financing instruments at fair market value; and

(B) The buyer is deemed to issue financing instruments to the fast-pay shareholders in exchange for the amount necessary to terminate the seller's position in the financing instruments.

(iv) *Adjustment to basis for amounts accrued or paid in taxable years ending before February 27, 1997.* In the case of a fast-pay arrangement involving amounts accrued or paid in taxable years ending before February 27, 1997, and recharacterized under this paragraph (c), a benefited shareholder must decrease its basis in any benefited stock (as determined under paragraph (c)(2)(ii) of this section) by the amount (if any) that—

(A) Its income attributable to the benefited stock (reduced by deductions attributable to financing instruments) for taxable years ending before February 27, 1997, computed by recharacterizing the fast-pay arrangement this under this paragraph (c); exceeds

(B) Its income attributable to such stock for taxable years ending before February 27, 1997, computed without applying the rules of this paragraph (c).

(d) *Prohibition against affirmative use of recharacterization by taxpayers.* A taxpayer may not use the rules of paragraph (c) of this section if a principal purpose for using such rules is the avoidance of any tax imposed by the Code. Thus, with respect to such taxpayer, the Commissioner may depart from the rules of this section and recharacterize (for all purposes of the Code) the fast-pay arrangement in accordance with its form or its economic substance. For example, if a foreign person acquires fast-pay stock in a REIT and a principal purpose for acquiring such stock is to reduce United States withholding taxes by applying the rules of paragraph (c) of this section, the Commissioner may, for purposes of determining the foreign person's United States tax consequences (namely, withholding tax), depart from the rules of paragraph (c) of this section and treat the foreign person as holding fast-pay stock in the REIT.

(e) *Examples.* The following examples illustrate the rules of paragraph (c) of this section:

Example 1. Decline in dividend rate. (i) *Facts.* Corporation X issues 100 shares of A Stock and 100 shares of B Stock for $1,000 per share. By its terms, a share of B Stock is reasonably expected to pay a $110 dividend in years 1 through 10 and a $30 dividend each year thereafter. If X liquidates, the holder of a share of B Stock is entitled to a preference equal to the share's issue price. Otherwise, the B Stock cannot be redeemed at either X's or the shareholder's option.

(ii) *Analysis.* When issued, the B Stock has a dividend rate that is reasonably expected to decline from an annual rate of 11 percent of its issue price to an annual rate of 3 percent of its issue price. Since the B Stock is structured to have a declining dividend rate, the B Stock is fast-pay stock, and the A Stock is benefited stock.

Example 2. Issued at a premium. (i) *Facts.* The facts are the same as in *Example 1* of this paragraph (e) except that a share of B Stock is reasonably expected to pay an annual $110 dividend as long as it is outstanding, and Corporation X has the right to redeem the B Stock for $400 a share at the end of year 10.

(ii) *Analysis.* The B Stock is structured so that the issue price of the B Stock ($1,000) exceeds (by more than a de minimis amount) the price at which the holder can be compelled to dispose of the stock ($400). Thus, the B Stock is fast-pay stock, and the A Stock is benefited stock.

Example 3. Recharacterization illustrated. (i) *Facts.* On formation, REIT Y issues 100 shares of C Stock and 100 shares of D Stock for $1,000 per share. By its terms, a share of D Stock is reasonably expected to pay a $110 dividend in years 1 through 10 and a $30 dividend each year thereafter. In years 1 through 10, persons holding a majority of the D Stock must consent before Y may take any action that would result in Y liquidating or dissolving, merging or consolidating, losing its REIT status, or selling substantially all of its assets. Thereafter, Y may take these actions without consent so long as the D Stock shareholders receive $400 in exchange for their D Stock.

(ii) *Analysis.* When issued, the D Stock has a dividend rate that is reasonably expected to decline from an annual rate of 11 percent of its issue price to an annual rate of 3 percent of its issue price. In addition, the $1,000 issue price of a share of D Stock exceeds the price at which the shareholder can be compelled to dispose of the stock ($400). Thus, the D Stock is fast-pay stock, and the C Stock is benefited stock. Because Y is a REIT, the fast-pay arrangement is recharacterized under paragraph (c) of this section.

(iii) *Recharacterization.* The fast-pay arrangement is recharacterized as follows:

(A) Under paragraph (c)(2)(i) of this section, the C Stock shareholders are treated as issuing financing instruments to the D Stock shareholders in exchange for $100,000 ($1,000, the fair market value of each share of D Stock, multiplied by 100, the number of shares).

(B) Under paragraph (c)(2)(ii) of this section, the C Stock shareholders are treated as contributing $200,000 to Y (the $100,000 received for the financing instruments, plus the $100,000 actually paid for the C Stock) in exchange for the C Stock.

(C) Under paragraph (c)(2)(ii) of this section, each distribution with respect to the D Stock is treated as a distribution with respect to the C Stock.

(D) Under paragraph (c)(2)(iii) of this section, the C Stock shareholders are treated as making payments with respect to the financing instruments, and Y is treated as the paying agent of the financing instruments for the C Stock shareholders.

Example 4. Transfer of benefited stock illustrated. (i) *Facts.* The facts are the same as in *Example 3* of this paragraph (e). Near the end of year 5, a person holding one share of C Stock sells it for $1,300. The buyer is unrelated to REIT Y or to any of the D Stock shareholders. At the time of the sale, the amount needed to terminate the seller's position in the financing instruments at fair market value is $747.

(ii) *Benefited shareholder's treatment on sale.* Under paragraph (c)(3)(iii)(A) of this section, the seller's amount realized is $2,047 ($1,300, the amount actually received, plus $747, the amount necessary to terminate the seller's position in the financing instruments at fair market value). The seller's gain on the sale of the common stock is $47 ($2,047, the amount realized, minus $2,000, the seller's basis in the common stock). The seller has no income or deduction with respect to terminating its position in the financing instruments.

(iii) *Buyer's treatment on purchase.* Under paragraph (c)(3)(iii)(A) of this section, the buyer's basis in the share of D Stock is $2,047 ($1,300, the amount actually paid, plus $747, the amount needed to terminate the seller's position in the financing instruments at fair market value). Under paragraph (c)(3)(iii)(B) of this section, simultaneous with the sale, the buyer is treated as issuing financing instruments to the fast-pay shareholders in exchange for $747, the amount necessary to terminate the seller's position in the financing instruments at fair market value.

Example 5. Fast-pay arrangement involving amounts accrued or paid in a taxable year ending before February 27, 1997. (i) *Facts.* Y is a calendar year taxpayer. In June 1996, Y acquires shares of REIT T benefited stock for $15,000. In December 1996, Y receives dividends of $100. Under the recharacterization rules of paragraph (c)(2) of this section, Y's 1996 income attributable to the benefited stock is $1,200, Y's 1996 deduction attributable to financing instruments is $500, and Y's basis in the benefited stock is $25,000.

(ii) *Analysis.* Under paragraph (c)(3)(iv) of this section, Y's basis in the benefited stock is reduced by $600. This is the amount by which Y's 1996 income from the fast-pay arrangement as recharacterized under this section ($1,200 of income attributable to the benefited stock less $500 of deductions attributable to the financing instruments), exceeds Y's 1996 income from the fast-pay arrangement as not recharacterized under this section ($100 of income attributable to the benefited stock). Thus, in 1997 when the fast-pay arrangement is recharacterized, Y's basis in the benefited stock is $24,400.

(f) *Reporting requirement*—(1) *Filing requirements*—(i) *In general.* A corporation that has fast-pay stock outstanding at any time during the taxable year must attach the statement described in paragraph (f)(2) of this section to its federal income tax return for such taxable year. This paragraph (f)(1)(i) does not apply to a corporation described in paragraph (f)(1)(ii), (iii), or (iv) of this section.

(ii) *Controlled foreign corporation.* In the case of a controlled foreign corporation (CFC), as defined in section 957, that has fast-pay stock outstanding at any time during its taxable year (during which time it was a CFC), each controlling United States shareholder (within the meaning of § 1.964–1(c)(5)) must attach the statement described in paragraph (f)(2) of this section to the shareholder's Form 5471 for the CFC's taxable year. The provisions of section 6038 and the regulations under section 6038 apply to any statement required by this paragraph (f)(1)(ii).

(iii) *Foreign personal holding company.* In the case of a foreign personal holding company (FPHC), as defined in section 552, that has fast-pay stock outstanding at any time during its taxable year (during which time it was a FPHC), each United States citizen or resident who is an officer, director, or 10-percent shareholder (within the meaning of section 6035(e)(1)) of such FPHC must attach the statement described in paragraph (f)(2) of this

section to his or her Form 5471 for the FPHC's taxable year. The provisions of sections 6035 and 6679 and the regulations under sections 6035 and 6679 apply to any statement required by this paragraph (f)(1)(iii).

(iv) *Passive foreign investment company.* In the case of a passive foreign investment company (PFIC), as defined in section 1297, that has fast-pay stock outstanding at any time during its taxable year (during which time it was a PFIC), each shareholder that has elected (under section 1295) to treat the PFIC as a qualified electing fund and knows or has reason to know that the PFIC has outstanding fast-pay stock must attach the statement described in paragraph (f)(2) of this section to the shareholder's Form 8621 for the PFIC's taxable year. Each shareholder owning 10 percent or more of the shares of the PFIC (by vote or value) is presumed to know that the PFIC has issued fast-pay stock. The provisions of sections 1295(a)(2) and 1298(f) and the regulations under sections 1295(a)(2) and 1298(f) (including § 1.1295–1T(f)(2)) apply to any statement required by this paragraph (f)(1)(iv).

(2) *Statement.* The statement required under this paragraph (f) must say, ''This fast-pay stock disclosure statement is required by § 1.7701(l)–3(f) of the income tax regulations.'' The statement must also identify the corporation that has outstanding fast-pay stock and must contain the date on which the fast-pay stock was issued, the terms of the fast-pay stock, and (to the extent the filing person knows or has reason to know such information) the names and taxpayer identification numbers of the shareholders of any class of stock that is not traded on an established securities market (as described in § 1.7704–1(b)).

(g) *Effective date*—(1) *In general.* Except as provided in paragraph (g)(4) of this section (relating to reporting requirements), this section applies to taxable years ending after February 26, 1997. Thus, all amounts accrued or paid during the first taxable year ending after February 26, 1997, are subject to this section.

(2) *Election to limit taxable income attributable to a recharacterized fast-pay arrangement for taxable years ending after February 26, 1997, and before the date these regulations are published as final regulations in the Federal Register*—(i) *Limit and adjustment.* For taxable years ending after February 26, 1997, and before the date these regulations are published as final regulations in the **Federal Register**, a shareholder may limit its taxable income attributable to a fast-pay arrangement recharacterized under paragraph (c) of this section, to the taxable income that would result if the fast-pay arrangement were recharacterized under Notice 97–21, 1997–1 C.B. 407, see § 601.601(d)(2) of this chapter. Any amount a shareholder excludes from taxable income under this paragraph (g)(2)(i) must be included as an adjustment to taxable income in the shareholder's first taxable year that includes the date these regulations are published as final regulations in the **Federal Register**. A shareholder that has elected to limit its taxable income under this paragraph (g)(2)(i) must include a statement in its books and records identifying each fast-pay arrangement to which the limit was applied and providing the amount excluded from taxable income for each such fast-pay arrangement.

(ii) The following examples illustrate the rules of this paragraph (g)(2). For purposes of these examples, assume that the last year a shareholder may limit its taxable income under this paragraph (g)(2) is 1998. The examples are as follows:

Example 1. Fast-pay arrangement recharacterized under Notice 97–21; REIT holds third-party debt—(i) *Facts.* (A) REIT Y is formed on January 1, 1998, at which time it issues 1,000 shares of fast-pay stock and 1,000 shares of benefited stock for $100 per share. Y and all of its shareholders have calendar taxable years. All shareholders of Y have elected to accrue market discount based on a constant interest rate, to include the market discount in income as it accrues, and to amortize bond premium.

(B) For years 1 through 5, the fast-pay stock has an annual dividend rate of $17 per share ($17,000 for the class); in later years, the fast-pay stock has an annual dividend rate of $1 per share ($1,000 for the class). At the end of year 5, and thereafter, a share of fast-pay stock can be acquired by Y in exchange for $50 ($50,000 for the class).

(C) On the day Y is formed, it acquires a five-year mortgage note (the note) issued by an unrelated third party for $200,000. The note provides for annual interest payments on December 31 of $18,000 (a coupon interest rate of 9.0 percent, compounded annually), and one payment of principal at the end of 5 years. The note can be prepaid, in whole or in part, at any time.

(ii) *Recharacterization under Notice 97–21.* (A) *In general.* One way to recharacterize the fast-pay arrangement under Notice 97–21 is to treat the fast-pay shareholders and the benefited shareholders as if they jointly purchased the note from the issuer with the understanding that over the five-year term of the note the benefited shareholders would use their share of the interest to buy (on a dollar-for-dollar basis) the fast-pay shareholders' portion of the note. The benefited shareholders' and the fast-pay shareholders' yearly taxable income under Notice 97–21 can then be calculated after determining their initial portions of the note and whether those initial portions are purchased at a discount or premium.

(B) *Determining initial portions of the debt instrument.* The fast-pay shareholders' and the benefited shareholders' initial portions of the note can be determined by comparing the present values of their expected cash flows. As a class, the fast-pay shareholders expect to receive cash flows of $135,000 (five annual payments of $17,000, plus a final payment of $50,000). As a class, the benefited shareholders expect to receive cash flows of $155,000 (five annual payments of $1,000, plus a final payment of $150,000). Using a discount rate equal to the yield to maturity (as determined under § 1.1272–1(b)(1)(i)) of the mortgage note (9.0 percent, compounded annually), the present value of the fast-pay shareholders' cash flows is $98,620, and the present value of the benefited shareholders' cash flows is $101,380. Thus, the fast-pay shareholders initially acquire 49 percent of the note at a $1,380 premium (that is, they paid $100,000 for $98,620 of principal in the note). The benefited shareholders initially acquire 51 percent of the note at a $1,380 discount (that is, they paid $100,000 for $101,380 of principal in the note). Under section 171, the fast-pay shareholders' premium is amortizable based on their yield in their initial portion of the note (8.57 percent, compounded annually). The benefited shareholders' discount accrues based on the yield in their initial portion of the note (9.35 percent, compounded annually).

(C) *Taxable income under Notice 97–21.* Under Notice 97–21, the fast-pay shareholders' 1998 taxable income attributable to the fast-pay arrangement is $8,574 ($8.57 per $100 invested), computed by subtracting the amortizable premium ($302) from the interest income from their portion of the note ($8,876). The benefited shareholders' 1998 taxable income attributable to the fast-pay arrangement is $9,353 ($9.35 per $100 invested), computed by adding the accrued discount ($229) to the interest income from their portion of the note ($9,124).

(iii) *Taxable income under the recharacterization of this section.* Assume the financing instruments are debt instruments. Under the recharacterization rules of paragraph (c) of this section, the fast-pay shareholders' 1998 taxable income attributable to the fast-pay arrangement is $8,574 ($8.57 per $100 invested), which is the interest income from the financing instruments. The benefited shareholders' 1998 taxable income attributable to the fast-pay arrangement is $9,426 ($9.43 per share of benefited stock), computed by subtracting the interest income accrued on the financing instruments ($8,574) from the dividend income actually and deemed paid on the benefited stock ($18,000).

(iv) *Limit on taxable income under this paragraph (g)(2).* (A) *Fast-pay shareholders.* For 1998, the fast-pay shareholders have the same taxable income under the recharacterization of Notice 97–21 ($8,574) as they have under the recharacterization of paragraph (c) of this section ($8,574). Thus,

the limit under paragraph (g)(2)(i) of this section is unavailable to the fast-pay shareholders.

(B) *Benefited shareholders.* For 1998, the benefited shareholders have taxable income attributable to the fast-pay arrangement of $9,353 ($9.35 per $100 invested) under the recharacterization of Notice 97–21, and taxable income of $9,426 ($9.43 per share of benefited stock) under the recharacterization of paragraph (c) of this section. Thus, under paragraph (g)(2)(i) of this section, a benefited shareholder may elect to limit its taxable income attributable to the fast-pay arrangement to $9.35 for each share of benefited stock. Any amount an electing shareholder excludes from taxable income($0.08 per share of benefited stock) must later be included as an adjustment. (If all benefited shareholders elect the limit, then as a class the later adjustment to taxable income is $73.)

Example 2. REIT holds debt issued by a benefited shareholder. (i) *Facts.* The facts are the same as in Example 1 of this paragraph (g)(2) except that corporation Z holds 800 shares (80 percent) of the benefited stock, and Z, instead of a third party, issues the mortgage note acquired by Y.

(ii) *Recharacterization under Notice 97–21.* Because Y holds a debt instrument issued by Z, the fast-pay arrangement is recharacterized under Notice 97–21 as an arrangement in which Z issued one or more instruments directly to the fast-pay shareholders and the other benefited shareholders. Consistent with this recharacterization, Z is treated as issuing a debt instrument to the fast-pay shareholders for $100,000. The debt instrument provides for five annual payments of $17,000 and an additional payment of $50,000 in year five. Thus, the debt instrument's yield to maturity is 8.57 percent per annum, compounded annually. Z is also treated as issuing a debt instrument to the other benefited shareholders for $20,000 (200 shares multiplied by $100, or 20 percent of the $100,000 paid to Y by the benefited shareholders as a class). This debt instrument provides for five annual payments of $200 and an additional payment of $30,000 in year five. The debt instrument's yield to maturity is 9.30 percent per annum, compounded annually. For 1998, Z's interest expense is $10,435 ($8,574 attributable to the debt instruments held by the fast-pay shareholders, and $1,861 attributable to the debt instruments held by the other benefited shareholders).

(iii) *Recharacterization under this section.* Assume the financing instruments are debt instruments. Under the recharacterization rules of paragraph (c) of this section, for 1998, Z has dividend income of $14,400 (800 shares multiplied by $18, or 80 percent of $18,000), and total interest expense of $24,859 ($18,000 of interest accrued on the note held by Y, and $6,859 of interest accrued on the financing instruments).

(iv) *Limit on taxable income under this paragraph (g)(2).* For 1998, Z has a taxable loss attributable to the fast-pay arrangement of $10,435 under the recharacterization of Notice 97–21, and a taxable loss of $10,459 ($14,400 of dividends, minus $24,859 of total interest expense) under the recharacterization of paragraph (c) of this section. Thus, for 1998, Z's taxable loss attributable to the fast-pay arrangement is $10,459 (the amount determined under paragraph (c) of this section), and the limit of paragraph (g)(2)(i) of this section is unavailable to Z.

(3) *Rule to comply with this section.* To comply with this section for each taxable year in which it failed to do so, a taxpayer should file an amended return. For taxable years ending before the date these regulations are published as final regulations, a taxpayer that has complied with Notice 97–21, 1997–1 C.B. 407 (see § 601.601(d)(2) of this chapter), is considered to have complied with this section.

(4) *Reporting requirements.* The reporting requirements of paragraph (f) of this section apply to taxable years (of the person required to file the statement) ending after the date these regulations are published as final regulations in the **Federal Register**.

John M. Dalrymple,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–178 Filed 1–5–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 871]

RIN 1512–AB80

Petition for Johannisberg Riesling; Proposed Addition of Grape Variety Names for American Wines; Request for Additional Information for Other Proposed Grape Varieties (98R–406P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing to extend the phase-out date for the use of the term Johannisberg Riesling as a designation for American wines, from January 1, 1999, until January 1, 2006. The effect of this proposed change would allow U.S. wineries to use Johannisberg Riesling as a designation for American wines made from White Riesling grapes for an additional seven years. The petition was received from the law firm of Buchman & O'Brien, and was filed on behalf of trade associations representing United States wineries. This petition asserts that this change would allow American wineries additional time to educate consumers about the name change, and would provide additional time for wineries to change labels, packaging, and merchandising material for this wine. This petition proposes to extend the phase-out date for the term Johannisberg Riesling to January 1, 2006. After that date, wine made from White Riesling grapes would be required to be designated either ''Riesling'' or ''White Riesling.''

ATF has also received petitions proposing to add two new names, Traminette and Aglianico, to the list of prime grape variety names for use in designating American wines. Finally, ATF is soliciting comments or petitions for other grape varieties which wineries wish to use in producing and designating American varietal wines. These proposals are intended to ensure the list of prime grape names reflects grape varieties currently in use. ATF believes the listing of approved names of grape varieties for American wines will help standardize wine label terminology and prevent consumer confusion.

DATES: Written comments must be received by March 8, 1999. ATF specifically requests comments on the clarity of the proposed rule and how it may be made easier to understand.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; Notice No. 871.

A copy of the petition and written comments in response to this notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF Reference Library, Office of Public Affairs and Disclosure, Room 6300, 650 Massachusetts Avenue, NW, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Ms. Teri Byers, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927–8195, or e-mail: <thbyers@atfhq.atf.treas.gov>.

SUPPLEMENTARY INFORMATION:

Background

Under § 4.23(b), a wine bottler may use a grape variety name as the designation of a wine if not less than 75 percent of the wine (51 percent in some circumstances) is derived from that grape variety. Under § 4.23(d), a bottler may use the name of two or more grape variety names as the designation of a wine if all varieties are listed on the brand label and the percentage of the

wine derived from each grape variety is shown on the label.

Treasury Decision ATF–370, 61 FR 522, January 8, 1996, adopted a list of grape variety names which ATF has determined to be appropriate for use in designating American wines. The list of prime grape names and their synonyms appears at § 4.91, while additional alternative grape names temporarily authorized for use are listed at § 4.92. Section 4.93 provides a means by which interested persons may petition the Director for inclusion of additional grape variety names in the list of prime grape names. Treasury Decision ATF–370 did not include Johannisberg Riesling in the list of prime names, either as a prime grape name or as a synonym. Johannisberg Riesling was instead listed as an alternative name in § 4.92 for use in advertising and labeling wines only until January 1, 1999, after which the required varietal designation for this wine would be Riesling or the synonym White Riesling.

A. Johannisberg Riesling

Treasury Decision ATF–370 authorized the use of the name ''Riesling,'' standing by itself, as the prime name for wine made from this grape. Through evidence received during the rulemaking process, ATF determined that there was no longer the necessity to distinguish wine made from the true Riesling grape by use of the term ''Johannisberg Riesling.'' Based on this evidence, and to provide accurate and correct grape variety names, ATF concluded that the name Johannisberg Riesling should no longer be permitted as a grape variety designation. Accordingly, Johannisberg Riesling was removed as a synonym for Riesling and made an alternative name in § 4.92. Johannisberg Riesling is listed in § 4.92(b), permitting its use in labeling wines prior to January 1, 1999.

ATF has received a petition from the law firm of Buchman & O'Brien, filed on behalf of trade associations representing United States wineries, requesting that ATF amend § 4.92 by adding a new paragraph (c). This proposed paragraph would authorize the use of the term ''Johannisberg Riesling'' for wines bottled prior to January 1, 2006. At the same time, the petition would remove Johannisberg Riesling from the list of grape names in § 4.92(b) which may only be used as grape wine designations for wine bottled prior to January 1, 1999.

The petition gives several reasons for extending the phase-out date of the term Johannisberg Riesling for American wines. Despite the fact that ATF made it clear in the notices issued prior to TD ATF–370 that there was significant controversy surrounding the term Johannisberg Reisling, the petition alleges that ATF failed to provide the industry with notice that it was phasing out the term. The petition states that ATF provided such notice with other terms, *e.g.*, Cabernet, Grey Reisling, Muscat Frontignon and Napa Gamay, because the two notices of proposed rulemaking issued prior to TD ATF–370 specifically proposed phasing out these terms. However, these notices did not specifically propose to phase-out the term Johannisberg Riesling. The petitioner also cites the 10-year phase-out period in the recently published Treasury decision relating to Gamay Beaujolais as support for extending the period. The petition asserts that because the Johannisberg Riesling designation has been in documented commercial use for over 100 years, an additional 7 years would provide enough transitional time to educate the consuming public regarding the designation change. Finally, the petition states that the abrupt elimination of Johannisberg Riesling would cause material economic harm and hardship to the United States wine industry.

In addition to the petition from Buchman & O'Brien, the Deutsches Weininstitut GmbH has submitted a letter supporting the extension of the transition period for the phase-out of Johannisberg Riesling. Recent letters from wine industry members have demonstrated their support for an extended transition period. Lastly, a marketing communications company, ELGIN, provided marketing information illustrating the negative impact on wineries and consumers should ATF restrict the Johannisberg Riesling phase-out period to three years. ELGIN drew a comparison between Johannisberg Riesling and the 1982 Nissan Corporation's decision to change from the Datsun brand name to Nissan. The change was implemented in the United States over a six year period, however Nissan still saw it's share drop in the first two years from 5.9 percent to 4.5 percent due to the name change.

ATF requests comments from interested persons concerning this proposal to extend the phase-out date for the use of Johannisberg Riesling for seven years. ATF is also seeking any additional marketing studies or information regarding the impact on wineries and consumers should ATF restrict the phase-out period of Johannisberg Riesling to a shorter period. ATF wishes to make it clear that the airing of this petition does not represent any change in ATF's position, as stated in the preamble of T.D. ATF–370, to eventually phase-out use of the term Johannisberg Riesling. This proposal only relates to Johannisberg Riesling and does not concern the use of geographic terms in labeling American wines.

B. Proposed Addition of Grape Varieties

ATF has received several petitions proposing that new grape variety names be listed in § 4.91. Under § 4.93 any interested person may petition ATF to include additional grape varieties in the list of prime grape names. Information for a petition includes evidence of the following: (1) Acceptance of the new grape variety; (2) the validity of the name for identifying the grape variety; (3) information that the variety is used or will be used in winemaking; and (4) information that the variety is grown and used in the United States. For the approval of names of new grape varieties, the petition should include: (1) A reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a published report by a professional, scientific or winegrowers' organization; (2) a reference to a plant patent, if patented; and (3) information about the commercial potential of the variety such as the acreage planted or market studies. Section 4.93 also places certain restrictions on grape names which will be approved. A name will not be approved if it has previously been used for a different grape variety; if it contains a term or name found to be misleading under § 4.39; or if a name of a new grape variety contains the term ''Riesling.'' The Director reserves the authority to disapprove the name of a newly-developed grape variety if the name contains words of geographical significance, place names, or foreign words which are misleading under § 4.39.

While two of the petitions proposing additional names appear to have provided sufficient evidence to satisfy § 4.93, ATF believes the other petitions need further evidence. Consequently, ATF is requesting further information from all sources regarding those petitions. ATF has reviewed available sources to determine whether any of the proposed names are entitled to protection as geographic indications under international agreements. ATF found no information indicating that any of these proposed variety names are entitled to such protection.

1. Petitions Appearing To Have Sufficient Evidence To Satisfy § 4.93

Traminette Petition. At the request of Arbor Hill Associates, Naples, NY, Dr. Bruce Reicsh of the New York State

Agricultural Station, Cornell University, Geneva, NY, submitted a letter requesting that ATF include the grape variety ''Traminette'' on the list of prime grape names. According to Reisch's letter, Traminette is a grape variety recently released by Cornell University. It is a cross of Joannes-Seyve 23–416 with Gewürztraminer which was first made in 1965. The grapes from this cross were found to make excellent wine with similarities to their *vinifera* parent. Through extensive experimental plantings, Traminette has proven to be more winter hardy than its parent, very productive, and moderately resistant to powdery mildew and black rot.

The petition asserts that wines made with Traminette grapes have received high scores from Geneva Experimental Station taste panels since 1972, and amateur winemakers have produced good wines using these grapes. According to the petition, this grape was informally known as the ''Gewürztraminer Hybrid'' until recently when the New York State Agricultural Research Station in Geneva formally named this hybrid ''Traminette.'' The Traminette hybrid will not be patented. Vines are commercially available for sale, and at least one winery has applied for a certificate of label approval for a Traminette wine.

Based on the evidence presented in this letter, ATF proposes to add the grape variety ''Traminette'' to the list of prime grape names at § 4.91.

Aglianico Petition. The Caparone Winery located in Paso Robles, California, petitioned ATF to add the grape variety name ''Aglianico'' to the list of prime grape names at § 4.91. According to their petition, Aglianico has long been recognized as one of Italy's finest red grape varieties. The petition states that this grape was cultivated in Italy by the Greeks and early Romans making it one of the oldest identified grape varieties.

Caparone Winery's petition states that Aglianico vines have been grown in the collection of the University of California at Davis for more than 50 years, and that their collection has been certified as true to variety. Their petition includes a letter from the Foundation Plants Materials Service at UC Davis attesting to the fact that Aglianico vines are grown in their vineyards and that these vines have been inspected by Dr. Anna Schneider, a recognized Italian grape variety expert and found to be true to variety.

Caparone Winery states they currently (as of June 1996) have 3½ acres of Aglianico grapes planted, that they have produced four vintages of wine from these grapes, and that the quality of wine produced from them is excellent. They further state that other California wineries have plantings of this grape in their vineyards, and they expect there will be continuing interest in making wine from these grapes.

Based on the evidence presented in this petition, ATF proposes to add the grape variety ''Aglianico'' to the list of prime grape names at § 4.91.

2. Proposals Currently Lacking Sufficient Evidence To Satisfy § 4.93

Since the publication of T.D. ATF–370 in January 1996, ATF has received other petitions and requests to use grape variety names not listed in § 4.91. Some of these requests have not contained all of the information required by § 4.93, or have requested names that ATF has not been able to verify to be the correct variety as grown in the United States. Accordingly, we seek information about these proposed grape varieties which might lead to their future listing. If ATF receives sufficient documentation relative to specific grape varieties in response to this notice, we will list those names in § 4.91.

Vernaccia. Millbrook Winery, Millbrook, NY petitioned ATF to list the grape variety ''Vernaccia.'' Millbrook's petition states that they obtained Vernaccia cuttings from the Foundation Plants Materials Service at University of California at Davis several years ago, and have cultivated this grape in their vineyards.

According to available literature, the term ''Vernaccia'' is associated with several unrelated Italian grape varieties including Vernaccia di Oristano, Vernaccia di San Giminiano, Vernaccia di Serrapetrona also called Vernaccia Nera, and Vernaccia Trentina also called Bianchetta Trevigiana. These varieties include both green and black grapes, and they are used in making distinctively different red, white, and sparkling wines. It is unclear from Millbrook's petition or from the Foundation Plants Materials Service listing which ''Vernaccia'' grape is actually contained in the FPMS collection and grown in vineyards in the United States. Until a positive determination is made, ATF will not list a nonspecific ''Vernaccia'' grape in the list of prime grape names. ATF seeks any information which will enable a positive identification of the ''Vernaccia'' grape(s) grown in the United States. If the evidence submitted pursuant to this notice supports inclusion of this name, then it will be adopted as part of the final rule.

Counoise. Eberle Winery, Paso Robles, California, petitioned ATF to list the grape variety Counoise in § 4.91. Although this is a well documented red variety from the Rhône region of France, ATF has insufficient information to determine whether it is suitable for wine production in the United States, or the extent to which it may be grown domestically. ATF welcomes information about the domestic cultivation of this grape variety. If the evidence submitted pursuant to this notice supports inclusion of this name, then it will be adopted as part of the final rule.

Trousseau vs. Bastardo. Section 4.91 lists Trousseau as a prime grape name while § 4.92 lists Bastardo as an alternative name for this grape variety which cannot be used for designating American wine after January 1, 1997. Trousseau is a French name for the grape while Bastardo is the Portuguese name. Because of the use of this grape in producing Port-style dessert wines, ATF has been requested to reexamine whether the name Bastardo should be authorized as a synonym for Trousseau, or whether Bastardo should replace Trousseau as the prime grape name at § 4.91. ATF welcomes comments on these names.

Miscellaneous varieties. ATF is aware of several newly-developed grape varieties including several which may have potential for use in winemaking. ATF is aware also that many domestic wineries are experimenting with old world vinifera varieties not currently listed in § 4.91. We would like to remind the public that we welcome petitions from interested persons proposing to list additional grape varieties at § 4.91.

Public Participation—Written Comments

ATF requests comments from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that a respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) are legible; (2) are 8½″ × 11″ in size; (3) contain a written signature; and (4) are three pages or less in length. Comments sent by FAX in excess of three pages

will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will extend the phase-out period for the use of the term Johannisberg Riesling and it will permit the use of other grape varietal names. The regulation will not impose any recordkeeping or reporting requirements. Accordingly, a regulatory flexibility analysis is not required because the final rule is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Disclosure

Copies of this notice and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 6300, 650 Massachusetts Avenue NW, Washington, DC.

Drafting Information. This notice was written by Charles N. Bacon and Teri H. Byers, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspections, Imports, Labeling, Packaging and containers, Wine.

Authority and Issuance

Accordingly, 27 CFR Part 4, Labeling and Advertising of Wine, is amended as follows:

PART 4—AMENDED

Paragraph 1. The authority citation for Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.91 is amended by adding the names ''Aglianico'' and ''Traminette,'' in alphabetical order, to the list of prime grape names, to read as follows:

§ 4.91 List of approved prime names.

* * * * *

Aglianico

* * * * *

Traminette

* * * * *

Par. 3. Section 4.92 is amended by removing the name ''Johannisberg Riesling'' from paragraph (b) and revising paragraph (b), and by adding a new paragraph (c), to read as follows:

§ 4.92 Alternative names permitted for temporary use.

* * * * *

(a) * * *

(b) *Wines bottled prior to January 1, 1999.*

Alternative name	Prime name
Cabernet	Cabernet Sauvignon.
Grey Riesling	Trousseau gris.
Muscat Frontignan	Muscat blanc.
Muscat Pantelleria	Muscat of Alexandria.
Napa Gamay	Valdiguié.
Pinot Saint George	Négrette.
Sauvignon vert	Muscadelle.

(c) *Wines bottled prior to January 1, 2006.*

Alternative name	Prime name
Johannisberg Riesling	Riesling.

Signed: October 16, 1998.

John W. Magaw,

Director.

Approved: November 20, 1998.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 98–34844 Filed 12–31–98; 2:07 pm]

BILLING CODE 4810–31–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–219–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Kentucky regulatory program (hereinafter the ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment would change the Kentucky program regulations to authorize silviculture or managed woodland, and fish and wildlife, postmining land uses on mountaintop removal mining operations. The amendment is intended to revise the Kentucky program to encourage reforestation and creation of fish and wildlife habitat on reclaimed mine lands.

DATES: Written comments must be received by 4:00 p.m., February 5, 1999. If requested, a public hearing on the proposed amendment will be held on February 1, 1999. Requests to speak at the hearing must be received by 4:00 p.m., on January 21, 1999.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to William J. Kovacic, Director, at the address listed below.

Copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (606) 233–2494

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington

Field Office, Telephone: (606) 233–2494.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated December 3, 1998 (Administrative Record No. KY–1445), Kentucky submitted the following proposed amendments to the Kentucky program.

1. 405 KAR 8:050 Section 4. Mountaintop Removal Mining

Section 4.(3)(a) of Kentucky's permitting requirements for mountaintop removal mining would be amended as described below. The amended provision is counterpart to the Federal regulations at 30 CFR 785.14(c)(1).

In section 4.(3)(a)1, ''fish and wildlife'' is added as a postmining land use. As amended, section 4.(3)(a)1 reads as follows: ''1. An industrial, commercial, agricultural, fish and wildlife, residential, or public facility (including recreational facilities) use; or.''

New section 4.(3)(a)2 is added to authorize silviculture or managed woodland as a postmining land use on mountaintop removal mining operations. As amended, section 4.(3)(a)2 reads as follows: ''Forest land, if the forest will be managed for silviculture or commercial woodland and a flat or gently rolling land surface is necessary for the operation of mechanical harvesting equipment.''

2. 405 KAR 20:050 Mountaintop Removal

Section 1(3) of the performance standards for mountaintop removal mining would be amended as described below. The amended provision is counterpart to the Federal regulations at 30 CFR 824.11(a)(3).

In section 1.(3)(a), ''fish and wildlife'' is added as a postmining land use. As amended, section 1.(3)(a) reads as follows: ''(3)(a) An industrial, commercial, agricultural, fish and wildlife, residential, or public facility (including recreational facilities) use is proposed and approved for the affected land; or.''

New section 1.(3)(b) is added to authorize silviculture or managed woodland as a postmining land use on mountaintop removal mining operations. As amended, section 1.(3)(b) reads as follows: ''Forest land use, if the forest will be managed for silviculture or commercial woodland and a flat or gently rolling land surface is necessary for the operation of mechanical harvesting equipment, is proposed and approved for the affected land;''

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., on January 21, 1999. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National

Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 28, 1998.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–190 Filed 1–5–99; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0117; FRL–6212–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from municipal solid waste landfills.

The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action will incorporate this rule into the federally approved SIP. In addition, final action on this rule will serve as a final determination that deficiencies in the rule (identified by EPA in a limited approval/limited disapproval action on May 6, 1997) have been corrected and that any sanctions or Federal Implementation Plan (FIP) obligations are permanently stopped. An Interim Final Determination published in today's **Federal Register** will defer the imposition of sanctions until EPA takes final action. EPA has evaluated the rule and is proposing to approve the rule under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Comments must be received on or before February 5, 1999.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule 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 are also available for inspection at the following locations:

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1188.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is South Coast Air Quality Management District (SCAQMD) Rule 1150.1, Control of Gaseous Emissions from Municipal Solid Waste Landfills. This rule was submitted by the California Air Resources Board (CARB) to EPA on June 23, 1998. This **Federal Register** action for the SCAQMD excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.[1]

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Los Angeles-South Coast Air Basin Area. 43 FR 8964; 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the SCAQMD's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[2] EPA's SIP-Call used that

[1] The State has recently changed the names and boundaries of the air basins located within the Southeast Desert Modified AQMA. Pursuant to State regulation the Coachella-San Jacinto Planning Area is now part of the Salton Sea Air Basin (17 Cal. Code Reg. § 60114); the Victor Valley/Barstow region in San Bernardino County and Antelope Valley region in Los Angeles County is a part of the Mojave Desert Air Basin (17 Cal. Code Reg. § 60109). In addition, in 1996 the California Legislature established a new local air agency, the Antelope Valley Air Pollution Control District, to have the responsibility for local air pollution planning and measures in the Antelope Valley region (California Health & Safety Code § 40106).

[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 Deviations, 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);

guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles-South Coast Air Basin Area is classified as extreme; [3] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on June 23, 1998, including the rule being acted on in this document. This document addresses EPA's proposed action for SCAQMD Rule 1150.1, Control of Gaseous Emissions from Municipal Solid Waste Landfills. SCAQMD adopted Rule 1150.1 on April 10, 1998. This submitted rule was found to be complete on August 25, 1998 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V [4] and is being proposed for approval into the SIP.

Rule 1150.1 controls the emissions of VOCs from municipal solid waste landfills. VOCs contribute to the production of ground-level ozone and smog. The rule was adopted as part of SCAQMD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for the rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 2. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). For source categories that do not have an applicable CTG (such as municipal solid waste landfills), state and local agencies may determine what controls are required by reviewing the operation of facilities subject to the regulation and evaluating regulations for similar sources in other areas.

Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 2. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On May 6, 1997, EPA published a limited approval and a limited disapproval of Rule 1150.1, Control of Gaseous Emissions from Active Landfills, that had been adopted by SCAQMD on April 5, 1985 and Rule 1150.2, Control of Gaseous Emissions from Inactive Landfills, that had been adopted by SCAQMD on October 18, 1985. (62 FR 24574) The limited approval action incorporated these rules into the SIP despite deficiencies in the rules that precluded full approval. SCAQMD's submitted Rule 1150.1, Control of Gaseous Emissions from Municipal Solid Waste Landfills, is intended to replace both rules and contains the following significant changes from the current SIP:

- Deletes provisions providing for director's discretion in violation of CAA section 110(i)
- Adds specific criteria for landfill gas collection and control system
- Adds specific exemption criteria
- Adds EPA-approved test methods and monitoring protocol
- Adds adequate recordkeeping requirements
- Increases records retention period from two to five years

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1150.1, Control of Gaseous Emissions from Municipal Solid Waste Landfills, is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

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

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, 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, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, 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 the existing control technique guidelines (CTGs).

[3] The Los Angeles-South Coast Air Basin Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, 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, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 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 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 18, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–14 Filed 1–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL178–1b, IL179–1b; FRL–6216–3]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve two negative declarations submitted by the State of Illinois. The first indicates there is no need for regulations covering the industrial wastewater category in the Metro-East St. Louis (Metro-East) ozone nonattainment area. The Metro-East ozone nonattainment area includes Madison, Monroe and St. Clair Counties which are located in southwest Illinois, adjacent to St. Louis, Missouri. The second negative declaration indicates there is no need for regulations covering the industrial cleaning solvents category in the Metro-East ozone nonattainment area. The State's negative declarations regarding industrial wastewater category sources and industrial cleaning solvent sources were submitted to USEPA in two letters dated October 2, 1998. In the final rules section of this **Federal Register**, the USEPA is approving the State's requests as a direct final rule without prior proposal because USEPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's requests is set forth in the direct final rule. The direct final rule will become effective without further notice unless USEPA receives relevant adverse written comment. Should USEPA receive such comment, it will publish a timely withdrawal informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on the proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that rule, and no further action will be taken. USEPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before February 5, 1999.

ADDRESSES: Written comments may be mailed to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Region 5 at the address listed below.

Copies of the materials submitted by the Illinois Environmental Protection Agency may be examined during normal business hours at the following location: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano at (312) 886–6036.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: December 21, 1998.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 99–228 Filed 1–5–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Extension of Public Comment Period on 90-day Finding on a Petition To List the Redband Trout in the Great Basin as Threatened or Endangered and Initiation of Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: We, the Fish and Wildlife Service, provide notice of extending the public comment period on our 90-day finding on a petition to list the redband trout (*Oncorhynchus mykiss* ssp.) in the Great Basin as an endangered or threatened species throughout its range. Our 90-day finding was published in the **Federal Register** on November 16, 1998 (63 FR 63657) pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act), and the original public comment period was opened from November 16, 1998, to January 15, 1999. This notice extends the comment period to March 16, 1999.

DATES: The public comment period closes on March 16, 1999. Any information or comments received by the closing date will be considered in the status review.

ADDRESSES: Information, written comments and materials, or questions concerning our 90-day finding and the petition should be submitted to the Supervisor, U.S. Fish and Wildlife Service, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266.

FOR FURTHER INFORMATION CONTACT: Antonio Bentivoglio, biologist, at the above address or telephone 503–231–6179.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1998, we published a positive 90-day finding on a petition to list ''Great Basin redband trout'' as threatened or endangered pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act). The petition requested the listing of the indigenous redband trout in the Great Basin as endangered or threatened throughout its range in southeastern Oregon, northeastern California, and northwestern Nevada, in particular the redband trout populations in Catlow, Fort Rock (Silver Lake), Harney (Malheur Lake), Goose Lake, Warner, and Chewaucan (Lake Abert/Summer Lake) Basins (together these six closed basins make up the Great Basin as described in the petition). Our 90-day finding announced that substantial information was presented in the petition for us to begin a status review of the petitioned taxon. The original public comment period on the 90-day finding closes on January 15, 1999. We believe that up-to-date information on distribution and abundance is lacking for this taxon but is currently being gathered. Therefore, we are extending the closing date and continue to request relevant information on the Great Basin redband trout to produce as complete a status review as possible and to ensure that the status review is based on the best available scientific and commercial data.

We are soliciting information concerning:

(1) information on historic distribution and information on current distribution in each basin;

(2) habitat conditions in each basin;

(3) basic biology including age-frequency distribution of the population(s) in each basin;

(4) ongoing efforts to protect Great Basin redband trout and their habitat;

(5) threats to the species and its habitat;

(6) any information regarding distinct vertebrate population segment status of Great Basin redband trout as one unit or as six individual units; and

(7) metapopulation dynamics and interactions between lake and stream morph fishes.

In addition to information pertaining to the Great Basin redband trout, we are requesting any information in categories 1–7, above, that relates to Interior redband trout. ''Interior redband trout'' is a common term referring to any rainbow/redband type trout found east of the crest of the Cascade Mountains.

This information should be submitted by March 16, 1999, to the Fish and Wildlife Service office in the **ADDRESSES** section.

Author: The primary author of this document is Antonio Bentivoglio, biologist, Oregon State Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: December 30, 1998.

Cynthia V. Barry,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 99–253 Filed 1–5–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF25

Extension of Comment Period: Migratory Bird Hunting; Regulations To Increase Harvest of Mid-Continent Light Geese

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Service is extending the comment period on the **Federal Register** rule dated November 9, 1998 (63 FR 60271). The rule invites public comments on the proposed changes to the migratory bird hunting regulations that authorize additional hunting methods (electronic callers and unplugged shotguns) during a normal open mid-continent light goose hunting season when all other migratory bird hunting seasons are closed.

DATES: The deadline for receipt of comments is extended from January 8, 1999 to January 15, 1999.

ADDRESSES: Comments should be mailed to Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of Interior, Ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240. The public may inspect comments during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION: The Mid-continent lesser snow goose and Ross' goose population has nearly quadrupled in the last 30 years. The Western Central Flyway lesser snow and Ross' goose population also has quadrupled in the last 23 years. Collectively, these central and eastern arctic and subarctic-nesting light goose populations are referred to as Mid-continent light geese (MCLG). Due to high population growth rates, a decline in adult mortality, and an increase in winter survival, MCLG are now seriously injurious to their habitat and habitat important to other migratory birds which poses a serious threat to the short and long-term health and status of migratory bird populations. The U.S. Fish and Wildlife Service (Service or ''we'') believes that MCLG populations exceed long-term sustainable levels for their arctic and subarctic breeding habitats and the populations must be reduced.

In a **Federal Register** notice dated November 9, 1998, we proposed to amend 50 CFR Part 21 to authorize the use of additional hunting methods (electronic callers and unplugged shotguns) during a normal open light-goose hunting season when all other migratory bird hunting seasons are closed. We are concurrently proposing an additional but separate population reduction strategy. In addition to this proposed rule to amend 50 CFR Part 20, we are also proposing to amend 50 CFR Part 21 to authorize the use of a conservation order to increase take of MCLG. This proposal is also in the nature of a proposed rule and the extension of the comment period on the rule is published in this issue of the **Federal Register**. The combination of these two proposals is designed to increase MCLG harvest and to provide a biologically sound and cost effective and efficient method for the reduction and management of overabundant MCLG populations.

We have received a request to extend the comment period on this rule. The Service invites careful consideration by all parties, and welcomes serious scrutiny from those committed to the long-term conservation of migratory birds. Therefore, to facilitate substantive public review, we are extending the comment period to January 15, 1999.

Dated: December 30, 1998.

Thomas O. Melius,

Acting Director.

[FR Doc. 99–145 Filed 1–5–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

RIN 1018–AF05

Extension of Comment Period: Migratory Bird Permits; Establishment of a Conservation Order for the Reduction of Mid-Continent Light Goose Populations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Service is extending the comment period on the **Federal Register** rule dated November 9, 1998 (63 FR 60278) that invites public comments on proposed changes to the migratory bird hunting regulations regarding implementation of a conservation order for the reduction of mid-continent light goose populations.

DATES: The deadline for receipt of comments is extended from January 8, 1999 to January 15, 1999.

ADDRESSES: Comments regarding this proposed rulemaking should be addressed to Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of Interior, Ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240. The public may inspect comments during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Comments and suggestions on the information collection requirements should be sent directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Interior Desk Officer, Washington, DC 20503; and to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Ms 222—ARLSQ, 4401 N. Fairfax Dr., Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION: The Mid-continent lesser snow goose and Ross' goose population has nearly quadrupled in the last 30 years. The Western Central Flyway lesser snow and Ross' goose population also has quadrupled in the last 23 years. Collectively, these central and eastern arctic and subarctic-nesting light goose populations are referred to as Mid-continent light geese (MCLG). Due to high population growth rates, a decline in adult mortality, and an increase in winter survival, MCLG are now seriously injurious to their habitat and habitat important to other migratory birds which poses a serious threat to the short and long-term health and status of migratory bird populations.

The U.S. Fish and Wildlife Service (Service or ''we'') believes that MCLG populations exceed long-term sustainable levels for their arctic and subarctic breeding habitats and the populations must be reduced.

In a **Federal Register** notice dated November 9, 1998, we propose to establish a new subpart in 50 CFR Part 21 for the management of overabundant MCLG populations. In cooperation with State wildlife agencies, we propose to implement a population control program by establishing a conservation order for MCLG under the authority of the proposed subpart. This proposed rule will increase the use and availability of additional hunting methods and will authorize take of MCLG outside of the normal open light goose hunting season. In order to minimize or avoid take of non-target species, States may implement this proposed action only when all migratory bird hunting seasons are closed. Although the desired goal is to significantly reduce overabundant MCLG populations, we believe that this proposed rule will not threaten the long-term status of MCLG populations or threaten the status of other species that could be impacted through the implementation of this proposed rule.

We are concurrently proposing an additional but separate population reduction strategy. In addition to this proposed rule to amend 50 CFR Part 21, we are also proposing to amend 50 CFR Part 20 to authorize the use of new hunting methods to harvest MCLG. That proposed rule would authorize States to allow the use of new hunting methods (electronic callers and unplugged shotguns) to harvest MCLG during a light-goose only season, when all other migratory bird hunting seasons are closed. The proposal is also in the nature of a proposed rule and the extension of the comment period on the rule is published in this issue of the **Federal Register**. The combination of these two proposals is designed to increase MCLG harvest and to provide a biologically sound and cost effective and efficient method for the reduction and management of overabundant MCLG populations.

We have received a request to extend the comment period on this rule. The Service invites careful consideration by all parties, and welcomes serious scrutiny from those committed to the long-term conservation of migratory birds. Therefore, to facilitate substantive

public review, we are extending the comment period to January 15, 1999.

Dated: December 30, 1998.

Thomas O. Melius,

Acting Director.

[FR Doc. 99–144 Filed 1–5–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 111998B]

RIN 0648–AM13

Fisheries of the Northeastern United States; Northeast Multispecies Fishery, Atlantic Sea Scallop Fishery, and Atlantic Salmon Fishery; Fishery Management Plan (FMP) Amendments

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

ACTION: Amendment to a notice of availability (NOA) of an omnibus amendment to FMPs; request for comments.

SUMMARY: On December 1 and again on December 7, 1998, NMFS published NOAs of an omnibus amendment that included Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP. The NOAs described the Essential Fish Habitat (EFH) measures contained in the omnibus amendment and initiated the Atlantic salmon overfishing definition and a framework provision for aquaculture contained in Amendment 1 to the Atlantic Salmon FMP. This notification informs the public of the regulations that may be implemented to allow for the framework adjustment process for Atlantic salmon. NMFS announces that this new management measure is currently under review by the Secretary of Commerce (Secretary) and invites public comment.

DATES: Comments must be received on or before February 1, 1999.

ADDRESSES: Comments on the amendment should be sent to Jon C. Rittgers, Acting Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930. Please mark the outside of the envelope: ''Comments on Amendment 1 to the Atlantic Salmon FMP.''

Copies of the Amendment, its regulatory impact review and environmental assessment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: Bonnie L. VanPelt, Fishery Management Specialist, 978–281–9244.

SUPPLEMENTARY INFORMATION: On December 1, 1998, NMFS published a notification in the **Federal Register** (63 FR 66110) announcing that the New England Fishery Management Council submitted for review and approval by the Secretary an omnibus amendment containing EFH provisions that would implement the requirements of section 303(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act. On December 7, 1998, NMFS published an amended notification in the **Federal Register** (63 FR 67450) announcing that in addition to the EFH measures, Amendment 1 to the Atlantic Salmon FMP would include a discussion of the Atlantic salmon overfishing definition and an aquaculture framework adjustment process for Atlantic salmon. The omnibus amendment describes and identifies EFH for specified fisheries, discusses measures to address the effects of fishing on EFH, and identifies other actions for the conservation and enhancement of EFH.

A proposed rule that would implement the regulations implementing a framework process to allow for Atlantic salmon aquaculture may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act. Because the December 7, 1998, notification did not specifically indicate that there would be any new regulations proposed, this notice informs the public that this additional management measure is under Secretarial review for approval, disapproval, or partial approval, and invites public comment. Public comments on the proposed rule must be received by the end of the comment period for the NOA on February 1, 1999, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by February 1, 1999, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the FMP amendment.

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

Dated: December 31, 1998.

Gary C. Matlock,

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

[FR Doc. 99–220 Filed 1–5–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 981204297–8297–01; I.D. 110698B]

RIN 0648–AK21

Fisheries off West Coast States and in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Amendment 5

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 5 to the Fishery Management Plan for Bottomfish and Seamount Groundfish of the Western Pacific Region (FMP). Amendment 5 would establish a permanent limited access program for the Mau Zone Bottomfish fishery in the Northwestern Hawaiian Islands (NWHI). The intent of this action is to conserve and to support the long-term productivity of the bottomfish stocks by preventing the potential for excessive harvest capacity and to improve the low economic returns in the fishery.

DATES: Comments on this proposed rule must be received on or before February 22, 1999.

ADDRESSES: Comments on this proposed rule or Amendment 5 should be sent to Alvin Katekaru, Fishery Management Specialist, Pacific Islands Area Office (PIAO), NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396. Copies of these documents are available from, Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813. Send comments on the modifications to approved collection-of-information requirements to PIAO, NMFS, 2570 Dole Street, Honolulu, HI, 96822 and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, NMFS, at 808–973–2985 or Kitty M. Simonds at 808–522–8220.

SUPPLEMENTARY INFORMATION: NMFS is proposing this rule to implement Amendment 5, as recommended by the Western Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 5 would establish a limited access program for the Mau Zone bottomfish fishery in the NWHI. The Mau Zone, which was established in 1989 as an open access zone adjacent to the Ho'omalu bottomfish limited access zone, is located north of Kauai between 161°20′ W. and 165°00′ W. longitude in the U.S. exclusive economic zone around the Hawaiian Islands. The amendment is intended to prevent biological overfishing and improve poor economic returns that are plaguing the open access bottomfish fishery in the Mau Zone.

In January 1989, a permit system for the NWHI bottomfish fishery was implemented for the open access Mau Zone and limited access Ho'omalu Zone. Two years later, on December 17, 1991, the Council established a control date putting vessel owners on notice that if they were issued a Mau Zone permit after the control date they may be ineligible for continued participation in the fishery if the Council decided to limit access to the fishery based on historic participation (56 FR 67598, December 31, 1991). Although the fishery in the Ho'omalu Zone was stabilized, the fishery in the Mau Zone showed signs of instability as evidenced in the species mix of the catch and high turnover rate of permitted vessels in the Mau Zone. Between 1994 and 1996, the average Mau Zone vessel suffered a net return of minus $1,186 per trip (-$7,827 per season) and as a result was not able to cover annual costs. Also, in 1994 and 1995, bottomfish landings from the zone exceeded the maximum sustainable yield, which is estimated to be 131,210 lb (59,516 kg). Although it is difficult to estimate and interpret biological parameters from catch and effort data due to the instability and unpredictability of the number of vessels participating in the Mau Zone fishery year to year, the Council was concerned about the future biological condition of the bottomfish resources in the Mau Zone. The Council was also concerned that the declining bottomfish resources in the main Hawaiian Islands and the State's enforcement of the bottomfish fishing closed areas around the main Hawaiian Island would force additional fishermen from the main Hawaiian Islands to move to the Mau Zone fishery. On March 27, 1997, the Council established a 2-year moratorium on the issuance of new Mau Zone permits (62 FR 8637, February 26, 1997).

Amendment 5 would: (1) restrict participation in the Mau Zone bottomfish fishery to vessel owners who hold limited access permits; (2) adopt, based on biological and economic factors, a long-term target number of 10 vessels that would be allowed to fish for bottomfish in the Mau Zone; (3) establish qualifying criteria for allocating initial limited access permits based on historic participation in the fishery (December 17, 1991, control date) and landing of bottomfish from the Mau Zone up to December 31, 1996; (4) prohibit the transfer, lease, charter, or sale of permits to reduce the number of vessels in the fishery in order to achieve the target number; (5) revoke limited access permits issued to partnerships or corporations upon a change in more than 50 percent ownership in the vessel, partnership or corporation; (6) limit the amount of time a permit holder may register a limited access permit for use with a leased or chartered vessel; (7) limit the length of replacement vessels to 60 ft (18.3 m); (8) require permit holders to make a minimum of five landings of at least 500 lb (227 kg) each of bottomfish management unit species each year from the Mau Zone to qualify for permit renewal; (9) require the Council to undertake a 5-year comprehensive review of the limited access program to determine its effectiveness in meeting the objectives of the FMP; (10) require the Council to develop criteria to allow new entry into the Mau Zone when the number of permitted vessels falls below 10; and (11) reserve 20 percent of the long-term target number of limited access permits, i.e., two permits, for a Western Pacific Community Development Program (CDP). The above measures and other requirements, such as establishing a fee for processing Mau Zone permits, specifying an appeals process for permit actions, and prohibiting the retention of incidentally-caught bottomfish in the Mau Zone without a limited access permit are described in Amendment 5.

Since March 1997, there has been a moratorium on the issuance of new permits for harvesting bottomfish in the Mau Zone to stabilize effort in the fishery while the Council developed a permanent limited access program (see the final rule published in the February 26, 1997, issue of the **Federal Register** at 62 FR 8637). The moratorium expires on March 27, 1999, at which time this proposed rule is expected to be implemented. Current holders of Mau Zone (open access) permits, which expire on December 31, 1998, and are renewable for another year, have been advised that if Amendment 5 is approved by the Secretary of Commerce (Secretary), renewed Mau Zone permits will expire 45 days after the date of publication of the final rule implementing Amendment 5. Only vessel owners, including those currently holding Mau Zone open access permits, who apply and are eligible for Mau Zone limited access permits would be allowed to participate in the new Mau Zone limited access program. Holders of existing Mau Zone permits who make a timely application for a limited entry permit will be allowed to fish in the Mau Zone pending final agency action on their applications.

The proposed rule also would revise certain provisions governing the Ho'omalu Zone limited access program for housekeeping purposes only, such as moving the description of ''qualifying landing'' for initial Ho'omalu Zone permit eligibility points and permit renewal from the *Definitions* section (§ 660.12) of subpart B (Western Pacific Fisheries - General) to subpart E (Bottomfish and Seamount Groundfish Fisheries).

The proposed rule also contains provisions for an appeal process involving the granting, denial, conditioning, or suspension of Ho'omalu and Mau Zone permits. Appeals would be made to the NMFS Southwest Region Administrator who, in consultation with the Council, would decide the appeal in accordance with the FMP and implementing regulations. The appeals process would allow for informal hearings before a hearing officer.

Section 660.67(d)(3) of the current bottomfish regulations refers to 1985 and 1986 ''control dates'' for limiting access to the fisheries off the NWHI, Guam, and American Samoa. As a housekeeping action, NMFS proposes to remove this paragraph from the regulations because it is very unlikely the Council and NMFS will use such old control dates. With the establishment of a limited access program for the Mau Zone under Amendment 5, the entire NWHI bottomfish fishery would be under limited access regimes. The Ho'omalu Zone, the other bottomfish zone in the NWHI, was established as a limited access program in 1989. Under section 305(a)(2)(B)(iii) of the Magnuson-Stevens Act, the Council may establish a CDP to provide access to a fishery for

a community consisting of residents descended from the aboriginal people indigenous to the area. Under Amendment 5, the Council would set aside two Mau Zone limited access permits for a CDP. Initially reserving 2 permits of the target number of Mau Zone permits (10) for a CDP is consistent with the estimated 20 percent of Hawaii's population descended from the indigenous people of Hawaii. This proposed rule would not implement the Western Pacific CDP or assign Mau Zone permits to a community. A community development plan must be prepared by an eligible community and be approved by the Council and the Secretary before the two reserved permits could be issued by NMFS. This description is provided here for background information only.

On June 3, 1998, a notice of availability of draft Amendment 5 was published in the **Federal Register** (63 FR 30180). At its 97th meeting held in July 1998, the Council approved draft Amendment 5 for submission to the Secretary for review and approval. On November 18, 1998, a notice of availability of Amendment 5, inviting comments from the public, was published in the **Federal Register** (63 FR 64033).

Classification

At this time, NMFS has not determined that Amendment 5 that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce made the following certification to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

NMFS considers an impact to be significant if it results in a reduction in annual gross revenues by more than 5 percent, an increase in annual compliance costs of greater than 5 percent, compliance costs at least 10 percent higher for small entities than for large entities, compliance costs that require significant capital expenditures, or the likelihood that 2 percent of the small entities would be forced out of business. NMFS considers a ''substantial number'' of small entities to be more than 20 percent of those entities affected by the regulation engaged in the fishery.

Sixteen vessels have participated in this fishery during the past 5 years (1994–mid 1998), all of which are small entities. This rule would impact these vessels differently, depending on whether or not they qualify for a limited entry permit. Initially, 14 of these 16 vessels will qualify for permits. If any of these vessels does not continue to actively participate in the fishery, it will lose its permit. NMFS anticipates that through such attrition the limited entry system will eventually include only 10 vessels.

NMFS anticipates that the impacts, if any, on the permitted vessels would be positive in that they would be able to continue fishing, but future influx of effort would be prohibited, and eventually capacity would be reduced. With an expected attrition rate of 10 percent per year, annual gross revenues per vessel are forecast to increase 29 percent by the year 2004 when the long-term target number of 10 vessels is reached. Two of the vessels that have participated in this fishery during the last 5 years would be excluded. The change in potential annual gross revenues for excluded vessels ranges from a loss of 64 percent, if no successful effort is exerted to replace Mau Zone catches, to a gain of up to 29 percent if these vessels replace their potential Mau Zone effort with pelagic handlining around Hawaii's seamounts.

As a variety of alternative fisheries are available to excluded vessels (including pelagic trolling, longlining, and handlining, as well as bottomfishing around the main Hawaiian Islands), no operator will be forced to cease business operations as a result of this action. There are no additional compliance costs (capital investments, operating costs, or recordkeeping requirements) associated with this action.

If the proposed rule is adopted, 2 (12.5 percent) of the 16 vessels that participated in this fishery during the past 5 years could experience significant economic impacts. In accordance with the standard adopted by NMFS on ''substantial number'' for purposes of the Regulatory Flexibility Act, because less than 20 percent of fishery participants may be negatively impacted, I have determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The public reporting burden for these requirements is estimated to be 45 minutes for a Mau Zone limited access permit application, 2 hours for a permit appeal submission, and 1 hour for permit renewal exemption request per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This proposed rule also restates information collection requirement already approved by OMB under control number 0648–0204. An application for a Ho'omalu Zone limited access permit is estimated to take 2 hours for an initial application and 1 hour for an application for renewal.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to minimize the burden of the collection of information, including through use of automated collection of techniques or other forms of information technology.

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 PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: December 30, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660 - FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. Section 660.12 is amended by removing the definitions of ''Pacific Area Office'', and ''Qualifying landing'', revising the definition of ''Owner'' and adding a definition of ''Pacific Islands Area Office'', to read as follows:

§ 660.12 Definitions.

* * * * *

Owner, as used in subparts C and D of this part and § 660.61(i)-(m), means a person who is identified as the current owner of the vessel as described in the Certificate of Documentation (Form CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or territory

or the USCG for an undocumented vessel. As used in subpart F of this part and § 660.61(c)-(h), the definition of ''owner'' in § 600.10 of this chapter continues to apply.

Pacific Islands Area Office means the Pacific Islands Area Office, Southwest Region, NMFS (PIAO), located in Honolulu, Hawaii. The address and phone number may be obtained from the Regional Administrator, whose address is in Table 1 to § 600.502.

* * * * *

3. Section 660.13 is amended by revising paragraphs (f), (g), and (i) to read as follows:

§ 660.13 Permits and fees.

* * * * *

(f) *Fees.* (1) PIAO will not charge a fee for a permit issued under subpart D or F of this part, or for a Ho'omalu Zone limited access permit issued under § 660.61.

(2) PIAO will charge a fee for each application for a Hawaii longline limited access permit (including permit transfers and permit renewals) and Mau Zone limited access permit (including permit renewals). The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Administrator, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of a Hawaii longline or Mau Zone limited access permit.

(g) *Expiration.* (1) Permits issued under subparts C, D, and F of this part are valid for the period specified on the permit unless transferred, revoked, suspended, or modified under 15 CFR part 904.

(2) Permits issued under subpart E of this part expire on 2400 local time on December 31.

* * * * *

(i) *Transfer.* An application for a permit transfer under § 660.21(h), § 660.41(e), or § 660.61(e), or for registration of a permit for use with a replacement vessel under § 660.61(k), must be submitted to the PIAO as described in paragraph (c) of this section.

* * * * *

4. Section 660.61 is revised to read as follows:

§ 660.61 Permits.

(a) *Applicability.* (1) The owner of any vessel used to fish for bottomfish management unit species in the Northwestern Hawaiian Islands Subarea must have a permit issued under this section and the permit must be registered for use with the vessel.

(2) The PIAO will not register a single vessel for use with a Ho'omalu Zone permit and a Mau Zone permit at the same time.

(3) Mau Zone permits issued before the effective date of this rule become invalid 45 days after the date of publication of the final rule implementing Amendment 5, except that a permit issued to a person who submitted a timely application under paragraph (i) of this section is valid until the permit holder either receives a Mau Zone limited entry permit or until final agency action is taken on the permit holder's application. The Ho'omalu Zone and the Mau Zone limited entry systems described in this section are subject to abolition, modification, or additional effort limitation programs.

(b) *Submission.* (1) An application for a permit required under this section must be submitted to the PIAO as described in § 660.13. (2) *Ho'omalu Zone limited access permit.* In addition to an application under § 660.13(c), each applicant for a Ho'omalu Zone permit must also submit a supplementary information sheet provided by the PIAO, which must be signed by the vessel owner or a designee and include the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit;

(ii) Copies of landings receipts or other documentation, with a certification from a state or Federal agency that this information is accurate, to demonstrate participation in the NWHI bottomfish fishery; and

(iii) If the application is filed by a partnership or corporation, the names of each of the individual partners or shareholders and their respective percentages of ownership of the partnership or corporation.

(3) *Mau Zone limited access permit.* The PIAO will not accept applications for a new Mau Zone permit more than 45 days following the publication date of the final rule implementing Amendment 5. In addition to an application under § 660.13(c), each applicant for a Mau Zone permit must also submit a supplementary information sheet provided by the PIAO, which must

be signed by the vessel owner or a designee and include the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit;

(ii) Copy of State of Hawaii catch report(s) to demonstrate that the permitted vessel had made qualifying landings of bottomfish from the Mau Zone; and

(iii) If the application is filed by a partnership or corporation, the names of each of the individual partners or shareholders and their respective percentage of ownership of the partnership or corporation.

(c) *Sale or transfer of Ho'omalu limited access permits to new vessel owners.*

(1) A Ho'omalu zone permit may not be sold or otherwise transferred to a new owner.

(2) A Ho'omalu zone permit or permits may be held by a partnership or corporation. If 50 percent or more of the ownership of the vessel passes to persons other than those listed in the original application, the permit will lapse and must be surrendered to the Regional Administrator.

(d) *Transfer of Ho'omalu Zone limited access permits to replacement vessels.*

(1) Upon application by the owner of a permitted vessel, the Regional Administrator will transfer that owner's permit to a replacement vessel owned by that owner, provided that the replacement vessel does not exceed 60 ft (18.3 m) in length. The replacement vessel must be put into service no later than 12 months after the owner applies for the transfer, or the transfer shall be void.

(2) An owner of a permitted vessel may apply to the Regional Administrator for transfer of that owner's permit to a replacement vessel greater than 60 ft (18.3 m) in length. The Regional Administrator may transfer the permit upon determining, after consultation with the Council and considering the objectives of the limited access program, that the replacement vessel has catching power that is comparable to the rest of the vessels holding permits for the fishery, or has catching power that does not exceed that of the original vessel, and that the transfer is not inconsistent with the objectives of the program. The Regional Administrator shall consider vessel length, range, hold capacity, gear limitations, and other appropriate factors in making determinations of catching power equivalency and comparability of the catching power of vessels in the fishery.

(e) *Ho'omalu Zone limited access permit renewal.* (1) A qualifying landing for Ho'omalu Zone permit renewal is a landing of at least 2,500 lb (1,134 kg) of bottomfish management unit species from the Ho'omalu Zone or a landing of at least 2,500 lb (1,134 kg) of fish from

the Ho'omalu Zone, of which at least 50 percent by weight was bottomfish management unit species. A permit is eligible for renewal for the next calendar year if the vessel covered by the permit made three or more qualifying landings during the current calendar year.

(2) The owner of a permitted vessel that did not make three or more qualifying landings of bottomfish in a year may apply to the Regional Administrator for waiver of the landing requirement. If the Regional Administrator finds that failure to make three landings was due to circumstances beyond the owner's control, the Regional Administrator may renew the permit. A waiver may not be granted if the failure to make three landings was due to general economic conditions or market conditions, such that the vessel operations would not be profitable.

(f) *Issuance of new Ho'omalu Zone limited access permits.* The Regional Administrator may issue new Ho'omalu Zone limited access permits under § 660.13 if the Regional Administrator determines, in consultation with the Council, that bottomfish stocks in the Ho'omalu Zone are able to support additional fishing effort.

(g) *Eligibility for new Ho'omalu Zone limited access permits.* When the Regional Administrator has determined that new permits may be issued, they shall be issued to applicants based upon eligibility, determined as follows:

(1) *Point system*. (i) Two points will be assigned for each year in which the applicant was owner or captain of a vessel that made three or more of any of the following types of landings in the NWHI:

(A) Any amount of bottomfish management unit species, regardless of weight, if made on or before August 7, 1985;

(B) At least 2,500 lb (1,134 kg) of bottomfish management unit species, if made after August 7, 1985; or

(C) At least 2,500 lb (1,134 kg) of any fish lawfully harvested from the NWHI, of which at least 50 percent by weight was bottomfish, if made after August 7, 1985.

(ii) One point will be assigned for each year in which the applicant was owner or captain of a vessel that landed at least 6,000 lb (2,722 kg) of bottomfish from the main Hawaiian Islands.

(iii) For any one year, points will be assigned under either paragraph (g)(1)(i) or (g)(1)(ii) of this section, but not under both paragraphs.

(iv) Before the Regional Administrator issues an Ho'omalu zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(2) *Restrictions.* An applicant must own at least a 25–percent share in the vessel that the permit would cover, and only one permit will be assigned to any vessel.

(3) *Order of issuance.* New permits shall be awarded to applicants in descending order, starting with the applicant with the largest number of points. If two or more persons have an equal number of points, and there are insufficient new permits for all such applicants, the new permits shall be awarded by the Regional Administrator through a lottery.

(4) *Notification.* The Regional Administrator shall place a notice in the **Federal Register** and shall use other means to notify prospective applicants of the opportunity to file applications for new permits under this program.

(h) *Eligibility for new Mau Zone limited access permits* (1) The PIAO will issue an initial Mau Zone permit to a vessel owner who qualifies for at least three points under the following point system:

(i) An owner who held a Mau Zone permit on or before December 17, 1991, and whose permitted vessel made at least one qualifying landing of bottomfish management unit species on or before December 17, 1991, shall be assigned 1.5 points.

(ii) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1991, shall be assigned 0.5 point.

(iii) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1992, shall be assigned 1.0 point.

(iv) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1993, shall be assigned 1.5 points.

(v) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1994, shall be assigned 2.0 points.

(vi) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1995, shall be assigned 2.5 points.

(vii) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1996, shall be assigned 3.0 points.

(viii) Before the PIAO issues a Mau Zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(2) For purposes of this paragraph § 660.61(h), a ''qualifying landing'' means any amount of bottomfish management unit species lawfully harvested from the Mau Zone and offloaded for sale. No points shall be assigned to an owner for any qualifying landings reported to the State of Hawaii more than 1 year after the landing.

(3) More than one Mau Zone permit may be issued to an owner of two or more vessels providing each of the owner's vessels for which a permit will be registered for use has made the required qualifying landings for the owner to be assigned at least three eligibility points.

(4) A Mau Zone permit holder who does not own a vessel at the time initial permits are issued must register the permit for use with a vessel owned by the permit holder within 12 months from the date the permit was issued. In the interim, the permit holder may register the permit for use with a leased or chartered vessel. If within 12 months of initial permit issuance, the permit holder fails to apply to the PIAO to register the permit for use with a vessel owned by the permit holder, then the permit expires.

(5) For each subparagraph of paragraph (h)(1) of this section, the PIAO shall assign points based on the landings of one permitted vessel to only one owner if the vessel did not have multiple owners during the time frame covered by the subparagraph. If a vessel had multiple owners during a time frame covered by one of the subparagraphs of paragraph (h)(1) of this section (including joint owners, partners, or shareholders of a corporate owner), the PIAO will assign the points for that subparagraph to a single owner if only one owner submits an application with respect to the landings of that vessel during that time frame. If multiple owners submit separate applications with respect to the same landings of the same vessel during the same time frame, then the PIAO shall:

(i) Adhere to any written agreement between the applicants with respect to who among them shall be assigned the aggregate point(s) generated by landings during such time frame(s), or

(ii) If there is no agreement:

(A) Shall issue the applicants a joint permit provided the vessel's landings during such time frames generate at least three points, or

(B) In the event the vessel's landings during such time frame(s) generated less than three points, shall not assign any

points generated by the vessel's landings during such time frame(s).

(i) *Ownership requirements and registration of Mau Zone limited access permits for use with other vessels.* (1) A Mau Zone permit may be held by an individual, partnership, or corporation. No more than 49 percent of the underlying ownership interest in a Mau Zone permit may be sold, leased, chartered, or otherwise transferred to another person or entity. If more than 49 percent of the underlying ownership of the permit passes to persons or entities other than those listed in the original permit application supplemental information sheet, then the permit expires and must be surrendered to the PIAO.

(2) A Mau Zone permit holder may apply under § 660.13 to the PIAO to register the permit for use with another vessel if that vessel is owned by the permit holder, and is no longer than 60 ft (18.3 m).

(3) If a Mau Zone permit holder sells the vessel, for which the permit is registered for use, the permit holder must within 12 months of the date of sale apply to the PIAO to register the permit for use with a vessel owned by the permit holder. If the permit holder has not applied to register a replacement vessel within 12 months, then the permit expires.

(4) If a permitted vessel owned by the permit holder is sold or becomes unseaworthy, the Mau Zone permit with which the vessel was registered may be registered for use with a leased or chartered vessel for a period not to exceed 12 months from the date of registration of the leased or chartered vessel. If by the end of that 12-month period the permit holder fails apply to the PIAO to register the permit for use with a vessel owned by the permit holder, then the permit expires.

(j) *Mau Zone limited access permit renewal.* (1) A Mau Zone permit will be eligible for renewal if the vessel for which the permit is registered for use made at least five separate fishing trips with landings of at least 500 lb (227 kg) of bottomfish management unit species per trip during the calender year. Only one landing of bottomfish management unit species per fishing trip to the Mau Zone will be counted toward the landing requirement.

(2) If the vessel for which the permit is registered for use

fails to meet the landing requirement of paragraph (j)(1) of this section, the owner may apply to the Regional Administrator for a waiver of the landing requirement. Grounds for a waiver are limited to captain incapacitation, vessel breakdowns, and the loss of the vessel at sea if the event prevented the vessel from meeting the landing requirement. Unprofitability is not sufficient for waiver of the landing requirement.

(3) Failure of the permit holder to register a vessel for use under the permit does not exempt a permit holder from the requirements specified in § 660.61(j).

(k) *Appeals of permit actions.* (1) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, or revocation of his or her permit to the Regional Administrator.

(2) In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action appealed, and the reasons therefore, and must be submitted within 30 days of the appealed action. The appellant may request an informal hearing on the appeal.

(3) The Regional Administrator, in consultation with the Council, will decide the appeal in accordance with the FMP and implementing regulations and based upon information relative to the application on file at NMFS and the Council, and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and any other relevant considerations.

(4) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose. The applicant or permit holder may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(5) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. The Regional Administrator's decision on the application is the final administrative decision of the Department of Commerce, and is effective on the date the Administrator signs the decision.

5. Section 660.62 is amended by revising paragraph (b), removing paragraph (c), and redesignating paragraphs (d) through (f) as paragraphs (c) through (e), respectively to read as follows:

§ 660.62 Prohibitions.

* * * * *

(b) Fish for or retain on board a vessel, bottomfish management unit species in the Ho'omalu Zone or Mau Zone without the appropriate permit, registered for use with that vessel, issued under § 660.13.

* * * * *

6. Section 660.67 is amended by removing paragraph (d)(3) and adding new paragraph (e) to read as follows:

§ 660.67 Framework for regulatory adjustments.

* * * * *

(e) *Five-year review.* The Council will conduct a comprehensive review on the effectiveness of the Mau Zone limited access program 5 years following implementation of the program. The Council will consider the extent to which the FMP objectives have been met and verify that the target number of vessels established for the fishery is appropriate for current fishing activity levels, catch rates, and biological condition of the stocks. The Council may establish a new target number based on the 5-year review.

[FR Doc. 99–219 Filed 1–5–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 3

Wednesday, January 6, 1999

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

Federal Crop Insurance Corporation

Revenue Assurance

ACTION: Notice of availability.

SUMMARY: In accordance with section 508(h) of the Federal Crop Insurance Act (Act), the Federal Crop Insurance Corporation (FCIC) Board of Directors (Board) approves for reinsurance and subsidy the insurance of wheat in North Dakota under the Revenue Assurance (RA) plan of insurance for the 1999 crop year. This notice is intended to inform eligible producers and the private insurance industry of the areas of availability, the RA coverage for wheat, and provide its terms and conditions.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, Missouri, 64131, telephone (816) 926–7387.

SUPPLEMENTARY INFORMATION: Section 508(h) of the Act allows for the submission of a policy to FCIC's Board and authorizes the Board to review and, if the Board finds that the interests of producers are adequately protected and that any premiums charged to the producers are actuarially appropriate, approve the policy for reinsurance and subsidy in accordance with section 508(e) of the Act.

In accordance with the Act, the Board approved a program of insurance known as ''Revenue Assurance'' originally submitted by Farm Bureau Mutual Insurance Company of Iowa as a pilot project covering corn and soybeans for the 1997 and 1998 crop years.

The RA program was approved for reinsurance and premium subsidy, including subsidy for administrative and operating expenses. RA was designed to protect a producer's revenue whenever low prices or low yields, or a combination of both, causes harvest revenue to fall below a guaranteed level. For the 1997 and 1998 crop years, a producer selected a per-acre revenue guarantee that could not be less than 65 percent or more than 75 percent of the expected revenue for a unit. The policy indemnity was finalized when the county harvest price and the producer's actual production were determined. This determination typically occurred in December for corn, and in November for soybeans. The crop prices were established on a county basis. The RA policy provides coverage on basic units, optional units, enterprise units, and whole-farm units.

For the 1999 crop year, the RA program was expanded for corn and soybeans into Illinois, South Dakota, and Minnesota, and producers can select a coverage level percentage up to 80 percent for whole-farm units, and a fall harvest price option that uses the greater of the projected harvest price or the fall harvest price in determining the revenue guarantee. The RA program now uses the Chicago Board of Trade futures for crop prices rather than crop county prices for determining the revenue guarantee and the actual production history as the base for determining RA premium rates. Beginning with the 1999 crop year, the RA program was also expanded into North Dakota for corn and soybeans, and wheat was approved as a new crop for North Dakota.

FCIC herewith gives notice of the above stated changes for the 1999 crop year for RA wheat for use by private insurance companies. On December 28, 1998, the RA corn and soybean crop provisions were published as a Notice of Availability in the **Federal Register** for RA expansion into Minnesota, South Dakota, and Illinois. The RA corn and soybean crop provisions for North Dakota are the same as those published in the December 28, 1998, Notice.

The RA underwriting rules, rate factors, and forms for wheat will be released electronically to all reinsured companies through FCIC's Reporting Organization Server. FCIC will also make available the terms and conditions of the RA reinsurance agreement. Requests for this information should be sent to Heyward Baker, Director, Reinsurance Services Division, Federal Crop Insurance Corporation, 1400 Independence Avenue, S.W., Stop 0804, Room 6727–S, Washington, D.C., 20250–0804.

NOTICE: The Basic Provisions and Crop Provisions for the 1999 RA wheat program of insurance are as follows:

Revenue Assurance Insurance Policy

(This is a continuous policy. Refer to section 3.)

This policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the authority of section 508(h) of the Federal Crop Insurance Act (7 U.S.C. 1508(h)). The provisions of the policy may not be waived or varied in any way by the crop insurance agent or any other agent or employee of the company.

Throughout the policy, ''you'' and ''your'' refer to the named insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to the company. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

Agreement to Insure: In return for the payment of the premium, and subject to all of the provisions of this policy, the company agrees with the insured to provide the insurance as stated in the policy. If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Special Provisions; (2) the Crop Provisions; and (3) these Basic Provisions with (1) controlling (2), etc.

Basic Provisions

Terms and Conditions

1. Definitions

Abandon. Failure to continue to care for the crop, providing care so insignificant as to provide no benefit to the crop, or failure to harvest in a timely manner, unless an insured cause of loss prevents you from properly caring for or harvesting the crop or causes damage to it to the extent that most producers of the crop on acreage with similar characteristics in the area would not normally further care for or harvest it.

Acreage report. A report required by section 7 of these Basic Provisions that contains, in addition to other required information, your report of your share of all acreage of an insured crop in the county, whether insurable or not insurable.

Acreage reporting date. The date contained in the Special Provisions or

as provided in section 7 by which you are required to submit your acreage report.

Act. The Federal Crop Insurance Act, (7 U.S.C. 1501 *et seq.*).

Actuarial documents. The material for the crop year that is available for public inspection in your agent's office, and which shows the coverage level percent, premium factors, types, practices, insurable acreage, and other related information regarding crop insurance in the county.

Administrative fee. An amount you must pay for coverage for each crop year as specified in section 8.

Agricultural commodity. All insurable crops and other fruit, vegetable or nut crops produced for human or animal consumption.

Another use, notice of. The written notice required when you wish to put acreage to another use (see section 15).

Application. The form required to be completed by you and accepted by us before insurance coverage will commence. This form must be completed and filed in your agent's office not later than the sales closing date of the initial insurance year for each crop for which insurance coverage is requested. If cancellation or termination of insurance coverage occurs for any reason, including but not limited to indebtedness, suspension, debarment, disqualification, cancellation by you or us, or violation of the controlled substance provisions of the Food Security Act of 1985, a new application must be filed for the crop. Insurance coverage will not be provided if you are ineligible under the contract or under any Federal statute or regulation.

Approved yield. The yield determined in accordance with 7 CFR part 400, subpart G.

Assignment of indemnity. A transfer of policy rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your right to an indemnity payment to any party of your choice for the crop year.

Base premium rate. The premium rate for the risk of a revenue loss.

Cancellation date. The calendar date specified in the Crop Provisions on which coverage for the crop will automatically renew unless canceled in writing by either you or us, or terminated in accordance with the policy terms.

Claim for indemnity. A claim made on our form by you for damage or loss to an insured crop and submitted to us not later than 60 days after the end of the insurance period (see section 15).

Consent. Approval in writing by us allowing you to take a specific action.

Contract. (See definition of ''policy'').

Contract change date. The calendar date by which we make any policy changes available for inspection in the agent's office (see section 5).

County. Any county, parish, or other political subdivision of a state shown on your accepted application, including acreage in a field that extends into an adjoining county if the county boundary is not readily discernible.

Coverage. The insurance provided by this policy, against insured loss of revenue, by unit as shown on your summary of coverage.

Coverage begins, date. The calendar date insurance begins on the insured crop, as contained in the Crop Provisions, or the date planting begins on the unit (see section 12 of these Basic Provisions for specific provisions relating to prevented planting).

Coverage level percent. The percent, expressed in decimals (.xxxx), determined by dividing the per-acre revenue guarantee (see section 1) by the expected per-acre revenue (see section 1) rounded to hundredths for enterprise or whole-farm units.

Crop premium per acre. Your per acre revenue guarantee multiplied by a base rate.

Crop Provisions. The part of the policy that contains the specific provisions of insurance for each insured crop.

Crop year. The period within which the insured crop is normally grown, regardless of whether or not it is actually grown, and designated by the calendar year in which the insured crop is normally harvested.

Damage. Injury, deterioration, or loss of revenue of the insured crop due to insured or uninsured causes.

Damage, notice of. A written notice required to be filed in your agent's office whenever you initially discover the insured crop has been damaged to the extent that a loss is probable (see section 15).

Days. Calendar days.

Deductible. The amount determined by subtracting the coverage level percent you choose from 100 percent. For example, if you elected a 65 percent coverage level, your deductible would be 35 percent (100% − 65%=35%).

Delinquent account. Any account you have with us in which premiums, administrative fees, and interest on those amounts is not paid by the termination date specified in the Crop Provisions, or any other amounts due us, such as indemnities found not to have been earned, which are not paid within 30 days of our mailing or other delivery of notification to you of the amount due.

Earliest planting date. The earliest date established for planting the insured crop (see Special Provisions and section 14).

End of insurance period, date of. The date upon which your crop insurance coverage ceases for the crop year (see Crop Provisions and section 12).

Expected per-acre revenue. The approved yield times the projected harvest price.

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within USDA.

Field. All acreage of tillable land within a natural or artificial boundary (*e.g.*, roads, waterways, fences, etc.).

Final planting date. The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full per-acre revenue guarantee.

FSA. The Farm Service Agency, an agency of the USDA, or a successor agency.

FSA Farm Serial Number. The number assigned to the farm by the local FSA office.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the per-acre revenue guarantee, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Insured. The named person as shown on the application accepted by us. This term does not extend to any other person having a share or interest in the crop (for example, a partnership, landlord, or any other person) unless specifically indicated on the accepted application.

Insured crop. The crop for which coverage is available under these Basic Provisions and the applicable Crop Provisions as shown on the application accepted by us.

Interplanted. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the per-acre revenue guarantee on the irrigated acreage planted to the insured crop.

Late planted. Acreage initially planted to the insured crop after the final planting date.

Late planting period. The period that begins the day after the final planting date for the insured crop and ends 25 days after the final planting date, unless otherwise specified in the Crop Provisions or Special Provisions.

Loss, notice of. The notice required to be given by you not later than 72 hours after certain occurrences or 15 days after the end of the insurance period, whichever is earlier (see section 15).

MPCI. Multiple peril crop insurance program, a program of insurance offered under the Act and implemented in 7 CFR chapter IV.

Negligence. The failure to use such care as a reasonably prudent and careful person would use under similar circumstances.

Per-acre revenue guarantee. The coverage level percent times your approved yield, times the projected harvest price. If you choose the fall harvest price option, the per-acre revenue guarantee equals the coverage level percent, times the approved yield, times the greater of the projected harvest price or the fall harvest price. For basic and optional units, the per-acre revenue guarantee may vary by unit. For an enterprise unit, the per-acre revenue guarantee will be the same for all insured acres of the crop in the county. For the whole farm unit, the per-acre revenue guarantee will be the same for all insured acres in the county.

Person. An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State. ''Person'' does not include the United States Government or any agency thereof.

Planted acreage. Land in which seed has been placed, appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

Policy. The agreement between you and us consisting of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, other applicable endorsements or options, the actuarial documents for the insured crop, and the applicable regulations published in 7 CFR chapter IV.

Practical to replant. Our determination, after loss or damage to the insured crop, based on all factors, including, but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period, or the final planting date if no late planting period is applicable, unless replanting is generally occurring in the area. Unavailability of seed will not be considered a valid reason for failure to replant.

Premium billing date. The earliest date upon which you will be billed for insurance coverage based on your acreage report. The premium billing date is contained in the Special Provisions.

Premium calculator. A computer program that determines your per-acre premium based on your approved yields, per-acre revenue guarantee, coverage level percent, projected harvest price, unit options, and other factors.

Prevented planting. Failure to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county. You may also be eligible for a prevented planting payment if you failed to plant the insured crop with the proper equipment within the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that is general in the surrounding area and that prevents other producers from planting acreage with similar characteristics.

Production report. A written record showing your annual production and used by us to determine your yield for insurance purposes (see section 4). The report contains yield information for previous years, including planted acreage and harvested production. This report must be supported by written verifiable records from a warehouseman or buyer of the insured crop, or by measurement of farm stored production, or by other records of production approved by us on an individual case basis.

Replanting. Performing the cultural practices necessary to prepare the land to replace the seed of the damaged or destroyed insured crop and then replacing the seed of the same crop in the insured acreage with the expectation of producing at least the yield used to determine the per-acre revenue guarantee.

Representative sample. Portions of the insured crop that must remain in the field for examination and review by our loss adjuster when making a crop appraisal, as specified in the Crop Provisions. In certain instances we may allow you to harvest the crop and require only that samples of the crop residue be left in the field.

Revenue guarantee. The per-acre revenue guarantee times the number of insurable acres in the unit, and times your respective share (see definition of per-acre revenue guarantee and section 2 of the Crop Provisions).

Sales closing date. A date contained in the Special Provisions by which an application must be filed. The last date by which you may change your crop insurance coverage for a crop year.

Section (for the purposes of unit structure). A unit of measure under a rectangular survey system describing a tract of land usually one mile square and usually containing approximately 640 acres.

Share. Your percentage of interest in the insured crop as an owner, operator, or tenant at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of the time of loss, or the beginning of harvest.

Special Provisions. The part of the policy that contains specific provisions of insurance for each insured crop that may vary by geographic area.

State. The state shown on your accepted application.

Substantial beneficial interest. An interest held by any person of at least 10 percent in the applicant or insured.

Summary of coverage. Our statement to you, based upon your acreage report, specifying the insured crop and the revenue guarantee provided by unit.

Tenant. A person who rents land from another person for a share of the crop or a share of the proceeds of the crop (see the definition of ''share'').

Termination date. The calendar date contained in the Crop Provisions upon which your insurance ceases to be in effect because of nonpayment of any amount due us under the policy, including premium.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Unit.

(a) Basic unit—A basic unit established in accordance with section 2(a).

(b) Optional unit—A unit established from basic units in accordance with section 2(b).

(c) Enterprise unit—A unit established from basic units or optional units in accordance with section 2(c).

(d) Whole-farm unit—A unit established from enterprise units in accordance with section 2(d).

USDA. United States Department of Agriculture.

Void. When the policy is considered not to have existed for a crop year as a result of concealment, fraud or misrepresentation (see section 27).

2. Unit Structure

(a) Basic unit—All insurable acreage of the insured crop in the county on the date coverage begins for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one person and operated by another person on a share basis. (Example: If, in addition to the land you own, you rent land from five landlords, three on a crop share basis and two on a cash basis, you would be entitled to four units, one for each crop share lease and one that combines the two cash leases and the land you own.) Land which would otherwise be one unit may, in certain instances, be divided according to guidelines contained in this section and in the applicable Crop Provisions.

(b) Optional unit—Unless limited by the Crop Provisions or Special Provisions, a basic unit as defined in section 2(a) of these Basic Provisions may be divided into optional units if, for each optional unit:

(1) You meet the following:

(i) You must plant the crop in a manner that results in a clear and discernible break in the planting pattern at the boundaries of each optional unit;

(ii) All optional units you select for the crop year are identified on the acreage report for that crop year (Units will be determined when the acreage is reported but may be adjusted or combined to reflect the actual unit structure when adjusting a loss. No further unit division may be made after the acreage reporting date for any reason);

(iii) You have records, that are acceptable to us, of planted acreage and the production from each optional unit for at least the last crop year used to determine your revenue guarantee; and

(iv) You have records of marketed or stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each optional unit is kept separate until loss adjustment is completed by us.

(2) Each optional unit must also meet one or more of the following, unless otherwise specified in the Crop Provisions:

(i) Optional units may be established if each optional unit is located in a separate section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure such as Spanish grants, as the equivalents of sections for unit purposes. In areas which have not been surveyed using sections, section equivalents or in areas where boundaries are not readily discernible, each optional unit must be located in a separate FSA farm serial number; and

(ii) In addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number, optional units may be based on irrigated and non-irrigated acreage. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which your revenue guarantee is based, except the corners of a field in which a center-pivot irrigation system is used may be considered as irrigated acreage if the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit. In this case, production from both practices will be used to determine your approved yield.

(3) If you do not comply fully with the provisions in this section, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined by us to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

(c) Enterprise unit—All insurable acreage of the insured crop in the county in which you have a share on the date coverage begins for the crop year. An enterprise unit must consist of:

(1) One or more basic units of the same insured crop that are located in two or more separate sections, section equivalents, or FSA farm serial number; or

(2) Two or more optional units of the same insured crop established by separate sections, section equivalents, or FSA farm serial numbers.

(d) Whole-farm unit—All insurable acreage of the insurable crops in the county in which you have a share on the date coverage begins for each crop for the crop year. This unit is established from enterprise units as defined in section 2(c). The insurable acreage must qualify for at least two enterprise units under this section, and at least 10 percent of the total liability must be in each crop.

(e) Exclusivity Between Units—If you select whole-farm unit coverage, you cannot select any other unit structure. However, you may select an enterprise unit for one crop and basic or optional unit coverage for other crops.

(f) Selection of unit structure—You may elect an enterprise unit or a whole-farm unit subject to the following:

(1) You must make such election by the sales closing date for the insured crops and report such unit structure to us in writing. Your unit selection will remain in effect from year to year unless you notify us in writing by the sales closing date for the crop year for which you wish to change this election. These units may not be further divided. If you select and qualify for an enterprise or whole-farm unit, you will qualify for a premium discount. If you do not qualify for enterprise or whole-farm units when the acreage is reported, we will assign the basic unit structure.

(2) For a whole-farm unit:

(i) You must report on your acreage report the acreage for each optional or basic unit for each crop produced in the county that comprises the whole-farm unit; and

(ii) Although you may insure all of your crops under a whole-farm unit, you will be required to pay separate applicable administrative fees for each crop included in the whole-farm unit.

(3) All applicable unit structures must be stated on the acreage report for each crop year.

3. Life of Policy, Cancellation, and Termination

(a) This is a continuous policy and will remain in effect for each crop year following the acceptance of the original application until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy, or by us.

(b) Your application for insurance must contain all the information required by us to insure the crop. Applications that do not contain all social security numbers and employer identification numbers, as applicable (except as stated herein) coverage level percent, crop, type, variety, or class, plan of insurance, and any other material information required to insure the crop, are not acceptable. If a person with a substantial beneficial interest in the insured crop refuses to provide a social security number or employer identification number, the amount of coverage available under the policy will be reduced proportionately by that person's share of the crop.

(c) After acceptance of the application, you may not cancel this policy for the initial crop year. Thereafter, the policy will continue in force for each succeeding crop year unless canceled or terminated as provided below.

(d) Either you or we may cancel this policy after the initial crop year by providing written notice to the other on or before the cancellation date shown in the Crop Provisions.

(e) If any amount due, including administrative fees or premium, is not paid or an acceptable arrangement for payment is not made on or before the termination date for the crop on which the amount is due, you will be determined to be ineligible to participate in any crop insurance program authorized under the Act in accordance with 7 CFR part 400, subpart U.

(1) For a policy with unpaid administrative fees or premium, the policy will terminate effective on the termination date immediately subsequent to the billing date for the crop year;

(2) For a policy with other amounts due, the policy will terminate effective on the termination date immediately after the account becomes delinquent;

(3) Ineligibility will be effective as of the date that the policy was terminated for the crop for which you failed to pay an amount owed and for all other insured crops with coincidental termination dates;

(4) All other policies that are issued by us under the authority of the Act will also terminate as of the next termination date contained in the applicable policy;

(5) If you are ineligible, you may not obtain any crop insurance under the Act until payment is made, you execute an agreement to repay the debt and make the payments in accordance with the agreement, or you file a petition to have your debts discharged in bankruptcy;

(6) If you execute an agreement to repay the debt and fail to timely make any scheduled payment, you will be ineligible for crop insurance effective on the date the payment was due until the debt is paid in full or you file a petition to discharge the debt in bankruptcy and subsequently obtain discharge of the amounts due. Dismissal of the bankruptcy petition before discharge will void all policies in effect retroactive to the date you were originally determined ineligible to participate and all premiums paid will be refunded;

(7) Once the policy is terminated, the policy cannot be reinstated for the current crop year unless the termination was in error;

(8) After you again become eligible for crop insurance, if you want to obtain coverage for your crops, you must reapply on or before the sales closing date for the crop (Since applications for crop insurance cannot be accepted after the sales closing date, if you make any payments after the sales closing date, you cannot apply for insurance until the next crop year); and

(9) If we deduct the amount due us from an indemnity, the date of payment for the purpose of this section will be the date you sign the properly executed claim for indemnity.

(10) For example, if crop A, with a termination date of October 31, 1998, and crop B, with a termination date of March 15, 1999, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 1998, and crop A's policy is terminated on that date. Crop B's policy is terminated as of March 15, 1999. If you enter an agreement to repay the debt on April 25, 1999, you can apply for insurance for crop A by the October 31, 1999, sales closing date and crop B by March 15, 2000, sales closing date. If you fail to make a scheduled payment on November 1, 1999, you will be ineligible for crop insurance effective on November 1, 1999, and you will not be eligible unless the debt is paid in full or you file a petition to have the debt discharged in bankruptcy and subsequently receive discharge.

(f) If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the policy will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after coverage begins for any crop year, the policy will continue in force through the crop year and terminate at the end of the insurance period and any indemnity will be paid to the person or persons determined to be beneficially entitled to the indemnity. The premium will be deducted from the indemnity or collected from the estate. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

(g) We may terminate your policy if no premium is earned for 3 consecutive years.

(h) The cancellation and termination dates are contained in the Crop Provisions.

(i) When obtaining coverage, you must provide information regarding crop insurance coverage on any crop previously obtained from an approved insurance provider, including the date such insurance was obtained and the amount of the administrative fee.

(j) You are not eligible to participate in the Revenue Assurance program if you have elected the MPCI Catastrophic Risk Protection Endorsement except in the following instance: If you execute a High-Risk Land Exclusion Option for a Revenue Assurance Policy, you may elect to insure the ''high-risk land'' under an MPCI Catastrophic Risk Protection Endorsement provided that the Catastrophic Risk Protection Endorsement is obtained from us. If both policies are in force, the acreage of the crop covered under the Revenue Assurance policy and the acreage covered under an MPCI Catastrophic Risk Protection Endorsement will be considered as separate crops for insurance purposes, including the payment of administrative fees.

4. Insurance Coverages

(a) Your revenue guarantee, coverage level percent, approved yields, per-acre revenue guarantee, and projected harvest price will be shown on your summary of coverage.

(b) You must select a coverage level percent by the sales closing date. The maximum allowable coverage level percent is 75 (.7500 decimal format) and the minimum allowable is 65 (.6500 decimal format) for basic, optional and enterprise units. The maximum allowable coverage level percent is 80 (.8000 decimal format) and the minimum allowable is 65 (.6500 decimal format) for whole-farm units.

(c) You may only select one coverage level percent that is applicable for all insurable acreage of the crop. You may change your coverage level percent for the following crop year by giving written notice to us not later than the sales closing date for the insured crop. If you do not select a new crop coverage level percent on or before the sales closing date, we will assign the previous year's coverage level percent or the nearest coverage level percent available (For example: If you selected a 65 percent coverage level for the previous crop year and you do not select a new coverage level percent for the current crop year, we will assign the 65 percent coverage level for the current crop year if it is still available.)

(d) This policy is an alternative to the MPCI program and satisfies the requirements of section 508(b)(7) of the Act.

(e) You must report production to us for the previous crop year by the earlier of the acreage reporting date or 45 days after the cancellation date unless

otherwise stated in the Special Provisions:

(1) If you do not provide the required production report, we will assign a yield for the previous crop year. The yield assigned by us will not be more than 75 percent of the yield used by us to determine your coverage for the previous crop year. The production report or assigned yield will be used to compute your approved yield for the purpose of determining your revenue guarantee for the current crop year;

(2) If you have filed a claim for any crop year, the documents signed by you which state the amount of production used to complete the claim for indemnity will be the production report for that year unless otherwise specified by FCIC;

(3) Production and acreage for the prior crop year must be reported for each proposed optional unit by the production reporting date. If you do not provide the information stated above, the optional units will be combined into the basic unit.

(f) We may revise your revenue guarantee for any unit, and revise any indemnity paid based on that revenue guarantee, if we find that your production report under paragraph (e) of this section:

(1) Is not supported by written verifiable records in accordance with the definition of production report; or

(2) Fails to accurately report actual production, acreage, or other material information.

(g) Any person may sign any document relative to crop insurance coverage on behalf of any other person covered by such a policy, provided that the person has a properly executed power of attorney or such other legally sufficient document authorizing such person to sign.

5. Contract Changes

(a) We may change the terms of your coverage under this policy from year to year.

(b) Any changes in policy provisions, prices, available coverage level percents, premium rates and program dates will be provided by us to your crop insurance agent not later than the contract change date contained in the Crop Provisions. You may view the documents or request copies from your crop insurance agent.

(c) You will be notified, in writing, of changes to the Basic Provisions, Crop Provisions, and Special Provisions not later than 30 days prior to the cancellation date for the insured crop. Acceptance of changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

6. Liberalization

If we adopt any revisions that broaden the coverage under this policy subsequent to the contract change date without additional premium, the broadened coverage will apply.

7. Report of Acreage

(a) An annual acreage report must be submitted to us on our form for each insured crop in the county on or before the acreage reporting date contained in the Special Provisions, except as follows:

(1) If you insure multiple crops with us that have final planting dates on or after August 15 but before December 31, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops; and

(2) If you insure multiple crops with us that have final planting dates on or after December 31 but before August 15, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops.

(3) Notwithstanding the provisions in sections 7(a)(1) and (2):

(i) If the Special Provisions designate separate planting periods for a crop, you must submit an acreage report for each planting period on or before the acreage reporting date contained in the Special Provisions for the planting period; and

(ii) If planting of the insured crop continues after the final planting date or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(A) The acreage reporting date contained in the Special Provisions;

(B) The date determined in accordance with sections 7(a)(1) or (2); or

(C) Five days after the end of the late planting period for the insured crop, if applicable.

(b) If you do not have a share in an insured crop in the county for the crop year, you must submit an acreage report on or before the acreage reporting date, so indicating.

(c) Your acreage report must include the following information, if applicable:

(1) All acreage of the crop in the county (insurable and not insurable) in which you have a share;

(2) Your share at the time coverage begins;

(3) The practice;

(4) The type; and

(5) The date the insured crop was planted.

(d) Because incorrect reporting on the acreage report may have the effect of changing your premium and any indemnity that may be due, you may not revise this report after the acreage reporting date without our consent.

(e) We may elect to determine all premiums and indemnities based on the information you submit on the acreage report or upon the factual circumstances we determine to have existed, subject to the provisions contained in section 7(g).

(f) If you do not submit an acreage report by the acreage reporting date, or if you fail to report all units, we may elect to determine by unit the insurable crop acreage, share, type and practice, or to deny liability on such units. If we deny liability for the unreported units, your share of any production from the unreported units will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit. However, such production will not be allocated to prevented planting acreage or otherwise affect any prevented planting payment.

(g) If the information reported by you on the acreage report for share, acreage, practice, type or other material information is inconsistent with the information that is determined to actually exist for a unit and results in:

(1) A lower liability than the actual liability determined, the revenue guarantee on the unit will be reduced to an amount that is consistent with the reported information. In the event that insurable acreage is under-reported for any unit, all production or value from insurable acreage in that unit will be considered production or value to count in determining the indemnity; and

(2) A higher liability than the actual liability determined, the information contained in the acreage report will be revised to be consistent with the correct information. If we discover that you have incorrectly reported any information on the acreage report for any crop year, you may be required to provide documentation in subsequent crop years that substantiates your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense.

(h) Errors in reporting units may be corrected by us at the time of adjusting a loss to reduce our liability and to conform to applicable unit division guidelines.

8. Annual Premium and Administrative Fees

(a) The annual premium is earned and payable at the time coverage begins. You will be billed for premium due not earlier than the premium billing date specified in the Special Provisions. The

premium due, plus any accrued interest, will be considered delinquent if it is not paid on or before the termination date specified in the Crop Provisions.

(b) Any amount you owe us related to any crop insured with us under the authority of the Act will be deducted from any prevented planting payment or indemnity due you for any crop insured with us under the authority of the Act.

(c) Your annual premium amount is determined by unit by multiplying the crop premium per acre, times the insured crop acreage, times any premium adjustment factor that may apply, times your respective share at the time coverage begins, and less producer premium subsidy.

(d) The producer premium subsidy for a unit equals the crop premium per acre at the 65 percent coverage level, times the insured crop acreage, times 0.417, times your respective share. The producer premium subsidy cannot exceed that available had you purchased a comparable MPCI policy.

(e) In addition to the premium charged:

(1) You must pay an administrative fee of $20 per crop for each crop year in which crop insurance coverage remains in effect;

(2) The administrative fee must be paid no later than the time that premium is due; and

(3) Payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop. If you falsely file a zero acreage report, you may be subject to criminal and administrative sanctions.

(4) The administrative fee is not subject to any limits, and may not be waived.

(5) Failure to pay the administrative fees when due may make you ineligible for certain other USDA benefits.

9. Insured Crop

(a) The insured crop will be that shown on your accepted application and as specified in the Crop Provisions or Special Provisions and must be grown on insurable acreage.

(b) A crop which will NOT be insured will include, but will not be limited to, any crop:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates or revenue guarantees have been established;

(2) Of a type, class or variety established as not adapted to the area or excluded by the policy provisions;

(3) That is a volunteer crop;

(4) That is a second crop following the same crop (insured or not insured) harvested in the same crop year unless specifically permitted by the Crop Provisions or the Special Provisions;

(5) That is planted for the development or production of hybrid seed or for experimental purposes, unless permitted by the Crop Provisions; or

(6) That is used solely for wildlife protection or management. If the lease states that specific acreage must remain unharvested, only that acreage is uninsurable. If the lease specifies that a percentage of the crop must be left unharvested, your share will be reduced by such percentage.

10. Insurable Acreage

(a) Acreage planted to the insured crop in which you have a share is insurable except acreage:

(1) That has not been planted and harvested within one of the 3 previous crop years, unless:

(i) Such acreage was not planted:

(A) To comply with any other USDA program;

(B) Because of crop rotation, (*e.g.*, corn, soybean, alfalfa; and the alfalfa remained for 4 years before the acreage was planted to corn again);

(C) Due to an insurable cause of loss that prevented planting; or

(D) Because a perennial tree, vine, or bush crop was grown on the acreage.

(ii) Such acreage was planted but was not harvested due to an insurable cause of loss; or

(iii) The Crop Provisions specifically allow insurance for such acreage.

(2) That has been strip-mined, unless an agricultural commodity other than a cover, hay, or forage crop (except corn silage), has been harvested from the acreage for at least five crop years after the strip-mined land was reclaimed;

(3) On which the insured crop is damaged and it is practical to replant the insured crop, but the insured crop is not replanted;

(4) That is interplanted, unless allowed by the Crop Provisions;

(5) That is otherwise restricted by the Crop Provisions or Special Provisions; or

(6) That is planted in any manner other than as specified in the policy provisions for the crop.

(b) If insurance is provided for an irrigated practice, you must report as irrigated only that acreage for which you have adequate facilities, and adequate water, or the reasonable expectation of receiving adequate water at the time coverage begins, to carry out a good irrigation practice. If you knew or had reason to know that your water may be reduced before coverage begins, no reasonable expectation exists.

(c) Notwithstanding the provisions in section 9(b)(1), if acreage is irrigated and we do not provide a premium rate for an irrigated practice, you may either report and insure the irrigated acreage as ''non-irrigated,'' or report the irrigated acreage as not insured.

(d) We may restrict the amount of acreage that we will insure to the amount allowed under any acreage limitation program established by the USDA if we notify you of that restriction prior to the sales closing date.

11. Share Insured

(a) Insurance will attach only to the share of the person completing the application and will not extend to any other person having a share in the crop unless the application clearly states that:

(1) The insurance is requested for an entity such as a partnership or a joint venture; or

(2) You as landlord will insure your tenant's share, or you as tenant will insure your landlord's share. In this event, you must provide evidence of the other party's approval (lease, power of attorney, etc.). Such evidence will be retained by us. You also must clearly set forth the percentage shares of each person on the acreage report.

(b) We may consider any acreage or interest reported by or for your spouse, child or any member of your household to be included in your share.

(c) Acreage rented for a percentage of the crop, or a lease containing provisions for BOTH a minimum payment (such as a specified amount of cash, bushels, pounds, etc.) AND a crop share, will be considered a crop share lease.

(d) Acreage rented for cash, or a lease containing provisions for EITHER a minimum payment OR a crop share (such as a 50/50 share or $100.00 per acre, whichever is greater), will be considered a cash lease.

12. Insurance Period

(a) Except for prevented planting coverage (see section 18), coverage begins on each unit or part of a unit at the later of:

(1) The date we accept your application (For the purposes of this paragraph, the date of acceptance is the date that you submit a properly executed application in accordance with section 3);

(2) The date the insured crop is planted; or

(3) The calendar date contained in the Crop Provisions for the beginning of the insurance period.

(b) Coverage ends at the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit;
(3) Final adjustment of a loss on a unit;
(4) The calendar date contained in the Crop Provisions for the end of the insurance period;
(5) Abandonment of the crop on the unit; or
(6) As otherwise specified in the Crop Provisions.

13. Causes of Loss

The insurance provided is against only unavoidable loss of revenue directly caused by specific causes of loss contained in the Crop Provisions. All other causes of loss, including but not limited to the following, are NOT covered:
(a) Negligence, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees;
(b) Failure to follow recognized good farming practices for the insured crop;
(c) Water contained by any governmental, public, or private dam or reservoir project;
(d) Failure or breakdown of irrigation equipment or facilities; or
(e) Failure to carry out a good irrigation practice for the insured crop if applicable.

14. Replanting Payment

(a) If allowed by the Crop Provisions, a replanting payment may be made on an insured crop replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured planted acreage for the unit (as determined on the final planting date or within the late planting period if a late planting period is applicable). The 20 acres or 20 percent requirement is to be applied for each crop in a whole-farm unit.
(b) No replanting payment will be made on acreage:
(1) On which our appraisal establishes that production will exceed the level set by the Crop Provisions;
(2) Initially planted prior to the earliest planting date established by the Special Provisions; or
(3) On which one replanting payment has already been allowed for the crop year.
(c) The replanting payment per acre will be your actual cost for replanting, but will not exceed the amount determined in accordance with the Crop Provisions.
(d) No replanting payment will be paid if we determine it is not practical to replant.

15. Duties In the Event of Damage or Loss

Your Duties:

(a) In case of damage to any insured crop you must:
(1) Protect the crop from further damage by providing sufficient care;
(2) Give us notice within 72 hours of your initial discovery of damage (but not later than 15 days after the end of the insurance period), by unit, for each insured crop (we may accept a notice of loss provided later than 72 hours after your initial discovery if we still have the ability to accurately adjust the loss);
(3) Leave representative samples intact for each field of the damaged unit as may be required by the Crop Provisions;
(4) Give us notice of your expected revenue loss not later than 45 days after the date the fall harvest price is released; and
(5) Cooperate with us in the investigation or settlement of the claim, and, as often as we reasonably require:
(i) Show us the damaged crop;
(ii) Allow us to remove samples of the insured crop; and
(iii) Provide us with records and documents we request and permit us to make copies.
(b) You must obtain consent from us before, and notify us after you:
(1) Destroy any of the insured crop that is not harvested;
(2) Put the insured crop to an alternative use;
(3) Put the acreage to another use; or
(4) Abandon any portion of the insured crop. We will not give consent for any of the actions in sections 15(b)(1) through (4) if it is practical to replant the crop or until we have made an appraisal of the potential production of the crop.
(c) In addition to complying with all other notice requirements, you must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the end of the insurance period. This claim must include all the information we require to settle the claim.
(d) Upon our request, you must:
(1) Provide a complete harvesting and marketing record of each insured crop by unit including separate records showing the same information for production from any acreage not insured; and
(2) Submit to examination under oath.
(e) You must establish the total production or value received for the insured crop on the unit, that any loss of production or value occurred during the insurance period, and that the loss of production or value was directly caused by one or more of the insured causes specified in the Crop Provisions.
(f) All notices required in this section that must be received by us within 72 hours may be made by telephone or in person to your crop insurance agent but must be confirmed in writing within 15 days.

Our Duties—

(a) If you have complied with all the policy provisions, we will pay your loss within 30 days after:
(1) We reach agreement with you;
(2) Completion of arbitration or appeal proceedings; or
(3) The entry of a final judgment by a court of competent jurisdiction.
(b) In the event we are unable to pay your loss within 30 days, we will give you notice of our intentions within the 30-day period.
(c) We may defer the adjustment of a loss until the amount of loss can be accurately determined. We will not pay for additional damage resulting from your failure to provide sufficient care for the crop during the deferral period.
(d) We recognize and apply the loss adjustment procedures established or approved by FCIC.

16. Production Included in Determining Indemnities

(a) The total production to be counted for a unit will include all production determined in accordance with the policy.
(b) The amount of production of any unharvested insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.
(c) The amount of an indemnity that may be determined under the applicable provisions of your crop policy may be reduced by an amount, determined in accordance with the Crop Provisions or Special Provisions, to reflect out-of-pocket expenses that were not incurred by you as a result of not planting, caring for, or harvesting the crop. Indemnities paid for acreage prevented from being planted will be based on a reduced revenue guarantee as provided for in the crop policy and will not be further reduced to reflect expenses not incurred.
(d) Appraised production will be used to calculate your claim if you will not be harvesting the acreage. To determine your indemnity based on appraised production, you must agree to notify us if you harvest the crop and advise us of the production. If the acreage will be harvested, harvested production will be used to determine any indemnity due, unless otherwise specified in the policy.

17. Late Planting

Unless limited by the Crop Provisions, insurance will be provided for acreage planted to the insured crop after the final planting date in accordance with the following:

(a) The per-acre revenue guarantee for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date.

(b) Acreage planted after the late planting period (or after the final planting date for crops that do not have a late planting period) may be insured as follows:

(1) The per-acre revenue guarantee for each acre planted as specified in this subsection will be determined by multiplying the per-acre revenue guarantee that is provided for acreage of the insured crop that is timely planted by the prevented planting coverage level percent you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Planting on such acreage must have been prevented by the final planting date (or during the late planting period, if applicable) by an insurable cause occurring within the insurance period for prevented planting coverage; and

(3) All production from acreage as specified in this section will be included as production to count for the unit.

(c) The premium amount for insurable acreage specified in this section will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for such acreage exceeds the liability, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid).

(d) Any acreage on which an insured cause of loss is a material factor in preventing completion of planting, as specified in the definition of ''planted acreage'' (*e.g.*, seed is broadcast on the soil surface but cannot be incorporated) will be considered as acreage planted after the final planting date and the per-acre revenue guarantee will be calculated in accordance with section 17(b)(1).

18. Prevented Planting

(a) Unless limited by the policy provisions, a prevented planting payment may be made to you for eligible acreage if:

(1) You were prevented from planting the insured crop by an insured cause that occurs:

(i) On or after the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on or after the sales closing date for the previous crop year for the insured crop in the county, provided insurance has been in force continuously since that date. Cancellation for the purpose of transferring the policy to a different insurance provider for the subsequent crop year will not be considered a break in continuity for the purpose of the preceding sentence;

(2) You include any acreage of the insured crop that was prevented from being planted on your acreage report; and

(3) You did not plant the insured crop during or after the late planting period. If such acreage was planted to the insured crop during or after the late planting period, it is covered under the late planting provisions.

(b) The actuarial documents may contain additional levels of prevented planting coverage that you may purchase for the insured crop:

(1) Such purchase must be made on or before the sales closing date;

(2) If you do not purchase one of those additional levels by the sales closing date, you will receive the prevented planting coverage specified in the Crop Provisions;

(3) If you have an MPCI Catastrophic Risk Protection Endorsement for any acreage of ''high risk land'' the additional levels of prevented planting coverage will not be available for that acreage; and

(4) You may not increase your elected or assigned preventing planting coverage level for any crop year if a cause of loss that will or could prevent planting is evident prior to the time you wish to change your prevented planting coverage level.

(c) The premium amount for acreage that is prevented from being planted will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for acreage that is prevented from being planted exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage).

(d) Drought or failure of the irrigation water supply will be considered to be an insurable cause of loss for the purposes of prevented planting only if, on the final planting date (or within the late planting period if you elect to try to plant the crop):

(1) For non-irrigated acreage, the area that is prevented from being planted has insufficient soil moisture for germination of seed and progress toward crop maturity due to a prolonged period of dry weather. Prolonged precipitation deficiencies must be verifiable using information collected by sources whose business it is to record and study the weather, including, but not limited to, local weather reporting stations of the National Weather Service; or

(2) For irrigated acreage, there is not a reasonable probability of having adequate water to carry out an irrigated practice.

(e) The maximum number of acres that may be eligible for a prevented planting payment for any crop will be determined as follows:

(1) The total number of acres eligible for prevented planting coverage for all crops cannot exceed the number of acres of cropland in your farming operation for the crop year, unless you are eligible for prevented planting coverage on double-cropped acreage in accordance with section 18(f)(4) or (5). The eligible acres for each insured crop will be determined in accordance with the following table.

Type of crop	Eligible acres if, in any of the 4 most recent crop years, you have planted any crop in the county for which prevented planting insurance was available or have received a prevented planting insurance guarantee	Eligible acres if, in any of the 4 most recent crop years, you have not planted any crop in the county for which prevented planting insurance was available or have not received a prevented planting insurance guarantee
(i) The crop is not required to be contracted with a processor to be insured.	(A) The maximum number of acres certified for APH purposes or reported for insurance for the crop in any one of the 4 most recent crop years (not including reported prevented planting acreage that was planted to a substitute crop other than an approved cover crop). The number of acres determined above for a crop may be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the total cropland acres that you farmed in the previous year, provided that you submit proof to us that for the current crop year you have purchased or leased additional land or that acreage will be released from any USDA program which prohibits harvest of a crop. Such acreage must have been purchased, leased, or released from the USDA program, in time to plant it for the current crop year using good farming practices. No cause of loss that will or could prevent planting may be evident at the time the acreage is purchased, leased, or released from the USDA program.	(B) The number of acres specified on your intended acreage report which is submitted to us by the sales closing date for all crops you insure for the crop year and that is accepted by us. The total number of acres listed may not exceed the number of acres of cropland in your farming operation at the time you submit the intended acreage report. The number of acres determined above for a crop may only be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the number of acres listed on your intended acreage report, if you meet the conditions stated in section 18(e)(1)(i)(A).
(ii) The crop must be contracted with a processor to be insured.	(A) The number of acres of the crop specified in the processor contract, if the contract specifies a number of acres contracted for the crop year; or the result of dividing the quantity of production stated in the processor contract by your approved yield, if the processor contract specifies a quantity of production that will be accepted. (For the purposes of establishing the number of prevented planting acres, any reductions applied to the transitional yield for failure to certify acreage and production for four prior years will not be used.).	(B) The number of acres of the crop as determined in section 18(e)(1)(ii)(A).

(2) Any eligible acreage determined in accordance with the table contained in section 18(e)(1) will be reduced by subtracting the number of acres of the crop (insured and uninsured) that are timely and late planted, including acreage specified in section 17(b).

(f) Regardless of the number of eligible acres determined in section 18(e), prevented planting coverage will not be provided for any acreage:

(1) That does not constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit, whichever is less. Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop, type, and practice that is planted in the field, unless the acreage that was prevented from being planted constitutes at least 20 acres or 20 percent of the total insurable acreage in the field and you produced both crops, crop types, or followed both practices in the same field in the same crop year within any of the 4 most recent crop years;

(2) For which the actuarial documents do not designate a premium rate;

(3) Used for conservation purposes or intended to be left unplanted under any program administered by the USDA;

(4) On which the insured crop is prevented from being planted, if you or any other person receives a prevented planting payment for any crop for the same acreage in the same crop year (excluding share arrangements), unless you have coverage greater than the Catastrophic Risk Protection Plan of Insurance and have records of acreage and production that are used to determine your approved yield that show the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(5) On which the insured crop is prevented from being planted, if any crop from which any benefit is derived under any program administered by the USDA is planted and fails, or if any crop is harvested, hayed or grazed on the same acreage in the same crop year (other than a cover crop which may be hayed or grazed after the final planting date for the insured crop), unless you have coverage greater than that applicable to the Catastrophic Risk Protection Plan of Insurance and have records of acreage and production that are used to determine your approved yield that show the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage (If one of the crops being double-cropped is not insurable, other verifiable records of it being planted may be used);

(6) Of a crop that is prevented from being planted if a cash lease payment is also received for use of the same acreage in the same crop year (not applicable if acreage is leased for haying or grazing only) (If you state that you will not be cash renting the acreage and claim a prevented planting payment on the acreage, you could be subject to civil and criminal sanctions if you cash rent the acreage and do not return the prevented planting payment for it);

(7) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes;

(8) That exceeds the number of acres eligible for a prevented planting payment;

(9) That exceeds the number of eligible acres physically available for planting;

(10) For which you cannot provide proof that you had the inputs available to plant and produce a crop with the expectation of at least producing the yield used to determine the per-acre revenue guarantee (Evidence that you have previously planted the crop on the unit will be considered adequate proof unless your planting practices or rotational requirements show that the acreage would have remained fallow or been planted to another crop);

(11) Based on an irrigated practice per-acre revenue guarantee unless adequate irrigation facilities were in place to carry out an irrigated practice on the acreage prior to the insured cause of loss that prevented you from planting. Acreage with an irrigated practice per-acre revenue guarantee will be limited to the number of acres allowed for that practice under sections 18(e) and (f); or

(12) Based on a crop type that you did not plant, or did not receive a prevented planting insurance guarantee for, in at least one of the four most recent crop

years. Types for which separate prices or per-acre revenue guarantees are available must be included in your APH database in at least one of the four most recent crop years, or crops that do not require yield certification (crops for which the insurance guarantee is not based on APH) must be reported on your acreage report in at least one of the four most recent crop years except as allowed in section 18(e)(1)(i)(B). We will limit prevented planting payments based on a specific crop type to the number of acres allowed for that crop type as specified in sections 18(e) and (f).

(g) If you purchased a Revenue Assurance policy for a crop, and you executed a High Risk Land Exclusion Option that separately insures acreage which has been designated as ''high-risk'' land by FCIC under a Catastrophic Risk Protection Endorsement for that crop, the maximum number of acres eligible for a prevented planting payment will be limited for each policy as specified in sections 18(e) and (f).

(h) If you are prevented from planting a crop for which you do not have an adequate base of eligible prevented planting acreage, as determined in accordance with section 18(e)(1), your prevented planting per-acre revenue guarantee, premium, and prevented planting payment will be based on the crops insured for the current crop year, for which you have remaining eligible prevented planting acreage. The crops used for this purpose will be those that result in a prevented planting payment most similar to the prevented planting payment that would have been made for the crop that was prevented from being planted.

(1) For example, assume you were prevented from planting 200 acres of corn and have 100 acres eligible for a corn prevented planting guarantee that would result in a payment of $40 per acre. You also had 50 acres of potato eligibility that would result in a $100 per acre payment, 90 acres of grain sorghum eligibility that would result in a $30 per acre payment, and 100 acres of soybean eligibility that would result in a $25 per acre payment. Your prevented planting coverage for the 200 acres would be based on 100 acres of corn ($40 per acre), 90 acres of grain sorghum ($30 per acre), and 10 acres of soybeans ($25 per acre).

(2) Prevented planting coverage will be allowed as specified in this section (18(h)) only if the crop that was prevented from being planted meets all policy provisions, except for having an adequate base of eligible prevented planting acreage. Payment may be made based on crops other than those that were prevented from being planted even though other policy provisions, including but not limited to, processor contract and rotation requirements, have not been met for the crop on which payment is being based.

(i) The prevented planting payment for any eligible acreage within a basic or optional unit will be determined by:

(1) Multiplying the per-acre revenue guarantee for timely planted acreage of the insured crop by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Multiplying the result of section 18(i)(1) by the number of eligible prevented planting acres in the unit; and

(3) Multiplying the result of section 18(i)(2) by your share.

(j) The prevented planting payment for any eligible acreage within an enterprise unit will be determined by:

(1) Multiplying the per-acre revenue guarantee within the enterprise unit, for timely planted acreage of the insured crop by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Multiplying the result of section 18(j)(1) by the number of eligible prevented planting acres in the enterprise unit;

(3) Multiplying the result of section 18(j)(2) by your share; and

(4) Totaling the results from section 18(j)(3).

(k) The prevented planting payment for any eligible acreage within a whole-farm unit will be determined by:

(1) Multiplying the per-acre revenue guarantee for the whole-farm unit, for timely planted acreage of the insured crop by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Multiplying the result of section 18(k)(1) by the number of eligible prevented planting acres in the whole-farm unit;

(3) Multiplying the result of section 18(k)(2) by your share; and

(4) Totaling the results from section 18(k)(3).

19. Crops as Payment

You must not abandon any crop to us. We will not accept any crop as compensation for payments due us.

20. Arbitration

(a) If you and we fail to agree on any factual determination, the disagreement will be resolved in accordance with the rules of the American Arbitration Association. Failure to agree with any factual determination made by FCIC must be resolved through the FCIC appeal provisions published at 7 CFR part 11.

(b) No award determined by arbitration or appeal can exceed the amount of liability established or which should have been established under the policy.

21. Access To Insured Crop and Records, and Record Retention

(a) We reserve the right to examine the insured crop as often as we reasonably require.

(b) For three years after the end of the crop year, you must retain, and provide upon our request, complete records of the harvesting, storage, shipment, sale, or other disposition of all the insured crop produced on each unit. This requirement also applies to the records used to establish the basis for the production report for each unit. You must also provide upon our request, separate records showing the same information for production from any acreage not insured. We may extend the record retention period beyond three years by notifying you of such extension in writing. Your failure to keep and maintain such records will, at our option, result in:

(1) Cancellation of the policy;

(2) Assignment of production to the units by us;

(3) Combination of the optional units; or

(4) A determination that no indemnity is due.

(c) Any person designated by us will, at any time during the record retention period, have access:

(1) To any records relating to this insurance at any location where such records may be found or maintained; and

(2) To the farm.

(d) By applying for insurance under the authority of the Act or by continuing insurance for which you previously applied, you authorize us, or any person acting for us, to obtain records relating to the insured crop from any person who may have custody of those records including, but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, and accountants. You must assist us in obtaining all records which we request from third parties.

(e) This policy will be considered a continuation of any prior crop insurance policy issued under the authority of the Act for actual production history

purposes under 7 CFR part 400, subpart G.

22. Other Insurance

(a) Other Like Insurance—You must not obtain any other crop insurance issued under the authority of the Act, on your share of the insured crop. If we determine that more than one policy on your share is intentional, you may be subject to the sanctions authorized under this policy, the Act, or any other applicable statute. If we determine that the violation was not intentional, the policy with the earliest date of application will be in force and all other policies will be void. Nothing in this paragraph prevents you from obtaining other insurance not issued under the Act.

(b) Other Insurance Against Fire—If you have other insurance, whether valid or not, against damage to the insured crop by fire during the insurance period, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this policy without regard to such other insurance; or

(2) The amount by which the loss from fire is determined to exceed the indemnity paid or payable under such other insurance.

(c) For the purpose of section 22(b), the amount of loss from fire will be the reduction in revenue of the insured crop on the unit involved determined pursuant to this policy.

23. Conformity To Food Security Act

Although your violation of a number of federal statutes, including the Act, may cause cancellation, termination, or voidance of your insurance contract, you should be specifically aware that your policy will be canceled if you are determined to be ineligible to receive benefits under the Act due to violation of the controlled substance provisions (title XVII) of the Food Security Act of 1985 (Pub. L. 99–198) and the regulations promulgated under the Act by USDA. Your insurance policy will be canceled if you are determined, by the appropriate Agency, to be in violation of these provisions. We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid or to be paid by you.

24. Amounts Due Us

(a) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any portion thereof, on any unpaid amount due us. For the purpose of premium amounts due us, the interest will start to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(b) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start to accrue on the date that notice is issued to you for the collection of the unearned amount. Amounts found due under this paragraph will not be charged interest if payment is made within 30 days of issuance of the notice by us. The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us.

(c) All amounts paid will be applied first to expenses of collection (see section 24(d)) if any, second, to the reduction of accrued interest, and then to the reduction of the principal balance.

(d) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection.

(e) Amounts owed to us by you may be collected in part through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37.

25. Legal Action Against Us

(a) You may not bring legal action against us unless you have complied with all of the policy provisions.

(b) If you do take legal action against us, you must do so within 12 months of the date of denial of the claim. Suit must be brought in accordance with the provisions of 7 U.S.C. 1508(j).

(c) Your right to recover damages (compensatory, punitive, or other), attorney's fees, or other charges is limited or excluded by this contract or by Federal Regulations.

26. Payment and Interest Limitations

(a) Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim.

(b) We will pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date, and submit to us the properly completed claim on our form. Interest will be paid only if the reason for our failure to timely pay is NOT due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year, and may vary with each publication.

27. Concealment, Misrepresentation or Fraud

(a) If you have falsely or fraudulently concealed the fact that you are ineligible to receive benefits under the Act or if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this policy:

(1) This policy will be voided; and

(2) You may be subject to remedial sanctions in accordance with 7 CFR part 400, subpart R.

(b) Even though the policy is void, you may still be required to pay 20 percent of the premium due under the policy to offset costs incurred by us in the service of this policy. If previously paid, the balance of the premium will be returned.

(c) Voidance of this policy will result in you having to reimburse all indemnities paid for the crop year in which the voidance was effective.

(d) Voidance will be effective on the first day of the insurance period for the crop year in which the act occurred and will not affect the policy for subsequent crop years unless a violation of this section also occurred in such crop years.

28. Transfer of Coverage and Right to Indemnity

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance. We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for the payment of the premium and administrative fees. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

29. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee will have

the right to submit all loss notices and forms as required by the policy. If you have suffered a loss from an insurable cause and fail to file a claim for indemnity within 60 days after the end of the insurance period, the assignee may submit the claim for indemnity not later than 15 days after the 60-day period has expired. We will honor the terms of the assignment only if we can accurately determine the amount of the claim. However, no action will lie against us for failure to do so.

30. Subrogation (Recovery of Loss From a Third Party)

Since you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve this right. If we pay you for your loss, your right to recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

31. Descriptive Headings

The descriptive headings of the various policy provisions are formulated for convenience only and are not intended to affect the construction or meaning of any of the policy provisions.

32. Notices

(a) All notices required to be given by you must be in writing and received by your crop insurance agent within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice. If the date by which you are required to submit a report or notice falls on Saturday, Sunday, or a Federal holiday, or if your agent's office is, for any reason, not open for business on the date you are required to submit such notice or report, such notice or report must be submitted on the next business day.

(b) All notices and communications required to be sent by us to you will be mailed to the address contained in your records located with your crop insurance agent. Notice sent to such address will be conclusively presumed to have been received by you. You should advise us immediately of any change of address.

33. Multiple Benefits

(a) If you are eligible to receive an indemnity under an additional coverage plan of insurance and are also eligible to receive benefits for the same loss under any other USDA program, you may receive benefits under both programs, unless specifically limited by the crop insurance contract or by law.

(b) The total amount received from all such sources may not exceed the amount of your actual loss. The total amount of the actual loss is the difference between the fair market value of the insured commodity before and after the loss, based on your production records and the highest price election or amount of insurance available for the crop.

(c) FSA will determine and pay the additional amount due you for any applicable USDA program, after first considering the amount of any crop insurance indemnity.

(d) Farm ownership and operating loans may be obtained from USDA in addition to any crop insurance indemnities.

Revenue Assurance

Wheat Crop Provisions

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

1. Definitions

Fall harvest price. The price used to value production to count. The fall harvest price is the simple average of the final daily settlement prices in August for the MGE September wheat futures contract. These prices will be released September 5.

Fall harvest price option. A coverage option that allows you to use the greater of the projected harvest price or the fall harvest price to determine your per acre revenue guarantee. For basic, optional, and enterprise units, this option applies to all insurable acres of a crop in the county. For the whole-farm unit, this option will apply to all insurable acres of the applicable crops in the county. This option must be selected by the sales closing date and is continuous unless canceled by the wheat sales closing date.

Harvest. Combining or threshing the insured crop for grain. A crop which is swathed prior to combining is not considered harvested.

Local market price. The cash grain price per bushel for the U.S. No. 2 grade of the insured crop offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade of the insured crop. Factors not associated with grading under the Official United States Standards for Grain, including but not limited to protein, oil or moisture content, or milling quality will not be considered.

MGE. Minneapolis Grain Exchange

Nurse crop (companion crop). A crop planted into the same acreage as another crop, that is intended to be harvested separately, and which is planted to improve growing conditions for the crop with which it is grown.

Prevented planting guarantee. The prevented planting guarantee for such acreage will be the selected percentage of the per-acre revenue guarantee for timely planted acres.

Projected harvest price. The price used to determine the expected per-acre revenue. The projected harvest price is the simple average of the final daily settlement prices in February for the MGE September wheat futures contract. The wheat projected harvest price will be released by March 5 of the current crop year.

Swathed. Severance of the stem and grain head from the ground without removal of the seed from the head and placing into a windrow.

2. Contract Changes

In accordance with section 5 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

3. Cancellation and Termination Dates

In accordance with section 3 of the Basic Provisions, the cancellation and termination dates are March 15.

4. Annual Premium

Your per-acre premium on a unit is determined using the premium calculator. Your per-acre premiums will differ by crop and unit structure.

(a) Basic unit: The annual premium for a basic unit equals the per-acre premium, times the number of insured acres in the unit, times your share.

(b) Optional unit: The annual premium for an optional unit equals the per-acre premium, times an optional unit surcharge factor, times the number of insured acres in the optional unit, times your share. The optional unit surcharge factor is 1.30.

(c) Enterprise unit: The per-acre premium decreases as the number of legally defined sections on which you have insured acreage increases up to a maximum of 10 sections. The annual premium for an enterprise unit equals the per-acre premium, times the number of insured acres in the unit, times your share.

(d) Whole-farm unit: The annual premium for a whole-farm unit equals the per-acre premium, times the number of insured acres in the unit, times your share. The insured per-acre premium

decreases as the number of legally defined sections on which you have insured acreage increases up to a maximum of 10 sections. The per-acre premium also depends on the proportions of insured crop acres on the unit. For example, if the unit contains corn, soybeans, and wheat, the per-acre premium will depend on the ratio of corn to soybean insured acres, the ratio of corn to wheat insured acres, and the ratio of soybean to wheat insured acres.

5. Insured Crop

In accordance with section 9 of the Basic Provisions, the crop insured will be all the wheat for which premium rates are provided by the premium calculator:

(a) In which you have a share;

(b) That is adapted to the area based on days to maturity and is compatible with agronomic and weather conditions in the area;

(c) That is planted for harvest as grain;

(d) That is not (unless allowed by the Special Provisions):

(1) Interplanted with another crop;

(2) Planted into an established grass or legume; or

(3) Planted as a nurse crop, unless planted as a nurse crop for new forage seeding, but only if seeded at a normal rate and intended for harvest as grain.

6. Insurable Acreage

In addition to the provisions of section 10 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. Insurance Period

In accordance with the provisions of section 12 of the Basic Provisions, the calendar date for the end of the insurance period is October 31 immediately following planting.

8. Causes of Loss

In accordance with the provisions of section 13 of the Basic Provisions, insurance is provided only against an unavoidable loss of revenue against the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

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

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

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption;

(h) Failure of the irrigation water supply, if applicable, due to a cause of loss contained in sections 8(a) through (g) occurring within the insurance period; or

(i) A decline in the fall harvest price below the projected harvest price.

9. Replanting Payment

(a) In accordance with section 14 of the Basic Provisions:

(1) Replanting payments for wheat are allowed if the wheat is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the per-acre revenue guarantee for the acreage and it is practical to replant. The projected harvest price is used to determine if 90 percent of the unit revenue guarantee can be achieved;

(2) The maximum amount of the replanting payment per acre will be your share times the lesser of 20 percent of the per-acre revenue guarantee based on the projected harvest price or an amount equal to 3 bushels, times the projected harvest price.

(b) When wheat is replanted using a practice that is uninsurable for an original planting, the unit per-acre revenue guarantee based on the projected harvest price will be reduced by the amount of the replanting payment which is attributable to your share. The premium amount will not be reduced.

10. Duties in the Event of Damage or Loss

In accordance with the requirements of section 15 of the Basic Provisions, if you initially discover damage to any insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the unit is completed.

11. Settlement of Claim

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

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

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

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

(1) Basic and Optional units: We will settle your claim on each basic or optional unit by:

(i) Multiplying the unit's per-acre revenue guarantee by the number of insured acres in the unit;

(ii) Multiplying the applicable fall harvest price by the production to count for each unit (see sections 11(c) through (e);

(iii) Subtracting the result of section 11(b)(1)(ii) from the result of section 11(b)(1)(i); and

(iv) Multiplying the results in section 11(b)(2)(iii) by your share.

If the result of section 11(b)(1)(iv) is greater than zero, an indemnity equal to that result will be paid to you. If the result of section 11(b)(1)(iv) is less than or equal to zero, no indemnity will be paid.

(2) Enterprise units: We will settle your claim on an enterprise unit by:

(i) Multiplying the enterprise unit's per-acre revenue guarantee by the number of insured acres in the enterprise unit;

(ii) Multiplying the applicable fall harvest price by the production to count for the enterprise unit;

(iii) Subtracting the result of section 11(b)(2)(ii) from the result of section 11(b)(2)(i); and

(iv) Multiplying the result in section 11(b)(2)(iii) by your share.

If the result of section 11(b)(2)(iv) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.

(3) Whole-farm units: We will settle your claim on a whole-farm unit by:

(i) Multiplying the per acre revenue guarantee for each crop by the number of insured acres planted to each crop;

(ii) Totaling the results of section 11(b)(3)(i);

(iii) Multiplying the applicable fall harvest price for each crop by the production to count for each crop;

(iv) Totaling the results of section 11(b)(3)(iii);

(v) Subtracting the result of section 11(b)(3)(iv) from the result of section 11(b)(3)(ii); and

(vi) Multiplying the result in section 11(b)(3)(v) by your share.

If the result of section 11(b)(2)(vi) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.

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

(1) All appraised production as follows:

(i) Not less than the per-acre revenue guarantee will be used for such acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

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

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 11(d)); and

(iv) Potential production on insured acreage that you intend to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

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

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

(2) All harvested production from the insurable acreage.

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

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 13.5 percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in wheat not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight, total damaged kernels (excluding heat damage), shrunken or broken kernels, or defects (excluding foreign material and heat damage), or grading garlicky, light smutty, smutty or ergoty;

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

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

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

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

(iii) The samples are analyzed by a grader licensed to grade the wheat under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by our loss adjuster.

(4) The wheat production that is eligible for quality adjustment, as specified in sections 11(d) (2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(e) Any production harvested from plants growing in the wheat may be counted as production of the wheat on a weight basis.

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your per-acre revenue guarantee for timely planted acreage. You may increase your prevented planting coverage to a level specified in the actuarial documents by paying an additional premium.

Signed in Washington, D.C., on December 29, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–164 Filed 1–5–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–063N]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Import and Export Inspection and Certification Systems

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture, and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services, are sponsoring public meetings on January 13, 1999, and February 3, 1999, to provide information and receive public comments on agenda items that will be discussed at the Seventh Session of the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS), in Melbourne, Australia, February 22–26, 1999. The Office of the Under Secretary and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the Seventh Session of the CCFICS and to address items on the agenda.

DATES: The public meetings are scheduled for Wednesday, January 13, 1999, from 10:00 a.m. to 12:00 p.m., and Wednesday, February 3, 1999, from 10:00 a.m. to 12:00 p.m.

ADDRESSES: The public meetings will be held in Room 1813, 200 C Street, SW, Washington, DC. Send an original and two copies of comments to: FSIS Docket Clerk, Docket Number 98–063N, 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 in response to this notice 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: Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW, Washington, DC 20250–3700. *Telephone:* (202) 205–7760; *Fax:* (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two

United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the principal international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration and correctly labeled.

CCFICS was established to develop principles and guidelines for food import and export inspection and certification systems; the application of measures by competent authorities of importing and exporting countries to provide assurance that foods comply with essential requirements; the utilization of quality assurance systems; and the format and content of official certificates.

Issues to be Discussed at the Public Meetings

The following issues will be discussed during the public meetings:

- Draft Guidelines for the Development of Equivalence Agreements Regarding Food Import and Export Inspection and Certification Systems *at Step 7*
- Proposed Draft Guidelines/ Recommendations for Food Import Control Systems (*New Work*)
- Proposed Draft Guidelines and Criteria for Official Certificate Formats and Rules Relating to the Production and Issuance of Certificates (*New Work*)
- Discussion Paper on Issues Relating to the Judgement of Equivalence
- Discussion Paper on the Utilization and Promotion of Quality Assurance Systems
- Discussion Paper on Guidelines for the Establishment of a Database on Importing Country Legislation

In advance of these meetings, the U.S. Delegate to CCFICS will have assigned the responsibility for development of U.S. positions on these issues to various members of the federal government. The individuals assigned will be named at the January 13 public meeting.

Additionally, at the January 13 public meeting, the issues will be described and discussed, and attendees will have the opportunity to ask questions and offer comments. At the February 3 public meeting, draft U.S. positions on the issues will be described and discussed, and attendees will have the opportunity to ask questions and offer comments. During the public meetings, all interested parties are invited to provide information and comments on the above issues or any other issues that may be brought before CCFICS. Comments may also be sent to the FSIS Docket Clerk (see **ADDRESSES**). Please state that your comments relate to CCFICS activities and specify which issues your comments address.

F. Edward Scarbrough,

U.S. Manager for Codex.

[FR Doc. 99–165 Filed 1–5–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Preapplications for Technical Assistance for Rural Transportation Systems

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency within the Rural Development mission area, announces the availability of one single $500,000 grant from the passenger transportation portion of the Rural Business Enterprise Grant (RBEG) Program for Fiscal Year (FY) 1999 to be competitively awarded to a qualified national organization.

DATES: The deadline for receipt of a preapplication in the Rural Development State Office is March 1, 1999. Preapplications received at a Rural Development State Office after that date will not be considered for FY 1999 funding.

ADDRESSES: For further information, entities wishing to apply for assistance should contact a Rural Development State Office to receive further information and copies of the preapplication package. A list of Rural Development State Offices follows:

Alabama

USDA Rural Development State Office, Sterling Center, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 745–2176

Arizona

USDA Rural Development State Office, 3003 North Central Avenue, Suite 900, Phoenix, AZ 85012–2906, (602) 280–8700

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue—Room 3416, Little Rock, AR 72201–3225, (501) 301–3200

California

USDA Rural Development State Office, 430 G Street, Agcy. 4169, Davis, CA 95616–4169, (530) 792–5800

Colorado

USDA Rural Development State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (303) 236–2801

Delaware/Maryland

USDA Rural Development State Office, 5201 South Dupont Highway, Camden, DE 19934–9998, (302) 697–4300

Florida/Virgin Islands

USDA Rural Development State Office, 4440 NW 25th Place, Gainesville, FL 32614–7010, (352) 338–3400

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–3000

Idaho

USDA Rural Development State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5600

Illinois

USDA Rural Development State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5235

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663

Kansas

USDA Rural Development State Office, 1200 SW Executive Drive, Topeka, KS 66604, (785) 271–2700

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7300

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7920

Maine

USDA Rural Development State Office, 444 Stillwater Avenue, Suite 2, Bangor, ME 04402–0405, (207) 990–9106

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Amherst, MA 01002, (413) 253–4300

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 337–6635

Minnesota

USDA Rural Development State Office, 410 Agri Bank Building, 375 Jackson Street, St Paul, MN 55101–1853, (651) 602–7800

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4316

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976

Montana

USDA Rural Development State Office, 900 Technology Blvd., Unit 1, Suite B, Bozeman, MT 59715, (406) 585–2580

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5551

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (702) 887–1222

New Jersey

USDA Rural Development State Office, Tarnsfield Plaza, Suite 22, 790 Woodlane Road, Mt Holly, NJ 08060, (609) 265–3600

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street, NE, Room 255, Albuquerque, NM 87109, (505) 761–4950

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000

North Dakota

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, Bismarck, ND 58502–1737, (701) 250–4781

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 469–5606

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000

Oregon

USDA Rural Development State Office, 101 SW Main Street, Suite 1410, Portland, OR 97204–3222, (503) 414–3300

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299

Puerto Rico

USDA Rural Development State Office, New San Juan Office Building, Room 501, 159 Carlos E Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 4th Street, SW, Huron, SD 57350, (605) 352–1100

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4320

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000

Virginia

USDA Rural Development State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1550

Washington

USDA Rural Development State Office, 1835 Blacklake Boulevard, SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740

West Virginia

USDA Rural Development State Office, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4791

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600

Wyoming

USDA Rural Development State Office, 100 East B, Federal Building, Rm 1005, Casper, WY 82602, (307) 261–6300

SUPPLEMENTARY INFORMATION: The passenger transportation portion of the RBEG program is authorized by section 310B(c)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932). The RBEG program is administered on behalf of RBS at the State level by the Rural Development State Offices. The primary objective of the program is to improve the economic conditions of rural areas. Assistance provided to rural areas under this program may include on-site technical assistance to local and regional governments, public transit agencies, and related nonprofit and for-profit organizations in rural areas; the development of training materials; and the provision of necessary training assistance to local officials and agencies in rural areas.

Awards under the RBEG passenger transportation program are made on a competitive basis using specific selection criteria contained in 7 CFR part 1942, subpart G, and in accordance with section 310B(c)(2) of the CONACT. That subpart also contains the information required to be in the preapplication package. Up to 25 Administrator's points may be added to an application's priority score based on the extent to which the application targets assistance to Empowerment Zones/Enterprise Communities, Champion Communities, or other rural communities that have experienced persistent poverty, out-migration of population, or sudden severe structural changes in the local economy. A project that scores the greatest number of points based on the selection criteria and Administrator's points will be selected. Preapplications will be tentatively scored by the State Offices and submitted to the National Office for review, final scoring, and selection.

To be considered ''national'', a qualified organization is required to provide evidence that it operates in multi-state areas. There is not a requirement to use the grant funds in a multi-state area. Under this program, grants are made to a qualified private non-profit organization for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities. Public bodies are not eligible for passenger transportation RBEG grants.

Refer to section 310B(c)(2) (7 U.S.C. 1932) of the CONACT and 7 CFR Part 1942, subpart G for the information collection requirements of the RBEG program.

Fiscal Year 1999 Preapplications Submission

Each preapplication received in a Rural Development State Office will be reviewed to determine if this

preapplication is consistent with the eligible purposes outlined in 7 CFR part 1942, subpart G, and section 310B(c)(2) of the CONACT. Each selection priority criterion outlined in 7 CFR part 1942, subpart G, section 1942.305(b)(3), must be addressed in the preapplication. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the preapplication. Copies of 7 CFR Part 1942, subpart G, will be provided to any interested applicant making a request to a Rural Development State Office listed in this notice. All projects to receive technical assistance through these passenger transportation grant funds are to be identified when the preapplication is submitted to the Rural Development State Office. Multiple project preapplications must identify each individual project, indicate the amount of funding requested for each individual project, and address the criteria as stated above for each individual project. For multiple-project preapplication, the average of the individual project scores will be the score for that preapplication.

All eligible preapplications, along with tentative scoring sheets and the Rural Development State Director's recommendation, will be referred to the National Office no later than April 15, 1999, for final scoring and selection for award.

The National Office will score preapplications based on the grant selection criteria and weights contained in 7 CFR part 1942, subpart G, and Administrator's points, and will select an awardee subject to the awardee's satisfactory submission of a formal application and related materials in the manner and time frame established by RBS in accordance with 7 CFR part 1942, subpart G. It is anticipated that the grant awardee will be selected by June 1, 1999. All applicants will be notified by RBS of the Agency decision on the award.

The information collection requirements within this Notice are covered under OMB No. 0570–0022 and 7 CFR part 1942, subpart G.

Dated: December 23, 1998.

Wilbur T. Peer,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 99–217 Filed 1–5–99; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–823]

Certain Cut-to-Length Carbon Steel Plate From Canada: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review, and intent to revoke order in part.

SUMMARY: In response to a request from Canberra Industries, Inc., (Canberra), the Department of Commerce (the Department) is initiating a changed circumstances antidumping duty administrative review and is issuing this notice of our intent to preliminarily revoke in part the antidumping duty order on certain cut-to-length carbon steel plate from Canada. Although the scope of that order excludes certain types and sizes of cobalt-60-free cut-to-length plate, the scope currently *includes* the types and sizes of cobalt-60-free plate covered by Canberra's request. *See Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 58 FR 44162 (August 19, 1993); *see also, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Preliminary Results of Antidumping Duty Administrative Reviews and Intent to Revoke in Part,* 63 FR 37320 (July 10, 1998).

Pursuant to a prior request by Canberra, *Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order,* 61 FR 7471 (February 28, 1996), the Department excluded certain types and sizes of cobalt-60-free cut-to-length carbon steel plate. Canberra has now requested that the Department revoke the order in part with respect to imports of other types and sizes of certain cut-to-length carbon steel plate that is free of cobalt-60 and other radioactive nuclides (cobalt-60-free carbon steel plate), from Canada. In their letter to the Department of December 4, 1998, petitioners in the underlying proceeding, Bethlehem Steel Corp., U.S. Steel Group (a unit of USX Corp.), Inland Steel Industries Inc., AK Steel Corp., LTV Steel Co., Inc., and National Steel Corp., expressed no interest in the importation or sale of certain cobalt-60-free cut-to-length carbon steel plate produced in Canada, as further described in the ''Scope of Review'' section below. Therefore, we preliminarily intend to revoke the order with respect to this merchandise.

EFFECTIVE DATE: January 6, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley (202–482–4106) or Rebecca Trainor (202–482–0666), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

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 to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351, 62 FR 27295 (May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

On September 3, 1998, Canberra requested that the Department conduct a changed circumstances administrative review to determine whether to revoke in part the antidumping duty order with regard to certain cobalt-60-free cut-to-length carbon steel plate. The order with regard to imports of other cut-to-length carbon steel plate is not affected by this request. In addition, on December 4, 1998, petitioners informed the Department in writing that they do not object to the changed circumstances review, and have no interest in the importation or sale of cobalt-60-free cut-to-length carbon steel plate produced in Canada as described in the ''Scope of Review'' below.

Scope of Review

The antidumping duty order on certain cut-to-length carbon steel plate from Canada covers hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters, but not exceeding 1,250 millimeters, and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief) of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic

substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness, and of a width which exceeds 150 millimeters, and measures at least twice the thickness, as currently classifiable under the Harmonized Tariff Schedule (HTS) numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Included in the scope are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. HTS item numbers are provided for convenience and for Customs purposes. The written description remains dispositive.

Excluded from the scope are grade X–70 plates, and cobalt-60-free cut-to-length steel plates of the following specifications: (1) 100% dry steel plates, virgin steel, no scrap content (free of Co-60 and other radioactive nuclides); (2) .290 inches maximum thickness, plus 0.0, minus .030 inches; (3) 48.00 inch wide, plus .05, minus 0.0 inches; (4) 10 foot lengths, plus 0.5, minus 0.0 inches; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and, (9) carbon content, .03 to .08 (max.).

The preceding description of the steel plate products covered by this order is included in Appendix 1 to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062 (July 9, 1993) as amended by *Certain Cut-to-Length Carbon Steel Plate From Canada: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part,* 60 FR 61536 (Nov. 30, 1995).

The merchandise covered by this changed circumstances review includes cut-to-length carbon steel plate meeting the following criteria: (1) 100% dry steel plates, virgin steel, no scrap content (free of cobalt-60 and other radioactive nuclides); (2) .300 inches maximum thickness, plus 0.0, minus .030 inches; (3) 48.00 inch wide, minimum; (4) 20 foot lengths; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, .03 to.08 (max).

This changed circumstances administrative review covers all manufacturers/exporters of the cobalt-60-free cut-to-length carbon steel plate from Canada described above.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

Pursuant to section 751(d) of the Tariff Act of 1930 as amended (the Act), the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.,* a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances administrative review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

The Department's regulations at 19 CFR 351.216(d) require the Department to conduct a changed circumstances administrative review in accordance with § 351.221 if it decides that changed circumstances sufficient to warrant a review exist. Section 782(h) of the Act and § 351.222(g)(1)(i) of the Department's regulations further provide that the Department may revoke an order, in whole or in part, if it concludes that substantially all of the producers of the domestic like product to which the order pertains have expressed a lack of interest in the order, in whole or in part. In addition, in the event that the Department concludes that expedited action is warranted, § 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and preliminary results.

Therefore, based on petitioners' affirmative statement of no interest in the partial revocation requested, we are initiating this changed circumstances administrative review. Further, also based on petitioners' affirmative statement of no interest, we have determined that expedited action is warranted, and we have preliminarily determined that there are changed circumstances sufficient to warrant revocation of the order as it pertains to cobalt-60-free cut-to-length carbon steel plate from Canada as described by the above specifications. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty order as it pertains to imports of certain cobalt-60-free cut-to-length carbon steel plate from Canada.

If final revocation in part occurs, we intend to instruct the U.S. Customs Service (Customs) to end the suspension of liquidation and to refund any estimated antidumping duties collected for all unliquidated entries of cobalt-60-free cut-to-length carbon steel plate from Canada with the specifications described above not subject to final results of an administrative review, in accordance with 19 CFR 351.222(g)(4). We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances review.

Public Comment

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303(f). Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is in accordance with sections 751(b)(1) of the Act and §§ 351.216 and 351.222 of the Department's regulations.

Dated: December 28, 1998.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–245 Filed 1–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–047]

Elemental Sulphur From Canada: 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 elemental sulphur from Canada.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on elemental sulphur from Canada in response to requests from the petitioner, Freeport-McMoRan Sulphur, Inc. (''Freeport''), and the respondent, Husky Oil, Ltd. (''Husky''). The period of review (''POR'') is from December 1, 1996 through November 30, 1997.

We preliminarily determine that respondent, Husky, has sold subject merchandise at not less than normal value (''NV'') during the POR. Husky has requested revocation from the order, but, as explained in the *Revocation* section below, we preliminarily determine that Husky has not met the threshold requirements to be considered for revocation. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service not to assess antidumping duties on suspended entries.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding should also submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: January 6, 1999.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0182 or (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Background

On December 17, 1973, the Department of the Treasury published in the **Federal Register** (38 FR 34655) the antidumping finding on elemental sulphur from Canada. On December 5, 1997, the Department published in the **Federal Register** (62 FR 64353) a notice of opportunity to request an administrative review of this antidumping finding for the period December 1, 1996 through November 31, 1997.

On December 31, 1997, in accordance with 19 CFR 351.213(b), Freeport requested that we conduct an administrative review of Husky and any other company that exported Husky-produced sulphur to the United States during the POR. Also, on December 31, 1997, Husky requested that we conduct an administrative review and further requested that the Department revoke the antidumping order as to Husky. We published a notice of initiation of this antidumping duty administrative review on January 26, 1998 (63 FR 3702). On June 26, 1998, petitioner submitted a request that the deadline for the preliminary results in this review be extended by 75 days in order to develop the administrative record with respect to revocation. On July 29, 1998, the Department published in the **Federal Register** an extension of the deadline for the preliminary results of review to November 1, 1998 (63 FR 40391). On August 19, 1998, the Department published in the **Federal Register** a further extension of the deadline for the preliminary results of review to December 31, 1998 (63 FR 44420). The Department is conducting this administrative review in accordance with section 751 of the Act. As outlined below, we preliminarily determine a *de minimis* margin of 0.37 percent for Husky, but that Husky has not met the threshold requirement to be considered for revocation.

Verification

As provided in section 782(i) of the Act, from September 23, 1998 to October 2, 1998, we verified sales and cost information provided by Husky, using standard verification procedures, including an examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports and are on file in the Central Records Unit (''CRU'') located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C. For changes to Husky's costs based on verification findings, see *Calculation of CV* section below.

Scope of the Review

Imports covered by this review are shipments of elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule (''HTS'') subheadings 2503.10.00, 2503.90.00, and 2802.00.00. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the Department's written description of the scope of this order remains dispositive. The POR is December 1, 1996 through November 30, 1997.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the *Scope of the Review* section above, which were produced and sold by the respondent in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. For all of Husky's U.S. sales, there were identical sales in the home market on which to base comparisons.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the affiliated importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an

LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales (which we note is not the case for Husky), if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In the present review, Husky did not request a LOT adjustment or CEP offset. To ensure that no such adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Canadian markets, including the selling functions, classes of customer, and selling expenses.

In the home market, Husky reported that it sold through one sales channel: to end-users. The selling functions associated with this channel included inventory maintenance, freight and delivery arrangements, and credit services. Hence, we preliminarily determine that there is one LOT in the home market.

In the U.S. market, Husky reported two sales channels: (1) To end-users; and (2) to resellers. Husky's U.S. sales through the second sales channel were made via a Canadian reseller. Husky knows that sales through this channel are destined for the U.S. market, hence, Husky classifies all its sales in the reseller sales channel as U.S. sales. We examined the selling functions performed for each of the two U.S. sales channels. Both sales channels involved inventory maintenance, freight and delivery arrangements, and credit services. Based on the above information, we preliminarily determine that there is one LOT in the United States.

Based on our analysis of the selling functions performed for sales in the home market and EP sales in the U.S. market, we preliminarily determine that there is not a significant difference in the selling functions performed in the U.S. and home markets and that these sales are made at the same LOT. Therefore, an LOT adjustment is not appropriate.

Fair Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than fair value, we compared the EP to the NV. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared these to individual EP transactions.

Export Price

For calculation of the price to the United States, we used EP, in accordance with section 772(a) of the Act, because Husky's subject merchandise was sold to the first unaffiliated purchaser in either Canada (shipped directly from the producer to the U.S. purchaser) or the United States prior to importation, and use of the CEP methodology was not otherwise warranted. We calculated EP based on free on board (f.o.b.) plant or delivered prices to unrelated customers. We made deductions to the starting price for movement expenses (inland freight, brokerage and handling, and tank car leasing expenses) pursuant to section 772(c)(2) of the Act. For a further explanation of how we calculated EP, *see Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review,* December 31, 1998 (''*Analysis Memo*''). Because Husky invoices its customers, in all cases, after shipment, we have used Husky's shipment date as the date of sale for the United States in accordance with 19 CFR 351.401(i).

Normal Value

We compared the aggregate volume of Husky's home market sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product Husky sold in Canada was sufficient, pursuant to section 773(a)(1)(C) of the Act, to form a basis for NV. Because Husky's volume of home market sales of the foreign like product was greater than five percent of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B)(i) of the Act, we have based the determination of NV upon Husky's home market sales of the foreign like product. Moreover, there is no evidence on the record indicating a particular market situation in the exporting country that would not permit a proper comparison of home market and U.S. prices. *See* section 773(a)(1)(C)(iii) of the Act. Thus, we based NV on the prices at which the foreign like product was first sold for consumption in Canada, in the usual commercial quantities, in the ordinary course of trade, and at the same LOT as the EP sales.

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

Cost of Production (''COP'') Analysis

Because the Department determined, in the most recently completed review, that Husky made sales in the home market at prices below the cost of producing the subject merchandise (*see, e.g., Notice of Preliminary Results of Review: Elemental Sulphur from Canada,* 62 FR 969 (January 7, 1997)), the Department determines in this review that there are reasonable grounds to believe or suspect that Husky made sales in the home market at prices below the cost of producing the merchandise. *See* section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a cost of production inquiry in this case on February 2, 1998, to determine whether Husky made home market sales during the POR at prices below their respective COPs within the meaning of section 773(b) of the Act.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Husky's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (''SG&A''), interest expenses, and packing costs. We used home market sales and COP information provided by Husky in its questionnaire responses. We made the following changes to Husky's reported costs based on our verification findings: (1) We included ''interest on subordinated shareholders' loans'' and ''Dividends on Class C shares'' in the calculation of the financial expense ratio (Husky omitted these costs from its calculation of COP and CV); (2) we revised the reported cost of sales (''COS'') figure used in the calculation of the financial expense ratio to exclude several costs used in Husky's calculation of the financial expense ratio; (3) we included certain miscellaneous and non-operating expense items in the calculation of the general and administrative (''G&A'') expense ratio; and (4) we revised the reported COS figure used in the calculation of the G&A ratio to exclude several costs. *See Memorandum to the File, ''Preliminary Cost Calculations for Husky Oil, Ltd.'',* dated December 31, 1998 and the *Cost Verification Report,* dated December 1, 1998.

B. Test of Home Market Prices

We compared the POR-long weighted average COP for Husky, adjusted where appropriate (see above), to its home

market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market 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.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product within an extended period of time are at prices less than the COP, we do not disregard any below-cost sales of that product because the below-cost sales are not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the extended period are at prices less than the COP, we determine such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C)(i) of the Act. The extended period of time for this analysis is the POR. *See* section 773(b)(2)(B) of the Act. Because each individual price was compared against the POR-long weighted average COP, any sales that were below cost were also at prices which did not permit cost recovery within a reasonable period of time. *See* section 773(b)(2)(D). We compared the COP for liquid sulphur to the reported home market prices less any applicable movement charges. Pursuant to section 773(b)(2)(C) of the Act, we concluded that Husky's below cost sales were made in substantial quantities because the volume of these sales represented more than 20 percent of the volume of sales under consideration for the determination of NV. We also concluded that these below-cost sales were made within an extended period of time (*i.e.*, within the POR) within the meaning of section 773 of the Act. *See Statement of Administrative Action* (''SAA''), accompanying the Uruguay Round Agreements Act, at 832.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated Husky's CV based on the sum of Husky's cost of materials, fabrication, SG&A, interest expenses and profit. We calculated the COPs included in the calculation of CV as noted above in the ''Calculation of COP'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Husky in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in Canada.

Price-to-Price Comparisons

We based NV on the home market prices to unaffiliated purchasers (Husky made no sales to affiliated parties). Home market prices were based on ex-factory or delivered prices. We made adjustments, where applicable, for movement expenses in accordance with section 773(a)(6)(B) of the Act. We also made adjustments for differences in circumstances of sale (''COS'') in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 by deducting home market direct selling expenses (credit) and adding U.S. direct selling expenses (credit).

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find suitable home market sales of the foreign like product. We made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Revocation

As noted, Husky has requested revocation pursuant to 19 CFR 351.222, which, at subsection (d), authorizes the Department to treat unreviewed intervening years as reviewed periods for purposes of its revocation analysis. However, the Department's policy is not to apply this regulation retroactively to include periods subject to review under earlier versions of the regulations. As we explained in a recent administrative review of the countervailing duty order on agricultural tillage tools from Brazil, ''[a]lthough section 351.222(d) of the Department's regulations provides that the Secretary may revoke the order in part when there are unreviewed years in the period upon which revocation is based, the regulations do not provide for the application of this provision retroactively to review periods that would have been controlled by the Department's pre-Uruguay Round regulations.'' *See* June 11, 1998 Letter from Barbara Tillman, Director, Office of CVD/AD Enforcement VI, to Randolph J. Stayin, Barnes & Thornburg. *See also Certain Agricultural Tillage Tools From Brazil; Preliminary Results of Countervailing Duty Administrative Review*, 63 FR 37532, 37533 (July 13, 1998) (''The Department considered Marchesan's revocation request and determined that the company did not meet the requirements to be considered for revocation from the countervailing duty order.'') (affirmed in final results at 63 FR 52685). Likewise, in *Frozen Concentrated Orange Juice From Brazil; Final Results of Antidumping Duty Administrative Review*, 63 FR 26145, 26146 (May 12, 1998), the Department declined to apply new section 351.222 retroactively to include periods that would have been reviewed under pre-URAA regulatory authority in its revocation analysis.

Because the Department does not apply section 351.222(d) of the new regulations retroactively, any unreviewed periods that apply to the three-consecutive-year revocation requirement must be periods reviewed under Part 351. Husky's 1995–96 POR thus cannot be considered the second of three consecutive PORs in this revocation analysis. Therefore, because Husky has not satisfied the threshold requirement that revocation be based upon sales ''at not less than normal value for a period of at least three consecutive years,'' we do not reach the additional criteria for revocation enumerated at 19 CFR 351.222 (b)(2) (ii) and (iii).

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the period December 1, 1996 through November 30, 1997:

Manufacturer/exporter	Margin (percent)
Husky Oil, Ltd.	0.37

The Department will disclose calculations performed in connection with this preliminary determination within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice in the **Federal Register**; rebuttal briefs may be submitted not later than five days thereafter. Any hearing, if requested, will be held 2 days after the scheduled date for submission of rebuttal briefs. Issues raised in the hearing will be limited to those raised in the case briefs. The Department will publish the final results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties

on all appropriate entries. If these preliminary results are adopted in our final results, we will instruct Customs not to assess antidumping duties on the merchandise subject to review. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service. If applicable, we will calculate an importer-specific *ad valorem* duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between statutory NV and statutory EP, by the total statutory EP value of the sales compared, and adjusting the result by the average difference between EP and Customs value for all merchandise examined during the POR.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) For Husky, no deposit will be required; (2) if the exporter is not a firm covered in this review, a prior 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 (3) the cash deposit rate for all other manufacturers will be the ''all others'' rate made effective by the final results of the 1993–94 administrative review of these orders (*see* 1992–93 and 1993–94 Final Results). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 30, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–242 Filed 1–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Time Limits for Preliminary Results of New Shipper Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of new shipper review.

EFFECTIVE DATE: January 6, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Strollo, Laurel LaCivita or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–3782, (202) 482–4236 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR part 351, (April, 1998).

Background

On March 27, 1998, the Department of Commerce (the Department) received a request from Ningbo Nanlian Frozen Foods Company, Ltd. (Ningbo Nanlian) for a new shipper antidumping administrative review of freshwater crawfish tail meat. On May 8, 1998, the Department published its initiation of this new shipper review covering the period of September 1, 1997 through March 31, 1998 (63 FR 25449).

Extension of Time Limits for Preliminary Results

Because of the complexities enumerated in the Memorandum from Joseph A. Spetrini to Robert S. LaRussa, *Extension of Time Limit for the New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China,* dated December 21, 1998, it is not practical to complete this review within the time limits mandated by section 751(a)(2)(B) of the Act.

Therefore, in accordance with section 751(a)(2)(B) of the Act, the Department is extending the time limits for the preliminary results 35 days to February 15, 1999. The final results continue to be due 90 days after the publication of the preliminary results.

Dated: December 30, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 99–249 Filed 1–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Amended Final Results of Antidumping Duty Administrative Reviews Pursuant To Remand From the Court of International Trade: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Correction

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended Final Results of Antidumping Duty Administrative Reviews Pursuant to Remand From the Court of International Trade: Correction.

EFFECTIVE DATE: January 6, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Thomson or Jim Terpstra, AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4793/3965, respectively.

CORRECTION: The Department of Commerce (the Department) inadvertently referenced an incorrect **Federal Register** notice in the ''Amended Final Results'' section of the *Amended Final Results of Antidumping Duty Administrative Reviews Pursuant To Remand From the Court of International Trade: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China,* 63 FR 55577 (October 16, 1998). The period of review (POR) for these amended final results is

February 1, 1996 through January 31, 1997. However, the Department incorrectly referenced the **Federal Register** notice covering the final results of the February 1, 1995 through January 31, 1996 POR in this notice. Specifically, the notice reads, ''On March 13, 1997, the Department published the final results of its administrative reviews of the antidumping duty order on heavy forged hand tools, finished or unfinished, with or without handles (HFHTs) from the People's Republic of China (PRC) (62 FR 11813). These reviews cover five manufacturers/exporters and the period of review (POR) is February 1, 1996, through January 31, 1997.'' Although the POR stated (1996–1997) was correct, the date of the publication for that determination was incorrect.

Pursuant to the Department's regulations at 19 CFR 351.224(e), we correct this statement in the above-referenced notice to read as follows: ''On *April 6, 1998,* the Department published the final results of its administrative reviews of the antidumping duty order on heavy forged hand tools, finished or unfinished, with or without handles (HFHTs) from the People's Republic of China (PRC) (63 FR 16758). These reviews cover five manufacturers/exporters and the period of review (POR) is February 1, 1996, through January 31, 1997.''

Dated: December 30, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–248 Filed 1–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta from Italy: Final Results of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 6, 1998, the Department of Commerce published the preliminary results of its new shipper review of the antidumping duty order on certain pasta from Italy. The review covers shipments of this merchandise to the United States by Corex during the period July 1, 1997, through December 31, 1997. These final results do not differ from the preliminary results.

We find that Corex did not make sales below normal value during the period of review. We will instruct the Customs Service not to assess antidumping duties on certain pasta produced and exported by this company.

EFFECTIVE DATE: January 6, 1999.

FOR FURTHER INFORMATION CONTACT: Constance Handley or John Brinkmann, AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0631 or (202) 482–5288, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR part 351 (1997).

Case History

On March 4, 1998, in response to a request by CO.R.EX. S.r.l, (Corex), the Department initiated a new shipper review.

On October 6, 1998, the Department published the preliminary results of this review. *See Notice of Preliminary Results of New Shipper Antidumping Duty Administrative Review,* 63 FR 53641 (*Preliminary Results*). From September 28, through October 2, 1998, we verified the information submitted by Corex. On November 3, 1998, we received a case brief from Corex. We did not receive comments from any other interested party.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione (IMC), by Bioagricoop Scrl, or by QC&I International Services.

The merchandise subject to review is currently classifiable under subheading 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

Scope Rulings

On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997. In addition, the Department issued a scope ruling on July 30, 1998, that multipacks consisting of six one-pound packages of pasta that are shrink wrapped into a single package are within the scope of the antidumping and countervailing duty orders. (*See* July 30, 1998 letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc.).

On October 23, 1997, the petitioners [1] filed an application requesting that the Department initiate an anti-circumvention investigation against Barilla S.r.L., an Italian producer and exporter of pasta. On October 5, 1998, the Department issued its final determination that, pursuant to section 781(a) of the Act, circumvention of the antidumping duty order is occurring by reason of exports of bulk pasta from Italy produced by Barilla which subsequently are repackaged in the United States into packages of five pounds or less for sale in the United States. (*See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 63 FR 54672 (October 13, 1998)).

On October 26, 1998, we self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the

[1] Borden Foods Corp., Hershey Pasta and Grocery Group, and Gooch Foods Inc.

antidumping and countervailing duty orders. On November 18, 1998, the Department received comments regarding this scope inquiry. The Department received rebuttal comments on November 30, 1998. In accordance with 19 CFR 351.225(f)(5), the Department will issue a scope ruling within 120 days of the initiation of the inquiry.

Price Comparisons

We calculated export price (EP) and normal value based on the same methodology used in the *Preliminary Results,* with the following exception:

We used a revised credit rate to calculate an imputed credit expense for U.S. and Australian sales, both of which were priced in Italian Lire (*see* memorandum from Constance Handley to the file, *Analysis Memorandum for CO.R.EX. S.r.l.,* (December 18,1998)).

Analysis of Comment Received

We gave interested parties an opportunity to comment on the preliminary results. As noted above, we received one comment from Corex.

Comment 1: Commissions

Corex notes that during verification Department officials learned of commissions on Australian sales which Corex had inadvertently failed to include in its database. Corex notes further that the Department officials requested information relating to Corex's indirect selling expenses. Claiming there is no reason to believe that the information was ever intentionally withheld, Corex requests that this information be used in calculating the final margin.

DOC Position:

We are not including the information found at verification because inclusion of the information would not affect the final margin.

Final Results of Review

As a result of our review, we determine that the following margin exists for the period July 1, 1997 through December 31, 1997:

Manufacturer/exporter	Margin (percent)
Corex	0.0

As discussed in the *Preliminary Results,* because Corex is primarily a trading company, any entries of merchandise exported by Corex must identify Corex as the producer in order for the deposit rate established in this review to apply. If Corex is the exporter but not the producer, the deposit rate will be the rate for the identified producer. Otherwise, the ''all others'' rate will apply.

Therefore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of new shipper administrative review, as provided by section 751(a) of the Act: (1) The cash deposit rate for Corex, when identified as the producer, will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 11.26 percent, the ''all others'' rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as final reminder to importers of their responsibility under 19 CFR part 351 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 in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: December 29, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–244 Filed 1–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–059]

Final Results of Expedited Sunset Review: Pressure Sensitive Plastic Tape From Italy

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results of expedited sunset review: pressure sensitive plastic tape from Italy.

SUMMARY: On September 1, 1998, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping finding on pressure sensitive plastic tape from Italy (63 FR 46410) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a Notice of Intent to Participate and a complete substantive response filed on behalf of the domestic industry, and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, D.C. 20230; telephone (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: January 6, 1999.

Statute and Regulations

This review was conducted pursuant to section 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the

Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

Imports covered by the review are shipments of pressure sensitive plastic tape (''PSPT'') measuring over 1⅜ inches in width and not exceeding 4 mils in thickness. The above described PSPT was classified under HTS subheadings 3919.90.20 and 3919.90.50. On May 7, 1992, the Department issued a scope ruling on highlighting ''note tape'' and determined that it was not within the scope of the order. *See Scope Rulings,* 57 FR 19602. The HTS subheadings are provided for convenience and for U.S. Customs purposes only. The written description remains dispositive as to the scope of the product coverage.

This review covers all manufacturers and exporters of pressure sensitive plastic tape from Italy, other than Plasturopa (which was excluded in the original less than fair value investigation conducted by the Treasury Department), and Autodesivitalia, S.p.A. and Boston S.p.A., for which the finding has been revoked. [1] The finding remains in effect for all other imports of the subject merchandise from Italy.

Background

On September 1, 1998, the Department initiated a sunset review of the antidumping finding on pressure sensitive plastic tape from Italy (63 FR 46410) pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate from Minnesota Mining & Manufacturing Company (''3M''), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* 3M claimed interested party status under section 771(9)(C) of the Act, as a United States producer of pressure sensitive plastic tape. 3M stated that it was the petitioner in the investigation and has participated in the Department's subsequent administrative reviews. On September 29, 1998, the Department received a substantive response from 3M, within the 30-day deadline specified in *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act, and our regulations (19 C.F.R. § 351.218(e)(1)(ii)(C)(2)), we determined to conduct an expedited review.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping finding, and it shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the finding is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, 3M's comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3. of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3. of the *Sunset Policy Bulletin*).

The antidumping finding on pressure sensitive plastic tape from Italy was published in the **Federal Register** as Treasury Decision 77–258, 42 FR 56110 (Oct. 21,1977). The Department has conducted numerous administrative reviews. [2]

In its substantive response, 3M argued that revocation of the finding would result in the continuation or recurrence of dumping that has been persistent since 1977. Additionally, 3M concluded that without the discipline of the finding (1) the present dumping margins would increase to an even greater magnitude than has been evident in the preceding years when the order was in effect, and (2) the volume of dumped merchandise would sharply increase. 3M supported this conclusion on the basis that while the finding has been in effect, margins greater than *de minimis* have persisted and the import volume has declined.

With respect to the existence of dumping margins over the life of the finding, in its substantive response 3M stated that ''although certain Italian producers have sporadically had zero or de minimis margins during certain review periods, it is apparent that the subject merchandise has been dumped at margins greater than *de minimis* throughout the history of the order,

[1] See *Antidumping—Pressure Sensitive Plastic Tape Measuring Over One and Three-Eighths Inches in Width and Not Exceeding Four Millimeters in Thickness From Italy; Finding of dumping;* 42 FR 56110 (Oct. 21, 1977); *Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review and Revocation in Part;* 53 FR 16444 (May 9, 1988) (revocation with respect to Autodesivitalia, S.p.A.) and *Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review and Relocation in Part*; 55 FR 6031 (February 21, 1990) (revocation with respect to Boston, S.p.A.).

[2] *Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review;* 48 FR 35686 (Aug. 5,1983); *Pressure Sensitive Plastic Tape from Italy; Final Results of Antidumping Duty Administrative Review;* 51 FR 43955 (Dec.5,1986); Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review and Revocation in Part; 53 FR 16444 (May 9,1988) with respect to Autodesivitalia,S.p.A.; *Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review;* 54 FR 13091 (May 30,1989); *Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review and Revocation in Part;* 55 FR 6031(Feb. 21, 1990) with respect to Boston, S.p.A.; *Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review;* 55 FR 49670 (Nov. 30, 1990); *Pressure Sensitive Plastic Tape from Italy; Final Results of Antidumping Duty Administrative Review;* 56 FR 56630 (Nov 6, 1991); *Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review;* 58 FR 51616 (Oct. 4. 1993); *Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Administrative Review;* 59 FR 36162 (Apr.13, 1994); *Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review;* 60 FR 55362 (Oct. 31,1995); *Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review;* 63 FR 50882 (Sep.23, 1998).

ranging from 1.19 percent to 12.66 percent.''[3] 3M pointed to the fact that in the recent administrative review covering period October 1, 1996—September 9, 1997, the Italian producer subject to review was found to have a dumping margin of 12.66 percent.[4]

As discussed in Section II.A.3. of the *Sunset Policy Bulletin,* the SAA at 890, and the House Report at 63–64, ''[i]f companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed.'' The Department has found dumping margins for various companies during administrative reviews conducted over the life of this finding. Dumping margins above *de minimis* continue in effect for some of these companies. For example, margins of 12.66 percent were found in administrative reviews conducted on shipments of both N.A.R. S.p.A. (''NAR'') and Autoadesivi Magri for the period 1993–1994 and for NAR for the period 1996–1997.[5] Therefore, given that dumping has continued over the life of the finding, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the finding were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin,* the Department stated that it normally will provide to the Commission the company-specific margin from the investigation for each company. For companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the all others rate from the investigation. The Department clarified that for sunset reviews of antidumping findings, the Department normally will provide the company-specific or all others rate included in the Treasury finding published in the **Federal Register**. Additionally, if no company-specific margin or all others rate is included in the Treasury finding, the Department normally will provide to the Commission the company-specific margin from the first final results of administrative review published in the **Federal Register** by the Department. However, if the first final results do not contain a margin for a particular company, the Department normally will provide the Commission, as the margin for that company, the first ''new shipper'' rate established by the Department for that finding. *See* section II.B.1 of the *Sunset Policy Bulletin.* Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. *See* sections II.B.2 and 3 of the *Sunset Policy Bulletin.*

In its May 31, 1977, determination of sales of less than fair value (''LTFV'') Treasury reported the following range of margins, by company: Boston—zero to 17 percent, Comet—2 to 19 percent, and Manuli 1—26 percent. Treasury did not identify weighted-average margins nor an all others rate.

In its substantive response, 3M requested that the Department select the highest company-specific margin identified in Treasury's LTFV determination, specifically, Boston—17 percent, Comet—18 percent, and Manuli—26 percent. 3M also requested that, consistent with the *Sunset Policy Bulletin,* the Department use the first ''new shippers'' rate from the final results of the first review conducted by the Department as the margin likely to prevail for all other companies. Finally, 3M requested that the Department assign to Autoadesivitalia, S.p.A. the all others rate of 12.66 percent regardless of the fact that the Department determined a zero margin for Autoadesivitalia, S.p.A. in the first administrative review (because the company ceased shipments of the subject merchandise after October 5, 1982). 3M argued that it is apparent that Autoadesivitalia cannot presently sell the subject merchandise into the United States without dumping and, therefore, good cause exists for the Department to assume that the magnitude of the dumping margin for that company, at the present time, would similarly be 12.66 percent.

In its LTFV determination, Treasury specified the percentage of sales reviewed and the range of margins found, by company. Treasury did not, however, indicate a weighted-average margin by company. We do not agree with 3M's suggestion that the highest margin found by Treasury is representative of the magnitude of the margin likely to prevail if the finding were revoked. Rather, consistent with Section 752(c) of the Act, which provides that in making the determination of likelihood ''the Department shall consider the *weighted-average* dumping margins determined in the investigation and subsequent reviews' (emphasis added), we determine that a weighted-average margin is more appropriate than the highest individual margin found by Treasury.

In section II.B.1. of the *Sunset Policy Bulletin,* the Department discussed the legislative history related to selection of the magnitude of the margin likely to prevail and clarified the preference for selecting a margin ''from the investigation, because that is the only calculated rate that reflects the behavior of exporters . . . without the discipline of an order or suspension agreement in place.'' We note that in its final affirmative determination of injury, the Commission identified the weighted-average margin found by Treasury in its investigation. *See Pressure Sensitive Plastic Tape From Italy; Determination of Injury or Likelihood Thereof;* 42 FR 44853 (September 7, 1977). Specifically, the Commission reported that the weighted-average margin for the three firms' LTFV sales was about ten percent. Therefore, the Department determines that the magnitude of the margin likely to prevail if the finding were revoked is 10 percent, the weighted-average margin of dumping found in the original investigation.

With respect to Autoadesivitalia, we note that, based on a finding of *de minimis* dumping margins during the period October 1, 1980 through October 5, 1982, and no subsequent requests for review, the Department determined to revoke the finding with respect to Autoadesivitalia in the administrative review covering the period October 1985 through September 1986.[6] Because the finding has been revoked with respect to Autoadesivitalia, we are not reporting a margin for that company to the ITC.

In its comments, 3M noted that the Department has not issued any determination with regard to duty absorption. However, 3M requested that the Department assume that duty absorption is taking place and adjust the margin by increasing the likely margin by the amount attributable to duty absorption. 3M stated that in instances where the foreign exporter sells the subject merchandise through an affiliated importer, and absent a finding in this sunset proceeding that no duty

[3] *See* September 29, 1998, Substantive Response of 3M at 4.

[4] *See Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review;* 63 FR 50822 (September 23, 1998) and September 29, 1998, Substantive Response of 3M at 4.

[5] *See Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review;* 60 FR 55362 (October 31, 1995) with respect to NAR and Autoadesivi Magri, and *Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review;* 63 FR 50882 (September 23, 1998) with respect to NAR.

[6] *See Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review and Revocation in Part,* 53 FR 16444 (May 9, 1988).

absorption is taking place, the Department should make this assumption and adjustment. We disagree with 3M. With respect to this finding, we note that 3M did not request a duty absorption determination during the administrative review initiated in 1996 (3M's first opportunity to request a duty absorption determination [7]).[8] In fact, the administrative review initiated in 1996, covering NAR, was initiated in response to a request from Horizon Plastics, an importer of tape from Italy. Commerce did not conduct a duty absorption inquiry; thus the record does not support a finding of duty absorption. Therefore, we have not adopted 3M's request.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the margins listed below.

Manufacturer/exporter	Margin (percent)
Autoadesivitali, S.p.A	[1]
Boston, S.p.A	[1]
Comet SARA, S.p.A	10.00
Cosmonastri, S.p.A	10.00
Manuli Autoadesivi (Manuli)	10.00
Plasturopa	[1]
Nazionale Imballaggi	10.00
SMAC, S.p.A	10.00
All Others	10.00

[1] Revoked.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 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 five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

[7] Section 751(a)(4) of the Act provides that, during the second and fourth administrative review of an order (or, for transition orders, during an administrative review initiated in 1996 or 1998 (*see* 19 CFR 351.213 (j)), upon request, the Department will determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to a finding if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter.

[8] The deadline for requesting a duty absorption determination in the administrative review of this finding initiated on November 30, 1998, is December 30, 1998.

Dated: December 30, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–250 Filed 1–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Certain Stainless Steel Wire Rod from India; Final Results of Antidumping Duty Administrative and New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and new shipper reviews.

SUMMARY: On September 9, 1998, the Department of Commerce (''the Department'') published the preliminary results of its administrative review and new shipper reviews of the antidumping duty order on certain stainless steel wire rod (''SSWR'') from India. These reviews covered one manufacturer/exporter, Mukand, Ltd. (''Mukand''), of the subject merchandise for the period December 1, 1996 through November 30, 1997, and two new shippers, Viraj Group (''Viraj'') and Panchamahal Steel Ltd. (''Panchmahal''). We gave interested parties an opportunity to comment on our preliminary results. We received no comments and have not changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: January 6, 1999.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak (Mukand), Carrie Blozy (Viraj), Stephen Bailey (Panchmahal) or Rick Johnson, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1398 (Dybczak), (202) 482–0165 (Blozy), (202) 482–0413 (Bailey), or (202) 482–3818 (Johnson).

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1998).

Background

On October 20, 1993, the Department published in the **Federal Register** the antidumping duty order on certain stainless steel wire rod from India (58 FR 54110). On December 5, 1997, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this antidumping duty order (62 FR 64353). On December 22, 1997, in accordance with 19 CFR 351.213(b), respondent Mukand requested that we conduct an administrative review. We published the notice of initiation of this antidumping duty administrative review on January 26, 1998 (62 FR 3702). On December 24, 1997, and December 31, 1997, Panchmahal and Viraj, respectively, submitted requests for new shipper reviews. On February 5, 1998, the notice of initiation of these new shipper reviews was published in the **Federal Register** (63 FR 5930).

On September 9, 1998, the Department published in the **Federal Register** (63 FR 48184) the preliminary results of its administrative review and new shipper reviews of the antidumping duty order on certain stainless steel wire rod from India (62 FR 3702). We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The Department has now completed these reviews in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of SSWR from India. SSWR are products which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States

(''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

The administrative review covers one company, Mukand, while both Viraj and Panchmahal are reviewed as new shippers. The period of review for all three companies is December 1, 1996 through November 30, 1997.

Final Results of Reviews

As a result of our reviews, we determine the dumping margins (in percent) for the period December 1, 1996 through November 30, 1997, for the companies under review to be as follows:

Producer/manufacturer/exporter	Margin (percent)
Mukand	0.00
Viraj	0.00
Panchmahal	0.00

The Department shall issue appraisement instructions directly to the Customs Service. Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a) of the Act: (1) The cash deposit rates for Mukand, Viraj, and Panchmahal will be the rates stated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer *is*, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash rate will be 48.80 percent, which is the ''all others'' rate as established in the LTFV investigation. The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR section 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 orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d), (1997). 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.

The administrative review and new shipper reviews and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)).

Dated: December 22, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–246 Filed 1–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–068]

Final Results of Expedited Sunset Review: Steel Wire Strand from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: steel wire strand from Japan.

SUMMARY: On September 1, 1998, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping finding on steel wire strand from Japan (63 FR 46410) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of the Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: January 6, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

The merchandise subject to this antidumping finding is steel wire strand, other than alloy steel, not galvanized, which are stress-relieved and suitable for use in prestressed concrete. Such merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 7312.10.30.12. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

This review covers imports from all manufacturers and exporters of steel wire strand from Japan, other than imports produced by Sumitomo Electric Ind., Ltd. and exported by the Sumitomo Corp., for which the finding has been revoked (51 FR 30894, August 29, 1986), and imports produced by Kawasaki Steel Techno-Wire (formerly known as Kawatetsu Wire Products Co., Ltd.), for which the investigation was discontinued (43 FR 38495, August 28, 1978).

Background

On September 1, 1998, the Department initiated a sunset review of the antidumping finding on steel wire strand from Japan (63 FR 46410), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of the American Spring Wire Corp., Florida Wire & Cable, Inc., Insteel Wire Products and Sumiden Wire Products Corp. (collectively ''the domestic industry'') on September 16, 1998,

within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* Each company claimed interested party status under section 771(9)(C) of the Act, as a U.S. manufacturer of a domestic like product. In addition, American Spring Wire Corp and Florida Wire & Cable indicated that they were two of the original five petitioners and that the three other original petitioners are no longer producers of the subject merchandise. We received a complete substantive response from the domestic industry on October 1, 1998, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this finding.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping finding, and shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the finding is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin,* the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

The antidumping finding on steel wire strand from Japan was published in the **Federal Register** as Treasury Decision 78–487 (43 FR 57599, December 8, 1978). Prior to this finding, on August 28, 1978, Treasury discontinued the dumping investigation with respect to imports from Kawatetsu Wire Products Co., Ltd. (43 FR 38495, August 28, 1978). Since the Treasury finding, the Department has conducted several administrative reviews.[1] On August 29, 1986, the Department revoked the finding with respect to imports produced by Sumitomo Electric Ind., Ltd. and exported by the Sumitomo Corp. (51 FR 30894, August 29, 1986). On March 5, 1990, the Department issued the final results of a changed circumstances review, determining that Kawasaki Steel Techno-Wire was the successor to Kawatetsu Wire Products Co., Ltd. and, therefore, that the discontinuance issued to Kawatetsu Wire Products Co., Ltd. applied to Kawasaki Steel Techno-Wire (55 FR 7759, March 5, 1990). The finding remains in effect for all other manufacturers and exporters of the subject merchandise.

In its substantive response, the domestic industry argued that the actions taken by producers and exporters of Japanese steel wire strand during the life of the finding indicate that ''(w)ere the finding to be revoked, it is likely that dumping would continue because the evidence demonstrates that the Japanese producers and exporters need to dump to sell in any significant quantities in the United States' (*see* October 1, 1998, Substantive Response of the Domestic Industry). With respect to whether dumping continued at any level above *de minimis* after the issuance of the finding, the domestic industry stated that, as documented in the final results of administrative reviews issued by the Department, a ''review of the behavior of Japanese producers following the imposition of the antidumping finding shows continued dumping by at least one producer, Tokyo Rope Manufacturing, at a rate of 4.5 percent following imposition of the order'' (*see* October 1, 1998, Substantive Response of the Domestic Industry).

With respect to whether imports of the subject merchandise ceased after the issuance of the finding, the domestic industry, citing U.S. Department of Commerce reports and U.S. Census statistics for U.S. imports (IM146 reports), asserted that ''imports of PC Strand from Japan have fallen to insignificant commercial volumes'' since the imposition of the finding.[2] Furthermore, the domestic industry argued that decreasing import volumes together with the existence of an antidumping duty finding strongly supports the conclusion that dumping would continue if the finding were revoked and demonstrates that Japanese manufacturers of steel wire strand cannot sell in the United States without dumping.

In conclusion, the domestic industry argued that the Department should determine that there is a likelihood that dumping would continue were the finding revoked because (1) dumping margins have existed throughout the life of the finding, and (2) most companies

[1] *See Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 48 FR 45586 (October 6, 1983); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review and Revocation in Part;* 51 FR 30894 (August 29, 1986); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 52 FR 4373 (February 11, 1987); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 52 FR 37997 (October 13, 1987); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 53 FR 9787 (March 25, 1988); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 53 FR 11162 (April 5, 1988); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 55 FR 28796 (July 13, 1990); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 55 FR 46853 (November 7, 1990); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 56 FR 66840 (December 26, 1991); and *Steel Wire Strand for Prestressed Concrete from Japan; Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Review;* 62 FR 60688 (November 12, 1997).

[2] The domestic industry provided information on U.S. imports of steel wire strand for prestressed concrete from Japan, on an annual basis, in short tons, from 1975 through 1998. The 1998 data was annualized based on data from January through July, 1998.

have dramatically reduced exports or ceased exports of the subject merchandise altogether.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin,* the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. A dumping margin above *de minimis* continues to exist for shipments of the subject merchandise from the Tokyo Wire Rope Manufacturing Co., Ltd.[3]

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the finding. The import statistics provided by the domestic industry on imports of the subject merchandise between 1975 and 1998, and confirmed through the Department's examination of U.S. Census data (IM146 reports), demonstrate that in the two years following the imposition of the finding, imports of the subject merchandise fell by approximately 50,000 short tons (from approximately 80,000 in 1978 to approximately 30,000 short tons in 1980). Since that period, imports of subject merchandise have decreased every year, with few exceptions. The statistics demonstrate that imports of steel wire strand from Japan have not been above 1000 short tons per year since 1990. This is consistent with the Department's findings of no shipments by the reviewed companies in many of the administrative reviews conducted by the Department.[4]

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the finding is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above a *de minimis* level continues in effect for exports of the subject merchandise by at least one known Japanese manufacturer/exporter. Therefore, given that dumping has continued over the life of the finding, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the finding were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin,* the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin.*) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin.*)

Treasury, in its final determination of sales at less than fair value, published weighted-average dumping margins for five Japanese manufacturers and exporters of steel wire strand (43 FR 38495, August 28, 1978). Of these five manufacturers, Treasury discontinued the investigation for one because of *de minimis* margins (Kawatetsu, 43 FR 38495, August 28, 1978) and the Department subsequently revoked the order with respect to another (Sumitomo, 51 FR 30894, August 29, 1986). Treasury did not publish an ''all others'' rate in its determination. The Department indicated in the *Sunset Policy Bulletin* that, under these circumstances, the Department normally will provide to the Commission, as the margin for any new company not reviewed by Treasury, the first ''new shipper'' rate established by the Department for that finding (*see* section II.B.1). We note, that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, the domestic industry recommended that, consistent with the *Sunset Policy Bulletin,* the Department provide to the Commission the company-specific margins included in the Treasury determination published in the **Federal Register**. Further, the domestic industry stated that the Department should inform the Commission of the two companies for which this finding has been revoked, Kawasaki Steel Techno Wire and Sumitomo Electric Industries, Ltd.

As for companies not reviewed in the original investigation, the domestic industry argued that the Department assign these companies a rate of 15.8 percent, the highest company-specific rate identified by Treasury in its determination. Citing the September 29, 1982, **Federal Register** notice *Clear Sheet Glass from Taiwan: Final Results of Administrative Review of Antidumping Finding,* 47 FR 42769, the domestic industry stated that the Department should follow its practice of automatically assigning the highest rate for any of the investigated companies as the ''all others.'' Therefore, the all others rate should be the 15.8 percent calculated by Treasury for Sumitomo Electric Industries, Ltd. and published on August 28, 1978 (43 FR 38495, August 28, 1978). Alternatively, the domestic industry argued that, should the Department believe it should rely on its more recent practice of deriving the ''all others rate,'' the Department should use the weighted-average dumping margin from the original investigation as identified in the Commission's final injury determination of November 29, 1978. In its final determination, the Commission stated that ''[t]he weighted average dumping margin for all the sales compared was 9.76 percent''.[5]

The Department agrees with the domestic industry's assertion that it should report to the Commission the company-specific margins published in the original Treasury final determination. The Department noted, in the *Sunset Policy Bulletin,* that the margins from the original investigation are the only calculated rates that reflect the behavior of exporters without the discipline of the order in place. Therefore, the Department finds these rates are the most probative of the behavior of these companies if the finding were revoked absent

---

[3] *See Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 52 FR 4373 (February 11, 1987), as corrected by *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review; Correction;* 52 FR 37997 (October 13, 1987).

[4] *See Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 48 FR 45586 (October 6, 1983); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review and Revocation in Part;* 51 FR 30894 (August 29, 1986); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 52 FR 4373 (February 11, 1987); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 52 FR 37997 (October 13, 1987); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 53 FR 9787 (March 25, 1988); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 53 FR 11162 (April 5, 1988); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 55 FR 28796 (July 13, 1990); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 55 FR 46853 (November 7, 1990); *Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review;* 56 FR 66840 (December 26, 1991); and *Steel Wire Strand for Prestressed Concrete from Japan; Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Review;* 62 FR 60688 (November 12, 1997).

[5] *See Steel Wire Strand for Prestressed Concrete from Japan,* Inv. No. AA1921–188, USITC Pub. 928 at 4 (Nov. 1978) or *Steel Wire Strand for Prestressed Concrete from Japan,* 43 FR 55826, November 29, 1978.

information and argument to the contrary.

The Department agrees with the domestic industry, in part, concerning the choice of the ''all others'' rate. We have no basis for applying the Department's early all others rate policy to the Treasury investigation. In fact, the Department itself abandoned the practice of applying the highest rate for responding firms as the all others rate. Currently, the all others rate is the weighted-average of the individual dumping margins calculated for those exporters and producers that are individually investigated. Therefore, we agree with the domestic industry that the weighted-average dumping margin for all sales of the subject merchandise, as calculated by Treasury and published by the Commission in its final injury determination for this proceeding, is an appropriate measure of the first ''all others'' rate. Thus, the Department will report to the Commission the company-specific and all others rates from the original investigation as contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping finding would likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Kawasaki Steel Techno-Wire Co, Ltd.	Investigation
(formerly Kawatetsu Wire Products Co., Ltd.).	Discontinued
Shinko Wire Co., Ltd	13.3
Sumitomo Electric Industries, Ltd. (and exported by Sumitomo Corp.).	Revoked
Suzuki Metal Industry Co., Ltd.	6.9
Tokyo Rope Manufacturing Co., Ltd.	4.5
All Others	9.76

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 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 five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 30, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–247 Filed 1–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Welded Carbon Steel Pipe and Tube From Taiwan; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on circular welded carbon steel pipe and tube from Taiwan. The review covers two manufacturers/exporters of the subject merchandise and the period May 1, 1997 through April 30, 1998.

EFFECTIVE DATE: January 6, 1999.

FOR FURTHER INFORMATION CONTACT: Martin Odenyo or John Kugelman, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–5254 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION: On June 29, 1998, the Department initiated this administrative review of the antidumping duty order on circular welded carbon steel pipe and tube from Taiwan (62 FR 40258). The current deadline for the preliminary results is January 30, 1999. We determined that it is not practicable to complete this review within the original time frame. (*See* Memorandum to Robert S. LaRussa dated December 30, 1998.)

Accordingly, the deadline for issuing the preliminary results of this review is now May 28, 1999. The deadline for issuing the final results of this review will be no later than 120 days from the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

Dated: December 30, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement, Group III.

[FR Doc. 99–243 Filed 1–5–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–816]

Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Elastic Rubber Tape from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 6, 1999.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Suresh Maniam, Office I, AD/CVD Enforcement, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 482–2815 or 482–0176, respectively.

Applicable Statute:

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act).

Supplementary Information:

On November 30, 1998, we completed the preliminary negative countervailing duty determination pertaining to elastic rubber tape from India. On December 4, 1998, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final antidumping duty determination in the antidumping investigation of elastic rubber tape from India. See *Notice of Initiation of Countervailing Duty Investigation: Elastic Rubber Tape from India*, 63 FR 49549 (September 16, 1998). The final antidumping duty determination is currently due on April 12, 1999.

This notice is published in accordance with section 705(a)(1) of the Act.

Dated: December 30, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–241 Filed 1–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On December 23, 1998, Allied Tube and Conduit Company, the Sawhill Tubular Division of Armco, Inc., and Wheatland Tube Company filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Scope Ruling on the antidumping order respecting Circular Welded Non-Alloy Steel Pipe and Tube from Mexico; Galvak, S.A. de C.V. This determination was made by the International Trade Administration and served on the Embassy of Mexico in Washington, D.C. on November 30, 1998. The NAFTA Secretariat has assigned File Number USA–MEX–98–1904–05 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews (''Rules''). These Rules were published in the* **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on December 23, 1998, requesting panel review of the final scope ruling described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in party by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the First Request for Panel Review (the deadline for filing a Complaint in January 22, 1999);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may anticipate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is February 8, 1999); and

(c) The panel review shall be limited to the allegations for error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: December 28, 1998.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 99–124 Filed 1–4–99; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 123098E]

Notice of Intent to Prepare an Environmental Impact Statement on Habitat Conservation Plans for the Operation of Three Hydroelectric Projects on the Mid-Columbia River in Washington

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

ACTION: Notice of intent to conduct public scoping meetings and prepare an Environmental Impact Statement (EIS).

SUMMARY: This notice advises the public that NMFS intends to gather information necessary to prepare an EIS related to a request by two Washington State public utility districts for incidental take permits (Permits) to take endangered and threatened species under section 10(a)(1)(B) of the Endangered Species Act (Act). The applicants are the Public Utility District No. 1 of Chelan County, Washington and the Public Utility District No. 1 of Douglas County, Washington (Districts). Applications are related to the operation of three hydroelectric projects on the mid-Columbia River in the state of Washington. The Districts are requesting Permits for two listed species, Upper Columbia spring chinook salmon (*Oncorhynchus tshawytscha*) and Upper Columbia steelhead (*O. mykiss*). The Districts also plan to seek coverage for other species not currently listed in the mid-Columbia region. These species are summer and fall chinook salmon (*O. tshawytscha)* and sockeye (*O. nerka*) salmon. Based on the requirements of the Act, the Districts have prepared Habitat Conservation Plans (HCPs) that include measures to minimize and mitigate any taking of species that may occur incidental to the operation of the hydroelectric projects.

In June 1998, NMFS, the U.S. Fish and Wildlife Service, the Districts, the Washington Department of Fish and Wildlife, the Confederated Tribes and Bands of the Yakima Indian Nation, the Confederated Tribes and Bands of the Colville Reservation, the Confederated Tribes of the Umatilla Reservation and American Rivers, Inc. signed a declaration acknowledging the work to date on the HCP and their commitment to complete the regulatory actions necessary to issuing a permit.

DATES: Written comments from all interested parties must be received on or before February 5, 1999. Public scoping meetings will be held in Wenatchee and Brewster, WA. The Wenatchee meeting is scheduled for 7 p.m., January 20, 1999, at the Chelan Public Utility District Auditorium, 327 N. Wenatchee Ave. The Brewster meeting will be held at 7 p.m. on January 21, 1999, at the Senior Center, 109 South Bridge St.

ADDRESSES: Comments and requests for information should be sent to Jane Banyard, NMFS, 510 Desmond Drive SE, Suite 103, Lacey, WA, 98503; telephone (360) 534–9338; facsimile (360) 753–9517. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the same address. Questions regarding the HCPs should be directed to Steve Landino, NMFS, 510 Desmond Drive SE, Suite 103, Lacey, WA, 98503;

telephone (360) 753–6054; facsimile (360) 753–9517.

SUPPLEMENTARY INFORMATION:

Background

The Districts own and manage three hydroelectric dams and associated facilities on the Columbia River. These dams are used to supply power to the citizens of Chelan, Douglas, and Okanogan Counties, as well as other public and private utilities that serve over 7 million customers throughout the Pacific Northwest. Operation of the dams has the potential to impact species subject to protection under the Act. Section 10(a)(1)(B) of the Act contains provisions for issuing incidental take permits to non-federal landowners for the take of endangered and threatened species, provided the following criteria is met:

(1) the taking will be incidental;

(2) the applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;

(3) the applicant will ensure that adequate funding for the Plan will be provided;

(4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(5) any other measures that the NMFS may require as being necessary or appropriate for the purposes of the Plan are met.

The Districts have initiated discussions with NMFS regarding the possibility of securing Permits for their hydroelectric project operations on the Mid-Columbia River, and they have prepared an HCP for each project. The Districts' intention in developing the HCPs was to establish a comprehensive approach to protect federally listed species and their habitats as affected by project operations. Activities proposed for coverage under the Permits include the following:

(1) Operation and maintenance of the Rock Island Hydroelectric project, FERC No. 943, in accordance with its FERC license, and the Rock Island HCP.

(2) Operation and maintenance of the Rocky Reach Hydroelectric project, FERC No. 2145, in accordance with its FERC license, and the Rocky Reach HCP.

(3) Operation and maintenance of the Wells Hydroelectric project, FERC No. 2149, in accordance with its FERC license, and the Wells HCP.

NMFS will conduct an environmental review of the HCPs and prepare an EIS. The environmental review will analyze the proposals in the HCPs as well as a full range of reasonable alternatives and the associated impacts of each. Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action is identified. The review of this project will be conducted according to the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, and policies and procedures of NMFS for compliance with those regulations.

After the environmental review is completed, NMFS will publish a notice of availability and a request for comment on the draft EIS and the HCPs.

Dated: December 31, 1998.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–221 Filed 1–5–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102998B]

Marine Mammals; Scientific Research Permit (PHF# 895–1450)

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

ACTION: Issuance of Permit.

SUMMARY: Notice is hereby given that Ms. Rachel Cartwright, 10 Greave, Romiley, Stockport, Cheshire SK6 4PU, England, has been issued a permit to take North Pacific humpback whales (*Megaptera novaeangliae*) for purposes of scientific research.

ADDRESSES: The permit and related documetns are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (562/980-4001); and

Protected Species Program Manager, Pacific Islands Area Office, 2570 Dole Street, Room 106, Honolulu, HI 9682–2396 (808/973–2987).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On April 15, 1998, notice was published in the Federal Register (63 FR 18378) that a request for a scientific research permit to take North Pacific humpback whales had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–227).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 23, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–218 Filed 1–5–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Agency Information Collection Activities: Proposed Collection

AGENCY: Air Force Medical Operations Agency, DoD.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Air Force Medical Operations Agency, Clinical Quality Management Division, AFMOA/SGOC, announces the proposed reinstatement and the initiation of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received on or before March 8, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to 110 Luke Avenue, Room 405, Bolling AFB, DC 20332–7050, ATTN: Maj Lynn Poppino.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call AFMOA/SGOC at (202) 767–4077.

Title, Associated Forms, and OMB Number: Medical Treatment Facility Incident Statement, AF Form 765, OMB Number 0701–0135

Needs and Uses: The form is used by respondents (hospital employees, including non-governmental personnel and contractors) to report specific incidents that may have resulted in injury. It is not filed in a patient's record, but is kept by the medical treatment facility (MTF) Quality Service/Risk Manager until appropriate actions are completed to analyze the incident and determine whether corrective action is necessary to avoid repeat incidents. After completion, and corrective action if required, the form is retained for one year and then destroyed. Information recorded on the form is concise statements of fact. If the information is not collected as needed, MTFs will lose the opportunity to identify potential risks in the facilities. Possible outcomes for failure to identify risks are medical malpractice, patient injury or death, unnecessary financial expenditure, and poor public perception of the MTF.

Affected Public: All individuals in Air Force Medical Treatment Facilities, to include patients, visitors, contractors, civilian, and military staff members.

Annual Burden Hours: 1,056.

Number of Respondents: 13,200.

Responses per Respondent: 1.

Average Burden per Respondent: 5 minutes.

Frequency: In the event of an incident resulting in injury or possible injury.

SUPPLEMENTARY INFORMATION: Summary of Information Collection.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–212 Filed 1–5–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–137–000]

Columbia Gas Transmission Corporation; Notice of Application To Abandon

December 31, 1998.

Take notice that on December 23, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030, filed under Section 7(b) of the Natural Gas Act, for authority to abandon by removal the Beaver Creek Compressor Station (Beaver Creek), located in Floyd County, Kentucky, effective November 30, 1999. Beaver Creek is comprised of nine compressor units which produce a total of 9,000 hp, two dehydration systems, and associated piping, all as more fully described in the application on file with the Commission and open to public inspection.

Columbia states that some of the Beaver Creek facilities are more than 70 years old, and that maintenance of the facility is difficult. Columbia states further, that as of November 30, 1999, Beaver Creek will no longer be needed to meet any of Columbia's service obligations.

Any person desiring to be heard or make any protest with reference to said application should on or before January 21, 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 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 Protesters parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–259 Filed 1–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–130–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

December 31, 1998.

Take notice that on December 21, 1998, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP99–130–000 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 modify an existing metering facility, with appurtenances at the Lone Butte Meter Station Delivery Point located in Maricopa County, Arizona. El Paso states that modification of the metering facility will permit more accurate measurement under various flow conditions for the firm transportation and delivery of natural gas to Southwest Gas Corporation (Southwest). 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 firm transportation service for Southwest pursuant to the terms and conditions of an existing Transportation Service Agreement (TSA) dated August 9, 1991, as amended and restated.

El Paso further states that the Lone Butte Meter Station was designed to operate under constant, high-flow conditions, but states that due to the development of substantial variations in gas demand, service at the Lone Butte Meter Station Delivery Point fluctuates causing several low-flow conditions. El

Paso avers that the low-flow conditions prevent the metering equipment from performing accurate measurement. It is further indicated that when the low-flow conditions occur, that El Paso will experience certain amounts of lost and unaccounted for gas volumes.

In resolution of the problem occurring due to the various flow conditions, El Paso has determined that the installation of a second meter run to measure low-flow volumes would provide accurate measurement. El Paso is therefore proposing to modify the Lone Butte Meter Station Delivery Point by installing a turbine meter run designed to measure low-flow conditions accurately. It is stated that such facility modification should minimize repeated maintenance and related operational activities.

It is stated that the modification of the existing Lone Butte Meter Station Delivery Point will not significantly increase the deliveries of natural gas to Southwest, and that the proposed measurement equipment has a maximum design of 20 Mcf of natural gas per hour. El Paso indicated that under most operating conditions, that only the existing meter run or the proposed meter run will be operating at any given time. It is averred that the only time that both meter runs will be used will be under unusual peaking situations.

El Paso states that modification and operation of the existing Lone Butte Meter Station Delivery Point is not prohibited by El Paso's existing tariff. It is further stated that El Paso has sufficient capacity to accomplish the deliveries of the requested gas volumes without detriment or disadvantage to El Paso's 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. 99–256 Filed 1–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–132–000]

Midwestern Gas Transmission Company, Texas Gas Transmission Corporation, Tennessee Gas Pipeline Company; Notice of Application

December 31, 1998.

Take notice that on December 22, 1998, Midwestern Gas Transmission Company (Midwestern), 1001 Louisiana, P.O. Box 2511, Houston, Texas 77252–2511, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, and Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, P.O. Box 2511, Houston, Texas 77252–2511 (jointly referred to as Applicants) filed a joint application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations thereunder, requesting authority to abandon a natural gas exchange service between Midwestern and Texas Gas which was authorized in Docket No. G–20520,[1] all as more fully described in the application on file with the Commission and open to public inspection.

Specifically, Applicants propose to abandon the exchange service between Midwestern and Texas Gas provided under Midwestern's Rate Schedule EX–3 and Texas Gas' Rate Schedule X–25. Tennessee also requests authorization to abandon its certificate in connection with the exchange service. In that regard, Tennessee was issued a certificate in Docket No. G–20520 because the proposed exchange of gas between Midwestern and Texas Gas contemplated the possible use of Tennessee's pipeline facilities in order to effectuate deliveries. The Applicants state that this exchange service is no longer required by Midwestern and Texas Gas, and has been terminated by mutual agreement.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 21, 1999, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protesters parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–257 Filed 1–5–99; 8:45 am]

BILLING CODE 6717–01–M

[1] *See,* 23 FPC 765 (1960).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–131–000]

Panhandle Eastern Pipe Line Company; Notice of Application

December 30, 1998.

Take notice that on December 21, 1998, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, tendered for filing in Docket No. CP99–131–000 an application pursuant to Sections 7(b) of the Natural Gas Act for permission and approval to abandon to certain facilities located in Kiowa County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that it would abandon in place, by sale to Dynegy Energy Resources, Limited Partnership (Dynegy), approximately 2.882 miles of 4-inch pipeline and related facility. Panhandle states further that upon abandonment, Dynegy would operate the facilities as part of its non-jurisdictional gathering system and asks the Commission to find the facilities to be non-jurisdictional upon abandonment.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before January 19, 1999, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determing the appropriate action to be taken but will not service to make the protestants parties to the proceeding. The Commission's rules require that protectors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be place on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the invervenors. An Intervenor can file for rehearing of any Commission order and can petition of court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered, a person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on is own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–159 Filed 1–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–133–000]

Tennessee Gas Pipeline Company, Texas Gas Transmission Corporation; Notice of Application

December 31, 1998.

Take notice that on December 22, 1998, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston, Texas 77252–2511, and Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed a joint application with the Commission in Docket No. CP99–133–000 pursuant to Section 7 of the Natural Gas Act (NGA) for permission and approval to abandon an exchange service performed under Tennessee's FERC Gas Tariff Rate Schedule X–52 and Texas Gas' FERC Gas Tariff Rate Schedule X–62, all as more fully set forth in the request which is open to the public for inspection.

Tennessee and Texas Gas received authority on October 6, 1976, to exchange gas in Docket No. CP76–321 [1] under their respective FERC Gas Tariff rate schedules. Tennessee and Texas Gas state that this exchange service has not been used for several years and is no longer needed. By mutual agreement, the parties via a letter dated July 30, 1996, terminated the exchange service. No facilities would be abandoned in this proposal.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 21, 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 permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee or Texas Gas to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–258 Filed 1–5–99; 8:45 am]

BILLING CODE 6717–01–M

[1] 56 FPC 2095 (1976).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–921–000, et al.]

California Independent System Operator Corporation, et al.; Electric Rate and Corporate Regulation Filings

December 29, 1998.

Take notice that the following filings have been made with the Commission:

1. California Independent System Operator Corporation

[Docket No. ER99–921–000]

Take notice that on December 15, 1998, the California Independent System Operator Corporation (ISO), tendered for filing an informational filing in accordance with the April 7, 1998, Settlement in Docket Nos. ER98–211–000, ER98–210–000, ER98–1729–000, ER98–462–000, ER98–556–000 and ER98–557–000. The informational filing contains the 1999 Grid Management Charge (GMC), calculation based on the formula in the April 7, 1998, Settlement and supporting cost information for 1999.

Copies of the filing were served upon the official and restricted service lists for the above-mentioned dockets and the California Public Utilities Commission.

2. Boston Edison Company, Entergy Nuclear Generation Company, Boston Edison Company

[Docket Nos. EC99–18–000, EL99–22–000, ER99–1023–000]

Take notice that on December 24, 1998, Boston Edison Company (Boston Edison) and Entergy Nuclear Generation Company (Entergy Nuclear) (collectively, the Applicants) filed a Joint Application under Section 203 of the Federal Power Act (FPA) and Part 33 of the Commission's Regulations to request authorization and approval: (1) for Boston Edison to sell and Entergy Nuclear to purchase certain jurisdictional transmission facilities which are appurtenant to Boston Edison's Pilgrim Nuclear Power Station (Pilgrim) which Boston Edison is also selling to Entergy Nuclear; and (2) for Boston Edison to assign to Entergy Nuclear:

(i) Certain specified duties under Pilgrim entitlement contracts between Boston Edison and certain Massachusetts municipal electric systems (Municipals) which give each Municipal an entitlement in a stated percentage of Pilgrim's capacity and energy and obligate each Municipal to pay that same percentage of Pilgrim's ownership and operating costs, and (ii) a contract for the sale and transmission of station service power to the Pilgrim plant.

The Applicants state that copies of the filing have been posted and served upon the Municipals, the Massachusetts Department of Telecommunications and Energy, and the regulatory commissions of the City of New Orleans and of the States of Arkansas, Louisiana, Texas and Mississippi which have jurisdiction over Entergy Nuclear's domestic electric utility operating affiliates.

Boston Edison also tender for filing on December 24, 1998, a petition for a declaratory order in connection with its proposed sale of its Pilgrim Nuclear Power Station (Pilgrim) to Entergy Nuclear Generation Company (Entergy Nuclear) and its proposed assignment of certain specified duties under Pilgrim entitlement contracts between Boston Edison and certain Massachusetts municipal electric systems (Municipals) which give each Municipal an entitlement in a stated percentage of Pilgrim's capacity and energy and obligate each Municipal to pay that same percentage of Pilgrim's ownership and operating costs.

Boston Edison states that the declaratory order petition seeks confirmation from the Commission that the sale of Pilgrim does not give the Municipals a right to terminate their contracts; that the partial assignment by Boston Edison is a valid exercise of its contractual authority; and that Boston Edison's rights to continue making sales and recover costs under the contracts is not affected by the sale to Entergy Nuclear and will continue as if the sale had not been made. Boston Edison also seeks certain decommissioning rulings including a ruling that the Municipals are obligated to compensate it for the decommissioning payment made to Entergy Nuclear as part of the sale and including authorization from the Commission, as needed, to transfer the accrued Pilgrim decommissioning funds to Entergy Nuclear.

Boston Edison states that copies of the filing have been posted and served upon the Municipals, Entergy Nuclear, the Massachusetts Department of Telecommunications and Energy, and the regulatory commissions of the City of New Orleans and of the States of Arkansas, Louisiana, Texas and Mississippi which have jurisdiction over Entergy Nuclear's domestic electric utility operating affiliates.

The names, rate schedule numbers and entitlement and cost responsibility percentages of the Municipals are:

Customer	Rate schedule No.	Entitlement/cost responsibility (percent)
Boylston Municipal Light Department ...	77	.07463
City of Holyoke Gas and Electric Department	79	.89552
Westfield Gas & Electric Light Department	81	.22388
Hudson Light & Power Department	83	.37313
Littleton Electric Light & Water Department	85	.14925
Marblehead Municipal Light Department ...	87	.14925
North Attleboro Electric Department	89	.14925
Peabody Municipal Light Plant	91	.22388
Shrewsbury Municipal Light Plant	93	.37313
Templeton Municipal Light Department ...	95	.04478
Wakefield Municipal Light Department ...	97	.14925
West Boylston Municipal Light Department	99	.07463
Middleborough Municipal Gas & Electric Department	102	.10448
Reading Municipal Light Plant	113	.74627

Boston Edison further submitted for filing on December 24, 1998, three rate schedules with the Commission as elements of a transaction pursuant to which Boston Edison is selling its Pilgrim Nuclear Power Station (Pilgrim) to Entergy Nuclear Generation Company (Entergy Nuclear). The rate schedules are: (i) the Third Amendment to Boston Edison's contract with Montaup Electric Company (FERC Rate Schedule No. 69); (ii) the Fourth Amendment to its contract with Commonwealth Electric Company (FERC Rate Schedule No. 68); and (iii) an agreement under which Boston Edison will provide interconnection service to Entergy Nuclear to connect Pilgrim to the transmission grid after the sale has been made. The Montaup and Commonwealth amendments, subject to the conditions therein stated including payment of a termination fee, terminate the contracts under which Commonwealth and Montaup had each acquired life-of-unit entitlements in 11% of Pilgrim capacity and energy and incurred the obligation to pay 11% of Pilgrim ownership and operating costs.

Boston Edison states that copies of the filing have been posted and served upon Commonwealth Electric Company, Montaup Electric Company, Entergy

Nuclear, the Massachusetts Department of Telecommunications and Energy, and the regulatory commissions of the City of New Orleans and of the States of Arkansas, Louisiana, Texas and Mississippi which have jurisdiction over Entergy Nuclear's domestic electric utility operating affiliates.

Comment date: January 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Public Service Corporation

[Docket No. ER99–994–000]

Take notice that on December 24, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing two short-term transaction specification sheets for wholesale power sales to its affiliate, Upper Peninsula Power Company under its Market-Based Rate Tariff. The specification sheets cover (1) 1998 sales which have been disclosed on WPSC's ''Home Page'' and in WPSC's quarterly Market-Based Rate Tariff reports to the Commission, and (2) sales which will take place in 1999.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Peco Energy Company

[Docket No. ER99–995–000]

Take notice that on December 24, 1998, PECO Energy Company (PECO), tendered for filing a Service Agreement dated August 7, 1998 with West Penn Power Company (WPPC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds WPPC as a customer under the Tariff.

PECO requests an effective date of December 21, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to WPPC and to the Pennsylvania Public Utility Commission.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. PP&L, Inc.

[Docket No. ER99–996–000]

Take notice that on December 24, 1998, PP&L, Inc. (PP&L), tendered for filing a partially executed Service Agreement dated December 21, 1998, with Central Vermont Public Service Corporation (CVPSC), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Volume No. 5. The Service Agreement adds CVPSC as an eligible customer under the Tariff.

PP&L requests an effective date of December 23, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to CVPSC and to the Pennsylvania Public Utility Commission.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ER99–997–000]

Take notice that on December 24, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Oglethorpe Power Corporation (Transmission Customer), under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of December 23, 1998.

Copies of the filing were served upon Oglethorpe Power Corporation, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER99–998–000]

Take notice that on December 24, 1998 Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with Oglethorpe Power Corporation under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of December 23, 1998.

Copies of the filing were served upon Oglethorpe Power Corporation, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. PP&L, Inc.

[Docket No. ER99–999–000]

Take notice that on December 24, 1998, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated December 8, 1998, with Energy Atlantic, LLC (Energy) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds Energy as an eligible customer under the Tariff.

PP&L requests an effective date of December 23, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Energy and to the Pennsylvania Public Utility Commission.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER99–1000–000]

Take notice that on December 24, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and the Town of Sharpsburg, North Carolina under the FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000. Under the tendered Service Agreement, Virginia Power will provide services to the Town of Sharpsburg, North Carolina under the rates, terms and conditions of the applicable Service Schedules included in the Tariff.

Virginia Power requests an effective date of December 23, 1998.

Copies of the filing were served upon the Town of Sharpsburg, North Carolina, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. CH Resources, Inc.

[Docket No. ER99–1001–000]

Take notice that on December 24, 1998, CH Resources, Inc. (Resources), tendered for filing proposed market-based rate schedules for the sale of capacity and energy and for the sale of ancillary services pursuant to negotiated agreements, together with a form of service agreement and a code of conduct to govern relationships with franchised public utilities.

Resources requests that the Commission accept these rate schedules

for filing and grant such waivers of its regulations and blanket authorizations as the Commission has granted to power marketers and non-franchised public utilities with market-based rate authority.

Resources requests the Commission to permit its proposed rate schedules to take effect on December 25, 1998.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1002–000]

Take notice that on December 24, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 12 to add three (3) new Customers to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of January 1, 1999, to Monongahela Power Company, The Potomac Edison Company and West Penn Power Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc.

[Docket No. ER99–1003–000]

Take notice that on December 23, 1998, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company (MPC), and Savannah Electric and Power Company (collectively referred to as Southern Company), tendered for filing a service agreement for network integration transmission service between SCS, as agent for Southern Company, and Southern Wholesale Energy, a Department of SCS, as agent for MPC and two (2) service agreements for firm point-to-point transmission service between SCS, as agent for Southern Company, and (i) Kentucky Utilities Company, and (ii) Louisville Gas & Electric under the Open Access Transmission Tariff of Southern Company (FERC Electric Tariff, Original Volume No. 5).

Comment date: January 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Nuclear Generating Company

[Docket No. ER99–1004–000]

Take notice that on December 24, 1998, Entergy Nuclear Generating Company tendered for filing a petition for waiver and blanket approvals under various regulations of the Commission and for an order accepting its proposed tariff governing negotiated market-based capacity and energy sales. Entergy Nuclear is also submitting, pursuant to the market rate tariff, four long-term power purchase agreements for sale of power from the Pilgrim nuclear generating plant.

Entergy Nuclear has requested the market rate tariff to become effective at the earliest possible date.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Kansas City Power & Light Company

[Docket No. ER99–1005–000]

Take notice that on December 24, 1998, Kansas City Power & Light Company (KCPL), tendered for filing proposed changes to KCPL's market-based rate tariff governing negotiated market-based capacity and energy sales and for an order accepting its proposed tariff changes.

KCPL has requested an effective date of February 24, 1999.

A copy of this filing was served on customers presently taking service under KCPL's market-based rate tariff.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Kansas City Power & Light Company

[Docket No. ER99–1006–000]

Take notice that on December 24, 1998, Kansas City Power & Light Company (KCPL), tendered for filing its updated market power study under KCP&L's market-based rate tariff, FERC Electric Tariff, Original Volume No. 4.

A copy of this filing was served on customers presently taking service under FERC Electric Tariff, Original Volume No. 4.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Kansas City Power & Light Company

[Docket No. ER99–1008–000]

Take notice that on December 23, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated December 4, 1998, between KCPL and Ameren Services Company. This Agreement provides for the rates and charges for Non-Firm Transmission Service. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

KCPL proposes an effective date of December 14, 1998, and requests waiver of the Commission's notice requirement.

Comment date: January 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. The Washington Water Power Company

[Docket No. ER99–1010–000]

Take notice that on December 23, 1998, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a revised Exhibit A (Points of Delivery) for the executed Interconnection and Operating Agreement between WWP and Kootenai Electric Cooperative. Exhibit A will replace and supersede the previously filed Exhibit A.

WWP respectfully requests that the Commission waive the prior notice requirement and an effective date of January 1, 1999.

Comment date: January 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Mississippi Power Company

[Docket No. ER99–1011–000]

Take notice that on December 23, 1998, Mississippi Power Company and Southern Company Services, Inc., its agent, tendered for filing a Service Agreement, pursuant to the Southern Companies Electric Tariff Volume No. 4—Market Based Rate Tariff, with South Mississippi Electric Power Association for the OLOH Delivery Point to Pearl River Valley Electric Power Association. The agreement will permit Mississippi Power to provide wholesale electric service to South Mississippi Electric Power Association at a new service delivery point.

Copies of the filing were served upon South Mississippi Electric Power Association, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff.

Comment date: January 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. PJM Interconnection, L.L.C.

[Docket No. ER99–1012–000]

Take notice that on December 23, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing four executed service agreements with NP Energy for point-to-point transmission service under the PJM Open Access Transmission Tariff.

The effective date of all the agreements is January 1, 1999. PJM requests waiver of the Commission's 60-day notice requirements.

Copies of this filing were served upon the parties to the service agreements.

Comment date: January 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Commonwealth Edison Company

[Docket No. ER99–1013–000]

Take notice that on December 23, 1998, Commonwealth Edison Company (ComEd), tendered for filing Non-Firm Service Agreements with American Municipal Power—Ohio, Inc. (AMPO) and Transalta Marketing (U.S.) Inc. (TEM), a Short-Term Firm Service Agreement with American Municipal Power—Ohio, Inc. (AMPO), and a Firm Service Agreement with Commonwealth Edison Company, in the wholesale merchant function (ComEd WMD), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of December 23, 1998, for the service agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on AMPO, TEM, and ComEd WMD.

Comment date: January 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Washington Water Power Company

[Docket No. ER99–1014–000]

Take notice that on December 23, 1998, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an executed Firm Point-to-Point Service Agreement under WWP's Open Access Transmission Tariff, second revised Volume No. 8, with Kootenai Electric Cooperative.

WWP respectfully requests that the Commission waive the prior notice requirements and also requests an effective date of January 1, 1999, for the Service Agreement.

Comment date: January 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Duquesne Light Company

[Docket No. ER99–1015–000]

Take notice that on December 24, 1998, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with NorAm Energy Services, Inc., (Customer).

Duquesne has requested that the Commission waive its notice requirements to allow the Service Agreement to become effective as of December 23, 1998.

Copies of this filing were served upon Customer.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Duquesne Light Company

[Docket No. ER99–1016–000]

Take notice that on December 24, 1998, Duquesne Light Company (DLC), tendered for filing a Service Agreement for non-firm point-to-point transmission service dated December 23, 1998, with West Penn Power d/b/a Allegheny Energy under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds West Penn Power d/b/a Allegheny Energy as a customer under the Tariff.

DLC requests waiver of the Commission's sixty-day notice requirement and an effective date of December 23, 1998, for the Service Agreement.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Duquesne Light Company

[Docket No. ER99–1017–000]

Take notice that on December 24, 1998, Duquesne Light Company (DLC), tendered for filing a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated December 23, 1998, CSW Energy Services, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds CSW Energy Services, Inc., as a customer under the Tariff.

DLC requests an effective date of December 23, 1998, for the Service Agreement.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Duquesne Light Company

[Docket No. ER99–1018–000]

Take notice that on December 24, 1998, Duquesne Light Company (DLC), tendered for filing a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated December 23, 1998, Duke Solutions, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Duke Solutions, Inc., as a customer under the Tariff.

DLC requests an effective date of December 23, 1998, for the Service Agreement.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Green Mountain Power Corporation

[Docket No. ER99–1019–000]

Take notice that on December 22, 1998, Green Mountain Power Corporation tendered for filing a Memorandum of Understanding to revise a Contract with Hydro-Québec for the purchase of call options by Hydro-Québec and correct typographical errors and erroneous references.

Green Mountain requests an effective date of January 1, 1999.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. New England Power Company

[Docket No. ER99–1020–000]

Take notice that on December 23, 1998, New England Power Company (NEP), tendered for filing a service agreement under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 9, between NEP and Browning Ferris Gas Services, Inc., (Browning Ferris). Under the service agreement, NEP will provide Firm Local Generation Delivery Service to Browning Ferris.

NEP requests an effective date of November 23, 1998, for the filing.

Comment date: January 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Washington Water Power Company

[Docket No. ER99–1021–000]

Take notice that on December 23, 1998, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric

Tariff, second revised Volume No. 8, with Kootenai Electric Cooperative.

WWP respectfully requests that the Commission waive the prior notice requirement and allow the Service Agreements to become effective as of January 1, 1999.

Comment date: January 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Washington Water Power Company

[Docket No. ER99–1022–000]

Take notice that on December 24, 1998, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with Kootenai Electric Cooperative.

WWP requests waiver of the prior notice requirement and requests an effective date of December 18, 1998.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Kansas City Power & Light Company

[Docket No. OA97–636–000]

Take notice that on December 23, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated December 4, 1998, between KCPL and Ameren Services Company. This Agreement provides for the rates and charges for Short-term Firm Transmission Service. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

KCPL proposes an effective date of December 14, 1998 and requests a waiver of the Commission's notice requirement to allow the requested effective date.

Comment date: January 13, 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. 99–263 Filed 1–5–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–23–000, et al.]

Western Systems Coordinating Council, et al.; Electric Rate and Corporate Regulation Filings

December 30, 1998.

Take notice that the following filings have been made with the Commission:

1. Western Systems Coordinating Council

[Docket No. EL99–23–000]

Take notice that on December 28, 1999, the Western Systems Coordinating Council (WSCC), tendered for filing with the Commission a petition for declaratory order, requesting that the Commission issue a declaratory order (1) asserting jurisdiction over the WSCC's proposed Reliability Management System (RMS), (2) concluding that the RMS, as described in the petition and in the model contracts attached thereto, is just and reasonable and consistent with Commission requirements, and (3) concluding that the Commission is willing to undertake the appellate role specified for the Commission in the RMS alternative dispute resolution procedures. The filing is available on the WSCC's web site (www.wscc.com).

The WSCC requests that the Commission act on the petition by March 31, 1999.

Comment date: January 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. San Diego Gas & Electric Company v. Public Service Company of New Mexico

[Docket No. EL99–21–000]

Take notice that on December 23, 1998, San Diego Gas and Electric Company (SDG&E), tendered for filing a complaint with the Commission against Public Service Company of New Mexico (PNM). In the complaint, SDG&E states that the demand rate charged SDG&E by PNM under a long-term 100-megawatt system power sale is unjust, unreasonable, and unduly discriminatory.

SDG&E asks the Commission to initiate a proceeding under Section 206(b) of the Federal Power Act to investigate the rate and establish a refund effective date of February 22, 1999. SDG&E asks that the complaint be consolidated for hearing and decision with the proceeding in Docket Nos. EL94–5–000, EL96–40–000, and EL97–54–000.

Comment date: January 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Mid-Continent Area Power Pool

[Docket No. ER99–993–000]

Take notice that on December 23, 1998, the Mid-Continent Area Power Pool (MAPP), on behalf of its members that are subject to Commission jurisdiction as public utilities under Section 201(e) of the Federal Power Act, filed amendments to MAPP Schedule F. Among other things, these amendments change the scheduling and reservation deadlines for transmission service and apply the charge for Hourly Non-Firm Coordination Transmission Service to reserved capacity rather than scheduled capacity.

MAPP requests an effective date of March 1, 1999.

Comment date: January 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Energy Canal, L.L.C.

[Docket No. ER99–1024–000]

Take notice that on December 23, 1998, Southern Energy Canal, L.L.C. (Southern Canal), tendered for filing the following agreements as long-term service agreements under its Market Rate Tariff accepted by the Commission in the Docket No. ER98–4115–000:

1. Amended and Restated Power Sales Contract by and between Southern Energy Canal, L.L.C. and Cambridge Electric Light Company and Commonwealth Electric Company.

2. Amended and Restated Power Sales Contract by and between Southern Energy Canal, L.L.C. and Montaup Electric Company.

3. Amended and Restated Power Sales Contract by and between Southern Energy Canal, L.L.C. and Boston Edison Company.

In addition, Southern Canal tendered for filing certain assignments related to the agreements.

Comment date: January 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER99–1025–000]

Take notice that on December 23, 1998, Illinois Power Company tendered for filing an updated market analysis in compliance with the Federal Energy Regulatory Commission's order issued on December 26, 1995, in Docket No. ER96–185–000.

Comment date: January 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER99–1026–000]

Take notice that on December 24, 1998,, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between NMPC and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where NMPC's transmission system connects to its retail distribution system west of NMPC's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

NMPC requests an effective date of December 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Washington Water Power Company

[Docket No. ER99–1027–000]

Take notice that on December 24, 1998, Washington Water Power Company (WWP), tendered for filing, with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an 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 Statoil Energy Trading, Inc.

WWP requests waiver of the prior notice requirement and requests an effective date of December 1, 1998.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Duquesne Light Company

[Docket No. ER99–1028–000]

Take notice that on December 24, 1998, Duquesne Light Company (DLC), tendered for filing a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated December 23, 1998, NorAm Energy Management, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds NorAm Energy Management, Inc., as a customer under the Tariff.

DLC requests an effective date of December 23, 1998, for the Service Agreement.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Duquesne Light Company

[Docket No. ER99–1029–000]

Take notice that on December 24, 1998, Duquesne Light Company (DLC), tendered for filing a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated December 23, 1998, Nicole Energy Services under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Nicole Energy Services as a customer under the Tariff.

DLC requests an effective date of December 23, 1998, for the Service Agreement.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Duquesne Light Company

[Docket No. ER99–1030–000]

Take notice that on December 24, 1998, Duquesne Light Company (DLC), tendered for filing a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated December 23, 1998, Worley & Obetz, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Worley & Obetz, Inc., as a customer under the Tariff.

DLC requests an effective date of December 23, 1998, for the Service Agreement.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Duquesne Light Company

[Docket No. ER99–1031–000]

Take notice that December 24, 1998, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated December 23, 1998 with TransAlta Energy Marketing (U.S.) Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds TransAlta Energy Marketing (U.S.) Inc., as a customer under the Tariff.

DLC requests waiver of the Commission's sixty-day notice requirement and an effective date of December 23, 1998, for the Service Agreement.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Duquesne Light Company

[Docket No. ER99–1032–000]

Take notice that on December 24, 1998, Duquesne Light Company (DLC), tendered for filing a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated December 23, 1998, DTE-CoEnergy, L.L.C., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds DTE-CoEnergy, L.L.C., as a customer under the Tariff.

DLC requests an effective date of December 23, 1998, for the Service Agreement.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Texas-New Mexico Power Company

[Docket No. ER99–1033–000]

Take notice that on December 23, 1998, Texas-New Mexico Power Company (TNMP), tendered for filing a service agreement (including appended power sale agreement) for the sale to Southwestern Public Service Company of capacity and energy in accordance with TNMP's rate schedule for sales of electricity at market-based rates.

Comment date: January 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Electric Company Cambridge Electric Light Company

[Docket No. ER99–1034–000]

Take notice that on December 23, 1998, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission

executed Service Agreements between the Companies and the following Market-Based Power Sales Customers (collectively referred to herein as the Customers), Southern Energy New England L.L.C. and Strategic Energy Ltd.

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Market-Based Power Sales Tariffs designated as Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9). These Tariffs, accepted by the FERC on February 27, 1997, and which have an effective date of February 28, 1997, will allow the Companies and the Customer to enter into separately scheduled short-term transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: January 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Pacific Gas and Electric Company

[Docket No. ER99–1035–000]

Take notice that on December 22, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing a change in its California Independent System Operator Corporation (ISO) Grid Management Charge (GMC) Pass-Through rate from $0.7831 per MWh to $0.7781 per MWh. The reduction in rate is necessary to keep PG&E's ISO GMC Pass-Through rate in conformity with the ISO's GMC. This filing is part of the comprehensive restructuring proposal for the California electric power industry that is before the Federal Energy Regulatory Commission.

PG&E requests that its filing be made effective January 1, 1999.

Copies of this filing have been served upon the California Public Utilities Commission and all other parties on the Service List to this proceeding.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Allegheny Power Service Corp., on behalf of Monongahela Power Co.; The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1036–000]

Take notice that on December 22, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 11 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of December 21, 1998, to FirstEnergy Trading and Power Marketing Inc.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Allegheny Power Service Corp., on behalf of Monongahela Power Co.; The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1037–000]

Take notice that on December 22, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 41 to add PP&L EnergyPlus Co., to Allegheny Power's Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000.

The proposed effective date under the Service Agreement is December 21, 1998.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–1038–000]

Take notice that on December 22, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations to proposed revisions to Attachment A to the Localized Market Power Mitigation Measures Applicable to Sales of Capacity, Energy and Certain Ancillary Services from Specified Generating Units in New York City.

Con Edison states that a copy of this filing was served on the New York Public Service Commission.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Idaho Power Company

[Docket No. ER99–1039–000]

Take notice that on December 23, 1998, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Non-Firm Point-to-Point Transmission Service and Firm Point-to-Point Transmission Service with Statoil Energy Trading, Inc., under Idaho Power Company's FERC Electric Tariff No. 5, Open Access Transmission Tariff.

IPC requests that the Commission accept these Service Agreements for filing, designate an effective date of December 1, 1998, and a rate schedule number.

Comment date: January 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. San Diego Gas & Electric Company

[Docket No. ER99–1040–000]

Take notice that on December 23, 1998, San Diego Gas & Electric Company (SDG&E), tendered for filing a change in rate for the Transmission Revenue Balancing Account Adjustment set forth in its Transmission Owner Tariff (TO Tariff). The effect of this rate change is to reduce rates for jurisdictional transmission service utilizing that portion of the California Independent System Operator's Controlled Grid owned by SDG&E.

SDG&E requests this rate change be made effective January 1, 1999.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Niagara Mohawk Power Corporation

[Docket No. ER99–1041–000]

Take notice that on December 24, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between NMPC and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where NMPC's transmission system connects to its retail distribution system East of NMPC's constrained Central-East Interface. This Transmission Service

Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

NMPC requests an effective date of December 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: January 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Midway-Sunset Cogeneration Company

[Docket No. QF86–433–004]

Take notice that on December 24, 1998, Midway-Sunset Cogeneration Company (MSCC), tendered for filing an application for recertification of its facility as a qualifying cogeneration facility pursuant to Section 292.207 of the Commission's Regulations.

The topping-cycle cogeneration facility is located in Kern County, California. The facility consists of three combustion turbine generating units with three waste heat recovery steam generators. Steam produced by the facility will be used by Aera Energy LLC in enhanced oil recovery operations.

The net electric power production capacity of the facility is 219 MW. The primary energy source is natural gas. The cogeneration facility interconnects with Pacific Gas & Electric Company and has power purchase agreements with both Pacific Gas and Electric Company and Southern California Edison Company.

By order issued October 11, 1994, the Director of the Division of Applications granted recertification of the facility as a cogeneration facility under Docket No. QF86–433–003 (69 FERC 62,018). The recertification is requested because of a change in ownership of the facility. All other facility characteristics remain unchanged.

Comment date: January 25, 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before 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. 99–262 Filed 1–5–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–96–000]

CNG Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed North Summit Pipeline Extension Project and Request for Comments on Environmental Issues

December 31, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities, about 3.5 miles of 8-inch-diameter pipeline and appurtenances, proposed in the North Summit Pipeline Extension Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. 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.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

CNG Transmission Corporation (CNG) wants to facilitate the recovery of injected storage gas that migrated to an undeveloped portion of its North Summit Storage Complex in Fayette County, Pennsylvania. CNG seeks authority to:

- Convert two observation wells (UW–204 and UW–207) to storage wells;
- Replace 0.4 mile of 6-inch-diameter pipeline with an equal length of 8-inch-diameter pipeline (Line No. UP–1);
- Install 2.4 miles of 8-inch-diameter pipeline (Line No. UP–24);
- Install 0.7 mile of 8-inch-diameter pipeline (Line No. UP–25); and
- Install tie-in facilities to Well Nos. UW–204 and UW–207 including a meter, step-ladder drip, separator, fiberglass holding tank, alcohol dropper, valves, a pig launcher and receiver, and other appurtenances.

The location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the proposed facilities would require about 29.8 acres of land. Following construction, about 20.8 acres would be maintained as new permanent right-of-way and about 0.7 acre as new aboveground facility sites. The remaining 8.3 acres of land would be allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage

[1] CNG Transmission Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Public safety.
- Land use.
- Cultural resources.
- Air quality and noise.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comment on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on page 4 of this notice.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by CNG, the Pennsylvania Fish & Boat Commission, and the Pennsylvania Game Commission. This preliminary list of issues may be changed based on your comments and our analysis.

- Three state protected or rare species are known in the vicinity of the proposed project area.
- A total of 18.5 acres of upland forested land on the Forbes State Forest would be cleared by the proposed project.
- The proposed project activities may adversely impact 2.4 acres on State Game Lands No. 138.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commenter, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP–99–96–000; and
- Mail your comments so that they will be received in Washington, DC on or before February 4, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a coy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

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 385.24(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 environmental 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.

Linwood A. Watson, Jr.,

Acting Secretary.

Appendix 1

AN INTERSTATE NATURAL GAS PIPELINE ON MY LAND? WHAT DO I NEED TO KNOW?

Prepared by the Federal Energy Regulatory Commission for Your Information

The Federal Energy Regulatory Commission is charged by Congress with determining whether any proposed interstate pipeline project is the public interest. Part of that determination may affect you if your land is where a natural gas pipeline might be located. We want you to know:

- How the Commission's procedures work;
- What rights you have;
- How the location of a pipeline is decided; and
- What safety and environmental issues might be involved.

Background

The Commission approves the location and construction of interstate pipelines that move natural gas across state boundaries. These pipelines crisscross the United States, moving nearly a quarter of the nation's energy long distances to markets in 48 states. They are vital to the economy.

If your land is on a proposed pipeline route, you will probably first learn of this from the company concerned. Once a company files an application for a certificate to build a pipeline project and the Commission prepares to undertake environmental studies of a significant construction project, local media will be notified and public meetings will be scheduled. You will have an opportunity to express your views and to have them considered. You will have the opportunity to negotiated with the pipeline and to learn the views of other interested parties. The Commission may approve the pipeline, with our without modifications, or reject it. It it is approved and you fail to reach an easement agreement with the company, access to and compensation for use of your land will be set by a court.

Understandibly, the location of pipeline raises urgent questions for landowners. The Commission's process by which it assesses pipeline applications is open and public, with regulations designed to keep all parties informed. This being so, Commission employees may not discuss the merits of pipeline applications with one party without other parties being modified.

This brochure generally explains the Commission's certificate process and addresses the basic concerns of landowners. The Commission's Office of External Affairs at 202/208–1088 will be happy to answer any further questions about the procedures involved.

Most Asked Questions

How the Process Begins

Q: How will I first hear about proposed pipeline construction?

A: As indicated, you will probably first hear of the project from the pipeline company as it prepares environmental studies required for the Commission application.

Q: How can I obtain more details about the company's application?

A: A copy of the company's application can be obtained for a nominal copying charge from the Commission's Public Reference Room. Call 202/208–1371 for details.

Q: This done, how do I participate?

A: There are two ways. If you want the Commission to consider your views on the various environmental issues involved in the location of the pipeline, you can do so by simply writing a letter. The Commission undertakes several levels of environmental analysis. You may comment at any stage in the process. Details are available from the Commission's Office of External Affairs at 202/208–1088. By becoming a commenter, your views will be considered and addressed in the environmental documents or a final order. Additionally, you will be placed on a mailing list to receive environmental documents in the case.

Q: And the second way?

A: You may file to become what is known as an intervenor. This is not complicated and gives you official rights and responsibilities, but it is a more formal involvement and you will be required to follow Commission regulations. You may obtain instructions from the Office of External Affairs. As an intervenor, you will receive Commission documents related to the case and details about what other interested parties are saying. You will also be able to file briefs, appear at hearings and be heard by the courts if you choose to appeal the Commission's final ruling. You must file for intervenor status within 21 days of our notice of the pipeline's application, although this may be waived under certain circumstances, such as the discovery of environmental concerns. But as an intervenor, you will also be obligated to serve copies of what you file with all the other parties. In major cases, there may be hundreds of parties.

Key Issues Involving Location of the Project

Q: How is the pipeline route selected?

A: The pipeline company proposes the route, which is then examined by the Commission. The applicant must study alternative routes to avoid or minimize damage to the environment, and the Commission or intervenors may suggest alternatives and modifications. The effects on buildings, fences, crops, water supplies, soil, vegetation, wildlife, air quality, noise, safety, landowner interests, and more, are taken into consideration. The Commission also considers whether the pipeline can be placed near an existing pipeline, power line, highway or railroad right-of-way.

Q: How do pipelines obtain a right-of-way?

A: In the first instance, they negotiate with landowners who are compensated for signing an easement document. They may be paid for loss of the land during construction, loss of any other resources and any damage to property. As indicated, if the Commission approves the project and no agreement with the landowner is reached, the pipeline may take the land under eminent domain (a right of a government to take private land for public use) with a court determining compensation under state law.

Q: How large is the right-of-way and how is it maintained?

A: Usually, it is 75 to 100 feet wide during construction. The permanent site is about 50 feet wide. Routine vegetation maintenance is done no more than once every three years. A ten-foot-wide corridor, centered on the pipeline, may be maintained annually.

Q. Who pays taxes on the right-of-way?

A: The landowner pays taxes on the right-of-way unless a local taxing authority grants relief. The pipeline simply has an easement across a portion of the land.

Q. Must the company obey local, county and state laws and zoning ordinances?

A: Generally, yes. If there is a conflict, however, the Commission requirement stands.

Q: How close can I build to the pipeline?

A: Usually up to the edge of the right-of-way.

Q: What about bushes, trees, fences and so forth?

A: Deep-rooted trees may be removed from the right-of-way along with other obstructions that prevent observation from aircraft during maintenance. Otherwise, this is subject to negotiation as long as pipeline maintenance and safety are not affected.

Q: How long will the right-of-way be there?

A: Part of it is temporary and will be restored immediately after construction. The permanent right-of-way will remain until the Commission determines it may be abandoned by the pipeline.

The Responsibilities of Gas Companies

Q: Must companies post bonds to guarantee performance?

A: No, but the Commission inspects the right-of-way during and after construction to ensure that the terms of its certificate have been met.

Q: Can the pipeline company come on my land without my permission?

A: State or local trespass laws prevail. No federal statute is involved until a certificate is issued.

Q: When can they start to build?

A: Construction cannot commence until the Commission issues a certificate and the applicant accepts it. For most large pipelines, the time from filing an application to approval ranges from one year to two years. Once a certificate is issued, construction usually starts within a few weeks of the company receiving any outstanding environmental reviews and clearances.

Q: Why would the company approach me before the project is approved?

A: Because of planning and lead time. A company must conduct environmental studies before it files an application with the Commission. If approval is ultimately denied, or the route changes, the initial agreement with the landowner is usually void.

Q: Can the company place more than one pipeline on my property? Can the pipeline and the easement be used for anything other than natural gas?

A: This is subject to negotiation. The Commission grants a certificate only for the proposed pipeline and related facilities in the exact location described. The certificate is only for the transportation of natural gas.

Q: How close can the pipeline be to other pipelines or utility facilities?

A: Pipelines must be at least a foot from any underground structure and between two and three feet below ground. Operators usually want to be 25 feet from another pipeline. If space permits, pipelines can be placed in another utility's right-of-way.

Q: Can I receive service from the pipeline?

A: No, not in most cases. Generally speaking, interstate pipelines are long-distance transporters operating at pressures different from those of your local distribution companies, which are their customers.

Q: Can a pipeline be placed in a river or the ocean?

A: Yes, although this raises a number of separate environmental, cost, design and safety issues.

Important Safety Issues

Q: Are pipelines safe?

A: Accidents are rare and usually result from unauthorized action by a third party. The U.S. Department of Transportation (DOT) enforces strict safety standards and requires safety checks.

Q: How soon after construction will the company restore the land?

A: As soon as the trench is filled and weather permits.

Q: Does natural gas smell?

A: Natural gas is odorless. An artificial odor is generally added for safety purposes in more populated areas on interstate transmission pipelines and in local distribution pipelines in accordance with DOT safety regulations.

Further Environmental Issues

Q: What if my property contains endangered species, wetlands, or archaeological sites?

A: Endangered species must be protected from the effects of pipeline construction and this could affect the location of the pipeline. In the case of wetlands, if proper crossing procedues are used and no alternatives are available, they may be used for a pipeline right-of-way. If an archaeological site falls within guidelines set by the national Register of Historic Places, it must be excavated or the pipeline rerouted. Landowners usually are permitted to keep any artifacts after they are properly studied.

Q: Environmental studies were mentioned earlier. How do they work?

A: A notice of Intent to prepare an environmental assessment (EA) or an Environmental Impact Statement (EIS) is issued for most major proposals. It is sent to federal, state and local agencies, local media and libraries, environmental groups, and, where the Commission is able to identify them, the owners of any land that would be crossed. Additionally, the Commission announces a schedule of public meetings along the proposed route and seeks comments, to be submitted within 30 days, from interested parties. After the comment period, the Commission will prepare an EA or a Draft EIS outlining its findings and recommendations. For major proposals,

further comments are sought during 45 days allotted for review of a Draft EIS or 30 days in the case of an EA. These comments are addressed in the Final EIS or the final order granting or denying the pipeline a certificate.

For additional information, contact: Federal Energy Regulatory Commission, Office of External Affairs, 888 First Street, NE, Washington, DC 20426, 202/208–1088.

[FR Doc. 99–255 Filed 1–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

December 31, 1998.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Filing:* Request for Extension of Time to Commence Project Construction.

b. *Applicant:* Summit Energy Storage, Inc.

c. *Project No.:* The proposed Summit Pumped Storage Hydroelectric Project, FERC No. 9423–024 is to be located near Norton and Wadsworth, in Summit and Medina Counties, Ohio.

d. *Date Filed:* November 17, 1998.

e. *Pursuant to:* Public Law 104–243.

f. *Applicant Contact:* Donald H. Clarke, Esq., Wilkinson, Barker, Knauer & Quinn, LLP, 2300 N Street, N.W., Suite 700, Washington, DC 20037, (202) 783–4141.

g. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

h. *Comment Date:* February 19, 1999.

i. *Description of the Request:* The licensee requests that the deadline for commencement of construction for FERC Project No. 9423 be extended for three consecutive two-year Periods. The deadline to commence project construction for the project would be extended to April 11, 2001. The deadline for completion of construction would be extended to April 11, 2007.

j. *This notice also consist of the following standard paragraphs:* B, C1, and D2.

B. *Comments,* Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR Part 385, subpart B. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''PROTEST'' or ''MOTION TO INTERVENE,'' as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 14 copies as required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: The Director, Division of Project Compliance and Administration, Office of Hydropower Licensing, HL–21, at the above address. A copy of any comments, protest, or motions to intervene, must also be served upon the representative of the applicant specified in this notice.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant. The application may be viewed on the web site at www.ferc.fed.us. Call (202) 208–2222 for assistance.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–160 Filed 1–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft License Application, Preliminary Draft Environmental Assessment (PDEA), and Soliciting Preliminary Terms, Conditions, and Recommendations

December 31, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor Unconstructed Project.

b. *Project No.:* 11561–000.

c. *Applicant:* Alaska Village Electric Cooperative, Inc. Anchorage, Alaska.

d. *Name of Project:* Old Harbor Hydroelectric Project.

e. *Location:* Partially within the Kodiak National Wildlife Refuge, on Mountain Creek, a tributary to the East Fork of Barling Creek, near Old Harbor, Alaska.

f. *Applicant Contact:* Mr. Dan Hertrich, Polarconsult Alaska, Inc., 1503 West 33rd Avenue, Anchorage, AK 99503, (907) 258–2430.

g. *FERC Contact:* Nan Allen (202) 219–2938.

h. Polarconsult Alaska, Inc., mailed a copy of the PDEA and draft license application to interested parties on December 15, 1998. The Commission received a copy of the PDEA and Draft License Application on December 21, 1998.

i. As noted in the Commission's February 25, 1998, letter to all parties, with this notice we are soliciting preliminary terms, conditions, and recommendations for the PDEA and comments on the draft license application.

j. All comments on the PDEA and draft license application for the Old Harbor Project should be sent to the address noted above in item (f) with one copy filed with the Commission at the following address: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Dockets—Room 1A, 888 First Street, Washington, DC 20426.

All comments must (1) bear the heading ''Preliminary Comments'', ''Preliminary Recommendations'', ''Preliminary Terms and Conditions'', or ''Preliminary Prescriptions''; and (2) set forth in the heading the name of the applicant and the project number of the application. Any party interested in commenting must do so before March 15, 1999.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–261 Filed 1–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Solicitation of Written Scoping Comments

December 30, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Minor License.

b. *Project No.:* 696–010.

c. *Date Filed:* October 27, 1998.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* American Fork Hydroelectric Project.

f. *Location:* On American Fork Creek, near the City of American Fork, Utah County, Utah. The project affects about 28.8 acres of federal lands within the Uinta National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Michael B. Burke, Project Manager, PacifiCorp, 825 NE Multnomah, Suite 1500, Portland, OR 97323, (503) 813–6656.

i. *FERC Contact:* Any questions on this notice should be addressed to Gaylord W. Hoisington, E-mail address Gaylord.Hoisington@FERC.FED.US, or telephone (202) 219–2756.

j. *Deadline for filing scoping comments:* February 26, 1999. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a 29-foot 9-inch wide and 4.5-foot-high reinforced concrete diversion dam; (2) a 6-foot-wide 6-foot-long intake; (3) a 6-foot-long 6-foot-wide manually operated sluice gate; (4) a 2-foot-long 2-foot-wide manually operated upstream sluice gate; (5) a 28-inch-diameter welded steel pipe flowline approximately 11,666-foot-long which transitions into a 33-inch-diameter riveted steel penstock 253-foot-long that transitions into a 20-inch-diameter riveted steel penstock 61-foot-long; (6) an approximately 2,700-square-foot brick powerhouse containing one turbine generator unit with a rated capacity of 1,050 kilowatts; and (7) other appurtenances.

m. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process.*

The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and a reasonable alternatives to the proposed action.

We are asking agencies, Indian tribes, non-governmental organizations, and individuals to help us identify the cope of environmental issues that should be analyzed in the EA, and to provide us with information that may be useful in preparing the EA.

To help focus comments on the environmental issues, a scoping document outlining subject areas to be addressed in the EA will soon be mailed to those on the mailing list for the project. Those not on the mailing list may request a copy of the scoping document from the project coordinator, whose telephone number is listed in item i above. A copy of the scoping document may also be viewed or printed by accessing the Commission's WebSite on the Internet at www.ferc.fed.us. For assistance, users can call (202) 208–2222.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–160 Filed 1–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–346–000, TM97–3–24–000, and RP98–123–000]

Equitrans, L.P.; Notice of Informal Settlement Conference

December 30, 1998.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10:00 a.m. on Tuesday, January 12, 1999 and continuing on Wednesday, January 13, 1999, if necessary, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

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 addition information, please contact Irene E. Szopo at (202) 208–1602 or Robert A. Young at (202) 208–5705.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–161 Filed 1–5–99; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

December 21, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following 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 February 5, 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 Commissions, Room 234, 1919 M St., NW., 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 Approval Number: 3060–0835.

Title: Ship Inspection Certificates.

Form Number: FCC 806, FCC 824, FCC 827, and 829.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions; State, Local, or Tribal Governments.

Number of Respondents: 3,730.

Estimated Time per Response: 5 minutes.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 101 hours.

Total Annual Costs: $0.

Needs and Uses: The Commission adopted Rules that privatized ship inspections of ships subject to inspection requirements of the Communications Act or Safety Convention. The Rules require this inspection to be conducted by an FCC-licensed technician. This change reduces the administrative burden on the public and the Commission. To ensure that vessel safety is not adversely affected by this proposal, the Commission adopted Rules that private sector technicians certify that the ship passed an inspection and issue the ship a safety certificate.

The Communications Act requires that the Commission must inspect the radio installation of large cargo ships and certain passenger ships at least once a year to ensure that the radio installation is in compliance with the requirements of the Communications Act. Additionally, the Communications Act requires the inspection of small passenger ships at least once every five years. The Safety Convention (to which the United States is a signatory) also requires an annual inspection, but permits an Administration to entrust the inspections to either surveyors nominated for the purpose or to organizations recognized by it. Therefore, the United States can have other entities conduct the radio inspection of vessels for compliance with the Safety Convention. The Commission adopted rules that FCC-licensed technicians provide a summary of the results of the inspection in the ship's log and furnish the vessel with a ship inspection safety certificate. The purpose of the information is to ensure that the inspection was successful so that passengers and crew members of certain United Sates ships have access to distress communications in an emergency.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–147 Filed 1–5–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

December 24, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following 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 February 5, 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 Commissions, 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: 3060–0289.

Title: Section 76.601, Performance tests.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 10,838.

Estimated Time Per Response: 0.5—70.0 hours.

Frequency of Response: Semi-annually; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 328,379 hours.

Total Annual Costs: $2,760.

Needs and Uses: Section 76.601 requires every cable system operator to maintain a current listing of the cable television channels which that system delivers to its subscribers. Section 76.601(c) and (d) requires cable systems with over 1,000 subscribers to conduct semi-annual proof of performance tests and triennial proof of performance tests for color testing. Section 76.601 also states that prior to additional testing pursuant to Section 76.601(d), the local franchising authority shall notify the cable operator who will be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected. The performance test data and channel listings are used in field inspections by Commission staff and franchise authorities to ensure that an acceptable quality signal is being provided to cable subscribers, and to ensure that there are no signal leakage problems which could cause interference with over-the-air radio frequencies involving safety-of-life functions (i.e., police, fire, forestry, aeronautical, amateur radio).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–148 Filed 1–5–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Acquisition Services Information Requirements''.

DATES: Comments must be submitted on or before March 8, 1999.

ADDRESSES: Interested parties are invited to submit written comments on Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to ''Acquisition Services Information Requirements.'' Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov]

A copy of the comments may also be submitted to the OMB desk officer for the FDIC. Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Review the Following Currently Approved Collection of Information

Title: Acquisition Services Information Requirement.

OMB Number: 3064–0072.

Frequency of Response: Occasional.

Affected Public: Contractors and vendors who wish to do business with the FDIC.

Estimated Number of Respondents: 31,528.

Estimatd Time per Response: varies from 0.25 hours to one hour.

Estimated Total Annual Burden: 13,233 hours.

General Description of Collection: The collection involves the submission of information on Form 1600/07 by contractors who wish to do business, have done business, or are currently under contract with the FDIC. The information is used to enter contractors on the FDIC's nationwide contractor database (the National Contractor System); ensure compliance with established contractors ethics regulations (12 CFR 366); obtain information on a contractor's past performance for proposal evaluation purposes; and review a potential lessor's fitness and integrity prior to entering into a lease transaction.

Request for Comment

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 30th day of December, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–163 Filed 1–5–99; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 20, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. C. Finley McRae, Graceville, Florida; to retain voting shares of PBG Financial Services, Inc., Graceville, Florida, and thereby indirectly retain voting shares of Peoples Bank of Graceville, Graceville, Florida.

Board of Governors of the Federal Reserve System, December 31, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–226 Filed 1–5–99; 8:45 am]

BILLING CODE 6210–01–F

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 29, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Grand Bancorp, Inc., Kingston, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Grand Bank, N.A., Kingston, New Jersey.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Fountain View Bancorp., Inc., Sigourney, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Keokuk County Bankshares, Inc., Sigourney, Iowa, and thereby indirectly acquire Keokuk County State Bank, Sigourney, Iowa.

2. Waukesha Bancshares, Inc., Wauwatosa, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Sunset Bank & Savings, Waukesha, Wisconsin (in organization).

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Capital Bancorp, Inc., Delhi, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial Capital Bank, Delhi, Louisiana.

Board of Governors of the Federal Reserve System, December 31, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–225 Filed 1–5–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 981–0345]

The British Petroleum Co. p.l.c., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 8, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or Richard Liebeskind, FTC/H–374, Washington, DC 20580. (202) 326–2932 or 326–2441.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 30, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of the Proposed Consent Order and Draft Complaint to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment from The British Petroleum Company p.l.c. (''BP'') and Amoco Corporation (''Amoco'') (collectively ''the proposed Respondents'') an Agreement Containing Consent Order (''the proposed consent order''). The proposed Respondents have also reviewed a draft complaint contemplated by the Commission. The proposed consent order is designed to remedy likely anticompetitive effects arising from the merger of BP and Amoco.

II. Description of the Parties and the Proposed Acquisition

BP, headquartered in London, England, is a diversified energy products company engaged in oil and gas exploration; the development, production and transportation of crude oil and natural gas; the refining, marketing, transportation, terminaling and sale of gasoline, diesel fuel, jet fuel and other petroleum products; and the production, marketing and sale of petrochemicals. BP is a major producer of gasoline and other petroleum products in the United States. BP distributes and markets its gasoline under the BP brand name through terminals and retail service stations in a variety of areas, including areas in the southeastern and midwestern United States.

Amoco, headquartered in Chicago, Illinois, is an integrated petroleum and chemical products company engaged in the exploration, development, and production of crude oil, natural gas, and natural gas liquids; the marketing of natural gas and natural gas liquids; the refining, marketing, and transportation of petroleum products, including crude oil, gasoline, jet fuel, diesel fuel, heating oil, asphalt, motor oil, lubricants, natural gas liquids, and petrochemical feedstocks; the terminaling and sale of gasoline, diesel fuel, and other petroleum products; and the manufacture and sale of various petroleum-based chemical products. Like BP, Amoco is a major producer of gasoline and other petroleum products in the United States. Amoco distributes and markets gasoline under the Amoco brand name through terminals and retail service stations in many of the same areas as does BP.

Pursuant to an agreement and plan of merger dated August 11, 1998, BP intends to acquire all of the outstanding

common stock of Amoco in exchange for stock of BP valued at the time of the agreement at approximately $48 billion. The new combined entity is to be renamed BP Amoco p.l.c. As a result of the merger, BP's shareholders will hold approximately 60%, and Amoco's shareholders will hold approximately 40%, of the new combined entity.

The Commission has carefully examined all of the areas in which BP and Amoco's operations might overlap in or affecting the United States. The Commission found that BP's and Amoco's operations do not overlap in many areas. However, the transaction raises competitive concerns in a number of local markets, and the Commission proposes to take action to remedy the potential anticompetitive effects of this merger in these markets.

The Commission considered this transaction in the context of what appears to be a significant trend toward consolidation in the petroleum industry. In recent months, there have been consolidations in this industry involving the refining and marketing operations of Texaco and Shell, Marathon and Ashland, and Tosco and Unocal. Other proposed combinations may occur, including Exxon's announced proposed merger with Mobil and Phillips' proposed combination of its refining and marketing operations with those of Ultramar Diamond Shamrock. The Commission will continue to examine the effect of proposed consolidations through careful analysis of each specific transaction in the context of the trend toward concentration.

III. The Draft Complaint

The draft complaint alleges that the merger of Amoco and BP would lessen competition in two relevant lines of commerce: (1) The terminaling of gasoline and other light petroleum products in nine specified geographic markets, and (2) the wholesale sale of gasoline in thirty cities or metropolitan areas in the eastern United States.

A. Terminaling

The draft complaint alleges that one line of commerce (*i.e.*, product market) in which to analyze the merger is the terminaling of gasoline and other light petroleum products, such as diesel fuel and jet fuel.

Petroleum terminals are facilities that provide temporary storage of gasoline and other petroleumn products received from a pipeline or marine vessel, and the redelivery of such products from the terminal's storage tanks into trucks or transport trailers for ultimate delivery to retail gasoline stations or other buyers. Terminals provide an important link in the distribution chain for gasoline between refineries and retail service stations. According to the complaint, there are no substitutes for petroleumn terminals for providing terminaling services.

The complaint identifies nine metropolitan areas that are relevant sections of the country (*i.e.*, geographic markets) in which to analyze the effects of the acquisition on terminaling. These metropolitan areas are: Cleveland, Ohio; Chattanooga and Knoxville, Tennessee; Jacksonville, Florida; Meridian, Mississippi; Mobile and Montgomery, Alabama; and North Augusta and Spartanburg, South Carolina. Amoco and BP both operate terminals that supply each of these nine metropolitan areas with gasoline and other light petroleum products.

The complaint charges that the terminaling of gasoline and other light petroleum products in each of these nine metropolitan areas is either moderately concentrated or highly concentrated, and would become significantly more concentrated as a result of the merger. Premerger concentration in these nine markets, as measured by the Herfindahl-Hirschman Index,[1] ranges from more than 1,300 to more than 2,500. As a result of the merger, concentration would increase in each terminal market by more than 100 points to levels raning from more than 1,500 to more than 3,600.

According to the draft complaint, entry into the terminaling of gasoline and other light petroleum products in each of these nine metropolitan areas is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects that may result from the merger.[2]

[1] The Herfindahl-Hirschman Index, or ''HHI,'' is a measurement of market concentration calculated by summing the squares of the individual market shares of all participants in the market. Under Section 1.51 of the Horizontal Merger Guidelines issued April 2, 1992, by the Federal Trade Commission and the Department of Justice, the Commission considers concentration levels exceeding 1,800 as ''highly concentrated'' and concentration levels between 1,000 and 1,800 to be ''moderately concentrated.''

[2] The Commission has found reason to believe that terminal mergers would be anticompetitive on prior occasions. *E.g., Shell Oil Co.*, C–3803 (1997) (combination of refining and marketing businesses of Shell and Texaco); *Texaco Inc.*, 104 F.T.C. 241 (1984) (Texaco's acquisition of Getty Oil Company); *Chevron Corp.*, 104 F.T.C. 597 (1984) (Chevron's acquisition of Gulf Corporation). Indeed, several of the markets involved in this proceeding are markets in which BP acquired terminals that were divested by Chevron in 1984 pursuant to the Commission's order in *Chevron*.

B. Wholesale Gasoline

The draft complaint alleges that a second line of commerce in which to analyze the competitive effects of the merger is the wholesale sale of gasoline. Gasoline is a motor fuel used in automobiles and other vehicles. It is manufactured from crude oil at refineries in the United States and throughout the world. There are no substitutes for gasoline as a fuel for automobiles and other vehicles that use gasoline.

According to the draft complaint, there are thirty cities or metropolitan areas in which to evaluate the effects of this merger on the wholesale sale of gasoline. Albany, Georgia; Athens, Georgia; Birmingham, Alabama; Charleston, South Carolina; Charlotte, North Carolina; Charlottesville, Virginia; Clarksville, Tennessee; Cleveland, Ohio; Columbia, South Carolina; Columbus, Georgia; Cumberland, Maryland; Dothan, Alabama; Fayetteville, North Carolina; Forence, Alabama; Goldsboro, North Carolina; Hattiesburg, Mississippi; Hickory, North Carolina; Jackson, Tennessee; Memphis, Tennessee; Meridan, Mississippi; Mobile, Alabama; Myrtle Beach, South Carolina; Pittsburgh, Pennsylvania; Raleigh, North Carolina; Rocky Mount, North Carolina; Savannah, Georgia; Sumter, South Carolina; Tallahassee, Florida; Toledo, Ohio; and Youngstown, Ohio (hereinafter collectively referred to as the ''gasoline markets'').

The wholesale sale of gasoline, as alleged in the complaint, is the business of selling branded gasoline to retail dealers. Both BP and Amoco sell branded gasoline at wholesale in the markets alleged in the complaint. In some cases BP or Amoco, or both, sell gasoline on a wholesale basis to retail gasoline stations owned by BP or Amoco, and operated either by employees of BP or Amoco (''company operated'' or ''owned and operated'' stations) or by persons who lease the station from BP or Amoco (''lessee dealers''). In other cases, BP and Amoco sell gasoline to independently owned stations (''open dealers'') or to intermediaries (''jobbers'') who deliver gasoline to individual gas stations owned by the jobber or by other persons.

Irrespective of the identity of the wholesale customer, wholesale sellers (BP and Amoco, and their branded and unbranded competitors) set the wholesale price of gasoline paid by retail dealers, and that wholesale price affects the price of gasoline charged to motorists. In the gasoline markets alleged in the complaint, the wholesale

sale of gasoline would become significantly more concentrated as a result of the merger, and the relatively small number of remaining wholesalers could tacitly or expressly coordinate price increases. Postmerger concentration, as measured by the Herfindahl-Hirschman Index, would increase by more than 100 points, to levels above 1,400 in five markets and to levels above 1,800 in the remaining markets. In each of the gasoline markets alleged in the complaint, BP and Amoco, and three other firms, would have at least 70% of the wholesale gasoline market.

According to the complaint, entry into the wholesale sale of gasoline in each of these markets is difficult and would not be timely, likely or sufficient to prevent anticompetitive effects that may result from this merger.

IV. Terms of the Agreement Containing Consent Order (''the Proposed Consent Order'')

The proposed consent order will remedy the Commission's competitive concerns about the proposed acquisition. Under Paragraph II of the proposed consent order, the proposed Respondents must divest the Amoco terminal serving each of the nine relevant terminal markets to Williams Energy Ventures, Inc., a subsidiary of The Williams Companies (''Williams''), or to another acquirer approved by the Commission. Williams is a major energy company with substantial experience in operating terminals.

The Commission's goal is evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed buyer must not itself present competitive problems. The Commission believes that Williams is well qualified to operate the divested terminals and that divestiture to Williams will not be anticompetitive in these markets.

The proposed consent order requires that the divestitures occur not later than ten days after the BP/Amoco merger is consummated, or thirty days after the consent agreement is signed, whichever is later. The proposed consent agreement also requires respondents to rescind the transaction with Williams if the Commission, after the comment period, decides to reject Williams as the buyer. If the Williams agreement is rescinded, then respondents are required to divest the terminals within six months from the date the order becomes final, at no minimum price, to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. If respondents have not divested the terminals pursuant to Paragraph II of the order, then the Commission may appoint a trustee to divest the assets.

The proposed consent order obtains relief with respect to the wholesale sale of gasoline in two ways. First, in eight markets where either Amoco or BP (or both) own retail gasoline stations (Charleston, South Carolina; Charlotte, North Carolina; Columbia, South Carolina; Jackson, Tennessee; Memphis, Tennessee; Pittsburgh, Pennsylvania; Savannah, Georgia; and Tallahassee, Florida), Paragraph III of the proposed order requires respondents to divest gasoline stations belonging to either Amoco or BP (as specified in the proposed order) to an acquirer approved by the Commission. These divestitures must be completed within six months of the date on which the parties signed the agreement containing consent order (December 29, 1998).

Second, in all 30 markets, including markets in which neither Amoco nor BP owns retail gasoline stations, Paragraph IV of the order requires Amoco and BP to give their wholesale customers (both jobbers and open dealers) the option of conceling their franchise and supply agreements with Amoco and BP, freeing them to switch their retail gasoline stations to other brands. In order to provide an incentive for these persons to switch to other brands, the order provides that wholesale customers who take advantage of this provision will be released from all debts, loans, obligations and other responsibilities under their agreements with Amoco and BP (other than for fuels actually delivered and other specified debts scheduled by the respondents), if they agree to stop selling Amoco and BP gasoline in the market and not sell any other brand that has more than 20% of the market. The proposed order requires that BP and Amoco provide notice to their wholesale customers upon the Commission's final acceptance of the proposed order (should the Commission do so after the public comment period), and allows these customers thirty days to exercise this option. Should a wholesale customer choose to terminate its relationship with BP or Amoco under the terms of the proposed order, BP and Amoco will not solicit that customer as a re seller of branded gasoline for two years thereafter.

In addition, Paragraph V of the order requires that unless gasoline sellers representing a specified volume of sales to Toledo and Youngstown, Ohio agree to switch to other brands, then respondents must divest retail gasoline stations with an equivalent volume of sales to an acquirer acceptable to the Commission.

For a period of ten years from the date the proposed consent order becomes final, the proposed Respondents are required to provide notice to the Commission prior to acquiring terminal assets or gasoline stations located in the markets at issues.

The proposed Respondents are required to provide to the Commission a report of compliance with the proposed consent order within thirty days following the date on which the order becomes final, every thirty days thereafter until the divestitures are completed, and annually for a period of ten years.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for sixty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the compliant will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of terminal assets to Williams, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order, nor is it intended to modify the terms of the proposed consent order in any way.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–197 Filed 1–5–99; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Joint Financial Management Improvement Program (JFMIP)—Federal Financial Management System Requirements (FFMIA)

[Document No. JFMIP–SR–98–6]

AGENCY: Joint Financial Management Improvement Program (JFMIP).

ACTION: Notice of document availability.

SUMMARY: The JFMIP is seeking public comment on an exposure draft titled,

''Direct Loan System Requirements,'' dated December 14, 1998. The draft is being issued to update a December 1993 document. The draft incorporates: (1) statutory and regulatory changes; (2) technological changes; and (3) JFMIP documentation changes. The document is designed to provide financial managers with Governmentwide mandatory requirements for financial systems in order to process and record financial events effectively and efficiently, and to provide complete, timely, reliable, and consistent information for decision makers and the public.

DATES: Comments are due by February 26, 1999.

ADDRESSES: Copies of the exposure draft have been mailed to Agency Senior Financial Officials and are available on the JFMIP website: http://www.financenet.gov/financenet/fed/jfmip/jfmipexp.htm.

Comments should be addressed to JFMIP, 441 G Street NW., Room 3111, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Dennis Mitchell, 202–512–5994 or via Internet: mitchelld.jfmip@gao.gov

SUPPLEMENTARY INFORMATION: The Federal Financial Management Improvement Act (FFMIA) of 1996 mandated that agencies implement and maintain systems that comply substantially with Federal financial management systems requirements, applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The FFMIA statute codified the JFMIP financial systems requirements documents as a key benchmark that agency systems must meet in order to be substantially in compliance with systems requirements provisions under FFMIA. To support the requirements outlined in the FFMIA, we are updating requirements documents that are obsolete and publishing additional requirements documents.

Comments received will be reviewed and the exposure draft will be revised as necessary. Publication of the final requirements will be mailed to agency senior financial officials and will be available on the JFMIP website.

Karen Cleary Alderman,

Executive Director, Joint Financial Management Improvement Program.

[FR Doc. 99–158 Filed 1–5–99; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of a Cooperative Agreement With Meharry Medical College

The Office of Minority Health (OMH), Office of Public Health and Science, announces that it will enter into an umbrella cooperative agreement with Meharry Medical College. This cooperative agreement is an umbrella cooperative agreement and will establish the broad programmatic framework in which specific projects can be supported by various agencies during the project period.

The purpose of this cooperative agreement is to strengthen the nation's capacity to prepare health professionals from disadvantaged backgrounds to serve minority populations and to develop a national model for improving health care delivery to indigent and underserved citizens. The ultimate goal is to improve the health status of minorities and disadvantaged people.

Authorizing Legislation

This cooperative agreement is authorized under section 1807(e)(1) of the Public Health Service Act, as amended.

Background

Assistance will be provided only to Meharry Medical College to accomplish the objectives of this cooperative agreement because it has the following combination of factors:

1. Meharry Medical College is the largest private, historically black institution exclusively dedicated to educating health care professionals and biomedical scientists in the United States.

2. Meharry Medical College has historically trained a significant number of African American physicians and dentists in the United States. Currently, 15 percent of those practicing are Meharry graduates. Since 1970, Meharry has awarded more than 10 percent of the Ph.D's in biomedical sciences received by African Americans.

3. The Majority of Meharry's graduates practice in medically underserved rural and inner city areas.

4. Meharry, a private academic health center, has forged an agreement with a public hospital to establish a unique model for the efficient distribution of resources in delivering improved services for poor and indigent citizens.

This cooperative agreement will be awarded in FY 1999 for a 12-month budget period within a project period of five-years. Depending upon the types of projects and availability of funds, it is anticipated that this cooperative agreement will initially receive approximately $3,000,000. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Under this cooperative agreement, OMH will:

1. Meet with Meharry Medical College representatives to discuss and approve work plans, including objectives, data integrity and confidentiality, evaluation techniques and budget items;

2. Provide guidance in critical areas, including but not limited to financing, accounting, and resources management.

3. Review and approve the development of managed care curricula and evaluation designs; and

4. Review and approve the implementation and dissemination of relevant project findings, final reports prior to dissemination to public and private parties.

Meharry will:

1. Devote its best effort to improving the administration and financing of Meharry Medical College;

2. Develop a plan to integrate residents of other area health professions institutions into the surgery, OB/GYN and pediatric services of Metropolitan Nashville General Hospital at the Meharry campus with the expressed intent of enhancing health service and education of undergraduate medical students;

3. Develop a plan to create a collaborative relationship between Meharry's family medicine program and other local higher education institutions to expand family practice activity throughout middle Tennessee;

4. Continue to develop an integrated services network between Meharry's faculty practice plan and other local area health delivery systems;

5. Carry out plans to improve the quality and quantity of its faculty; and

6. Work closely and cooperatively with the consultants and technical assistance supported or provided by HHS.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, contact Ms. Mimi Chafin, Division of Program Operations, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

The Catalogue of Federal Domestic Assistance number is 93.004.

Dated: December 10, 1998.

Clay E. Simpson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 99–200 Filed 1–5–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Emergency TANF Data Report (ACF–198).

OMB No.: 0970–0164.

Description: This information is being collected to meet the statutory requirements of section 411 of the Social Security Act. It consists of disaggregated and aggregated demographic and program information that will be used in determining participation rates, performance awards, and other statutorily required indicators for the Temporary Assistance for Needy families (FANF) program. OMB previously approved this data collection through December 31, 1998. We are now requesting an extension through March 31, 2000 in order to maintain continuity of data collection.

Respondents: State, Local or Tribal Government.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–198	54	4	451	97,416

Estimated Total Annual Burden Hours: 97,416.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Officer for the Administration for Children and Families.

Dated: December 31, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–201 Filed 1–5–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–1199]

Zeneca Biocides; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Zeneca Biocides has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-methyl-4,5-trimethylene-4-isothiazolin-3-one as a preservative for paper coatings intended for use in contact with aqueous food.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4525) has been filed by Zeneca Biocides, Foulkstone 1405, 2nd, 1800 Concord Pike, P.O. Box 15457, Wilmington, DE 19850–5457. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of 2-methyl-4,5-trimethylene-4-isothiazolin-3-one as a preservative for paper coatings intended for use in contact with aqueous foods.

The agency has determined under 21 CFR 25.32(q) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: December 7, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–198 Filed 1–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 77N–0240; DESI 12836]

Dipyridamole; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing conditional approval of abbreviated new drug applications (ANDA's) and pertinent parts of ANDA's for certain dipyridamole drug products. FDA is also declaring three unapproved dipyridamole drug products unlawful. FDA is withdrawing approval because there is a lack of substantial evidence that these drugs are effective for long-term therapy of chronic angina pectoris.

EFFECTIVE DATE: February 5, 1999.

ADDRESSES: Requests for opinion of the applicability of this notice to a specific product should be identified with Docket No. 77N–0240 and reference number DESI 12836 and directed to the Division of Prescription Drug Compliance and Surveillance (HFD–330), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 15, 1987 (52 FR 1663), FDA revoked the temporary exemption for the drug products described in this document that permitted these products to remain on the market beyond the time limits scheduled for implementation of the Drug Efficacy Study. The notice also offered an opportunity to request a hearing on a proposal to withdraw approval of the conditionally approved new drug applications for these products insofar as they provide for the indication, long-term therapy of chronic angina pectoris. The proposal was based on the conclusion that the data submitted in support of this indication did not constitute substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and 21 CFR 314.126. In a notice published in the **Federal Register** of February 23, 1987 (52 FR 5501), FDA amended the January 15, 1987, notice by adding 16 conditionally approved applications.

In response to the notices, applicants of the products described in this document requested a hearing. In 1995 and 1996, FDA requested the applicants to inform the agency in writing whether they were still interested in pursuing the hearing request and advised the applicants that the agency would consider a lack of response in 30 days to constitute withdrawal of the hearing request. Some of the applicants requested withdrawal of the hearing request, withdrawal of approval of the ANDA's, or both. The remaining applicants failed to respond to the agency's request, thereby consenting to withdrawal of the hearing request. Accordingly, FDA is now withdrawing the conditional approvals of the ANDA's and pertinent parts of other ANDA's that lack substantial evidence of effectiveness for the long-term therapy of chronic angina pectoris (chronic angina pectoris indication).

The following 13 ANDA's have also been approved for the indication ''as an adjunct to coumarin anticoagulants in the prevention of postoperative thromboembolic complications of cardiac valve replacements'' (cardiac valve indication). This notice withdraws approval of only those parts of the applications that provide for the chronic angina pectoris indication.

1. ANDA 86–944; Dipyridamole Tablets containing 25 milligrams (mg) of the drug per tablet; Geneva Pharmaceuticals (formerly Cord Laboratories, Inc.), 2555 West Midway Blvd., Broomfield, CO 80020.

2. ANDA 87–160; Dipyridamole Tablets containing 50 mg of the drug per tablet; Chelsea Laboratories, Inc., P.O. Box 15686, 8606 Roading Rd., Cincinnati, OH 45215.

3. ANDA 87–184; Dipyridamole Tablets containing 25 mg of the drug per tablet; Barr Laboratories, Inc., 2 Quaker Rd., P.O. Box 2900, Pomona, NY 10970.

4. ANDA 87–561; Dipyridamole Tablets containing 75 mg of the drug per tablet; Geneva Pharmaceuticals.

5. ANDA 87–562; Dipyridamole Tablets containing 50 mg of the drug per tablet; Geneva Pharmaceuticals.

6. ANDA 87–716; Dipyridamole Tablets containing 50 mg of the drug per tablet; Barr Laboratories, Inc.

7. ANDA 87–717; Dipyridamole Tablets containing 75 mg of the drug per tablet; Barr Laboratories, Inc.

8. ANDA 88–999; Dipyridamole Tablets containing 25 mg of the drug per tablet; Lederle Laboratories, 401 North Middleton Rd., Pearl River, NY 10965.

9. ANDA 89–000; Dipyridamole Tablets containing 50 mg of the drug per tablet; Lederle Laboratories.

10. ANDA 89–001; Dipyridamole Tablets containing 75 mg of the drug per tablet; Lederle Laboratories.

11. ANDA 89–425; Dipyridamole Tablets containing 25 mg of the drug per tablet; Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.

12. ANDA 89–426; Dipyridamole Tablets containing 50 mg of the drug per tablet; Purepac Pharmaceutical Co.

13. ANDA 89–427; Dipyridamole Tablets containing 75 mg of the drug per tablet; Purepac Pharmaceutical Co.

The following 26 ANDA's have not been approved for the cardiac valve indication, and the products lack substantial evidence of effectiveness for the angina indication. Therefore, this document withdraws approval of the entire application for the products.

1. ANDA 86–908; Dipyridamole Tablets containing 25 mg of the drug per tablet; Eon Labs Manufacturing, Inc. (formerly held by Lemmon Co.), 227–15 North Conduit Ave., Laurelton, NY 11413.

2. ANDA 87–039; Dipyridamole Tablets containing 25 mg of the drug per tablet; Chelsea Laboratories, Inc.

3. ANDA 87–492; Dipyridamole Tablets containing 25 mg of the drug per tablet; Barr Laboratories, Inc.

4. ANDA 87–583; Dipyridamole Tablets containing 25 mg of the drug per tablet; Mylan Pharmaceuticals, Inc., P.O. Box 4293, Morgantown, WV 26505.

5. ANDA 87–676; Dipyridamole Tablets containing 25 mg of the drug per tablet; Mylan Pharmaceuticals, Inc.

6. ANDA 87–754; Dipyridamole Tablets containing 25 mg of the drug per tablet; Superpharm Corp., 1769 Fifth Ave., Bayshore, NY 11706.

7. ANDA 87–755; Dipyridamole Tablets containing 75 mg of the drug per tablet; Superpharm Corp.

8. ANDA 87–873; Dipyridamole Tablets containing 25 mg of the drug per tablet; Rosemont Pharmaceutical Corp. (formerly Pharmaceutical Basics, Inc.), 301 South Cherokee St., Denver, CO 80223.

9. ANDA 87–882; Dipyridamole Tablets containing 50 mg of the drug per tablet; Mylan Pharmaceuticals, Inc.

10. ANDA 87–883; Dipyridamole Tablets containing 75 mg of the drug per tablet; Mylan Pharmaceuticals, Inc.

11. ANDA 88–018; Dipyridamole Tablets containing 50 mg of the drug per tablet; Barr Laboratories, Inc.

12. ANDA 88–019; Dipyridamole Tablets containing 75 mg of the drug per tablet; Barr Laboratories, Inc.

13. ANDA 88–300; Dipyridamole Tablets containing 50 mg of the drug per tablet; Unit Dose Laboratories, P.O. Box 10319, Rockford, IL 61131.

14. ANDA 88–301; Dipyridamole Tablets containing 75 mg of the drug per tablet; Unit Dose Laboratories.

15. ANDA 88–413; Dipyridamole Tablets containing 50 mg of the drug per tablet; Superpharm.

16. ANDA 88–442; Dipyridamole Tablets containing 25 mg of the drug per tablet; Duramed Pharmaceuticals, Inc., 5040 Lester Rd., Cincinnati, OH 45213.

17. ANDA 88–443; Dipyridamole Tablets containing 50 mg of the drug per tablet; Duramed Pharmaceuticals, Inc.

18. ANDA 88–444; Dipyridamole Tablets containing 75 mg of the drug per tablet; Duramed Pharmaceuticals, Inc.

19. ANDA 88–822; Dipyridamole Tablets containing 50 mg of the drug per tablet; Rosemont Pharmaceutical Corp.

20. ANDA 88–683; Dipyridamole Tablets containing 25 mg of the drug per tablet; Sidmak Laboratories, Inc., P.O. Box 371, East Hanover, NJ 07936.

21. ANDA 88–684; Dipyridamole Tablets containing 50 mg of the drug per tablet; Sidmak Laboratories, Inc.

22. ANDA 88–685; Dipyridamole Tablets containing 75 mg of the drug per tablet; Sidmak Laboratories, Inc.

23. ANDA 88–945; Dipyridamole Tablets containing 25 mg of the drug per tablet; Danbury Pharmacal.

24. ANDA 89–378; Dipyridamole Tablets containing 25 mg of the drug per tablet; Mutual Pharmaceutical Co., Inc., 1100 Orthodox St., Philadelphia, PA 19124.

25. ANDA 89–379; Dipyridamole Tablets containing 50 mg of the drug per tablet; Mutual Pharmaceutical Co., Inc.

26. ANDA 89–380; Dipyridamole Tablets containing 75 mg of the drug per tablet; Mutual Pharmaceutical Co., Inc.

Warner Lambert Co. requested a hearing for the three unapproved drug products described as follows, but later withdrew the applications.

1. ANDA 89–551; Dipyridamole Tablets containing 25 mg of the drug per tablet; Warner Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950.
2. ANDA 89–552; Dipyridamole Tablets containing 50 mg of the drug per tablet; Warner Lambert Co.
3. ANDA 89–553; Dipyridamole Tablets containing 75 mg of the drug per tablet; Warner Lambert Co.

Approval of the following four conditionally approved ANDA's is being withdrawn because the applicants failed to request a hearing for the products. Failure to file an appearance and request a hearing constitutes a waiver of the opportunity for a hearing.

1. ANDA 86–884; Dipyridamole Tablets containing 25 mg of the drug per tablet; Chelsea Laboratories, Inc.
2. ANDA 87–719; Dipyridamole Tablets containing 25 mg of the drug per tablet; Geneva Pharmaceuticals.
3. ANDA 87–830; Dipyridamole Tablets containing 75 mg of the drug per tablet; Boehringer-Ingelheim Pharmaceuticals, Inc., 90 East Ridge, Ridgefield, CT 06877.
4. ANDA 87–831; Dipyridamole Tablets containing 50 mg of the drug per tablet; Boehringer-Ingelheim Pharmaceuticals, Inc.

The effectiveness conclusions stated in the January 15, 1987, notice also applied to the 24 drug products described as follows. Although FDA withdrew approval of the products based on the written requests of the applicants who no longer market them, this notice constitutes FDA's final conclusions on the effectiveness of the products for the chronic angina pectoris indication.

1. ANDA 87–008; Dipyridamole Tablets containing 25 mg of the tablet per drug; Zenith Laboratories Inc., 140 Legrand Ave., Northvale, NJ 07647 (see 62 FR 64385, December 5, 1997).
2. ANDA 87–094; Dipyridamole Tablets containing 25 mg of the drug per tablet; Par Pharmaceutical, Inc., One Ram Ridge Rd., Spring Valley, NY 10977 (see 57 FR 7934, March 5, 1992).
3. ANDA 87–161; Dipyridamole Tablets containing 75 mg of the drug per tablet; Chelsea Laboratories, Inc. (see 59 FR 29298, June 6, l994).
4. ANDA 87–316; Dipyridamole Tablets containing 50 mg of the drug per tablet; Zenith Laboratories, Inc. (see 62 FR 64385, December 5, 1997).
5. ANDA 87–320; Dipyridamole Tablets containing 75 mg of the drug per tablet; Zenith Laboratories, Inc. (see 62 FR 64385, December 5, 1997).
6. ANDA 87–360; Dipyridamole Tablets containing 75 mg of the drug per tablet; Par Pharmaceutical, Inc. (see 57 FR 7934, March 5, 1992).
7. ANDA 87–419; Dipyridamole Tablets containing 25 mg of the drug per tablet; Danbury Pharmacal, 131 West St., Danbury, CT 06810 (see 63 FR 64266, November 19, 1998).
8. ANDA 87–432, Dipyridamole Tablets containing 75 mg of the drug per tablet; Danbury Pharmacal (see 63 FR 64266, November 19, 1998).
9. ANDA 87–650; Dipyridamole Tablets containing 50 mg of the drug per tablet; Par Pharmaceutical, Inc. (see 57 FR 7934, March 5, 1992).
10. ANDA 87–802; Dipyridamole Tablets containing 25 mg of the drug per tablet; Halsey Drug Co., Inc., 1827 Pacific St., Brooklyn, NY (see 61 FR 5562, February 13, 1996).
11. ANDA 87–803; Dipyridamole Tablets containing 75 mg of the drug per tablet; Halsey Drug Co. Inc. (see 61 FR 5562, February 13, 1996).
12. ANDA 87–843; Dipyridamole Tablets containing 25 mg of the drug per tablet; Lederle Laboratories (see 55 FR 49427, November 28, 1990).
13. ANDA 88–033; Dipyridamole Tablets containing 25 mg of the drug per tablet; Purepac Pharmaceutical Co. (see 56 FR 9956, March 8, 1991).
14. ANDA 88–315; Dipyridamole Tablets containing 25 mg of the drug per tablet; Unit Dose Laboratories (see 56 FR 9956, March 8, 1991).
15. ANDA 88–362; Dipyridamole Tablets containing 50 mg of the drug per tablet; Lederle Laboratories (see 55 FR 49427, November 28, 1990).
16. ANDA 88–363; Dipyridamole Tablets containing 75 mg of the drug per tablet; Lederle Laboratories (see 55 FR 49427, November 28, 1990).
17. ANDA 88–416; Dipyridamole Tablets containing 25 mg of the drug per tablet; Barr Laboratories, Inc. (see 61 FR 40649, August 5, 1996).
18. ANDA 88–417; Dipyridamole Tablets containing 50 mg of the drug per tablet; Barr Laboratories, Inc. (see 61 FR 40649, August 5, 1996).
19. ANDA 88–418; Dipyridamole Tablets containing 75 mg of the drug per tablet; Barr Laboratories, Inc. (see 61 FR 40649, August 5, 1996).
20. ANDA 88–466; Dipyridamole Tablets containing 50 mg of the drug per tablet; Halsey Drug Co. (see 61 FR 5562, February 13, 1996).
21. ANDA 88–800; Dipyridamole Tablets containing 50 mg of the drug per tablet; Danbury Pharmacal (see 63 FR 64266, November 19, 1998).
22. ANDA 89–348; Dipyridamole Tablets containing 25 mg of the drug per tablet; Rosemont Pharmaceutical Corp. (see 57 FR 30741, July 10, 1992).
23. ANDA 89–349; Dipyridamole Tablets containing 50 mg of the drug per tablet; Rosemont Pharmaceutical Corp. (see 52 FR 30741, July 10, 1992).
24. ANDA 89–350; Dipyridamole Tablets containing 75 mg of the drug per tablet; Rosemont Pharmaceutical Corp. (see 52 FR 30741, July 10, 1992).

Any drug product that is identical, related, or similar to the drug products named above and is not the subject of an approved new drug application is covered by the applications listed above and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Prescription Drug Compliance and Surveillance (address above).

The Director of the Center for Drug Evaluation and Research, under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to her (21 CFR 5.82), finds that, on the basis of new information on the drugs and the evidence available when the applications were approved, there is a lack of substantial evidence that the products named above will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling for the indication of long-term therapy of chronic angina pectoris.

Therefore, based on the foregoing finding, approval of the applications listed above and all their amendments and supplements insofar as they pertain to the indication, long-term therapy of chronic angina pectoris, is withdrawn effective February 5, 1999. Shipment in interstate commerce of these products or of any identical, related, or similar product that is not the subject of a fully approved new drug application will then be unlawful.

Dated: December 14, 1998.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 99–156 Filed 1–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pharmacy Compounding Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pharmacy Compounding Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 4 and 5, 1999, 8:30 a.m. to 5 p.m.

Location: CDER Advisory Committee Conference Room 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Igor Cerny, or Tony Slater, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or by e-mail at CERNY@CDER.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12440. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss and provide FDA with advice about the agency's development and publication of a list of bulk drug substances that may be used in pharmacy compounding that do not have a United States Pharmacopeia or National Formulary monograph and are not components of FDA-approved drugs. Specifically, the committee is likely to address the following drug substances as candidates for the bulk drugs list: 4-aminopyridine, 3,4-diaminopyridine, betahistine dihydrochloride, cyclandelate, dinitrochlorobenzene, diphenylcyclopropenone, hydrazine sulfate, mild silver protein, pentylenetetrazole, and squaric acid dibutyl ester. The committee may also review drug products to be included on a list which have been withdrawn or removed from the market for reasons of safety or efficacy which may not be used in compounding that qualifies for the applicable statutory exemptions.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 21, 1999. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 21, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 28, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–154 Filed 1–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1146]

Discussion Paper: ''A Proposed Framework for Evaluating and Assuring the Human Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals''; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a discussion paper entitled ''A Proposed Framework for Evaluating and Assuring the Human Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals'' (discussion paper). This discussion paper is the second step in the agency's consideration of issues related to the use of antimicrobial new animal drugs in food-producing animals. FDA is making the discussion paper available to the public to initiate discussions with the scientific community and other interested parties on the agency's thinking about appropriate underlying concepts to be used to develop microbial safety policies protective of the public health.

DATES: Written comments on the discussion paper should be submitted by April 6, 1999.

ADDRESSES: Submit written requests for single copies of the discussion paper to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist the office in processing your requests.

Submit written comments on the discussion paper to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the full title of the discussion paper and the docket number found in brackets in the heading of this document.

See the **SUPPLEMENTARY INFORMATION** section of this document for electronic access to the discussion paper.

FOR FURTHER INFORMATION CONTACT:

Sharon R. Thompson, Office of the Director (HFV–1), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798.

Margaret A. Miller, Office of New Animal Drug Evaluation (HFV–100), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1620.

Linda R. Tollefson, Office of Surveillance and Compliance (HFV–200), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6644.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 18, 1998 (63 FR 64094), FDA published a notice of availability of a draft guidance entitled ''Guidance for Industry: Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals.'' The release of this draft guidance was the first step in the agency's consideration of issues related to the use of antimicrobial new animal drugs in food-producing animals. The draft guidance lays out the agency's rationale for its current thinking about its authority under the Federal Food, Drug, and Cosmetic Act to consider the human health impact of the microbial effects associated with the use of antimicrobial new animal drugs in food-producing animals. Since the 1970's, and until scientific evidence indicated that a change was necessary, the agency had evaluated the human health impact of the microbial effects of only certain uses of antimicrobial new animal drugs in animal feeds. The draft guidance provides that the agency now believes that sponsors of all antimicrobial new animal drugs intended for use in food-producing animals need to provide information that will allow the agency to evaluate the human health impact of the microbial effects of the intended uses. In assessing the human health impact of such uses, the draft guidance states that two separate but related factors should be evaluated: (1) The quantity of antimicrobial drug-resistant enteric bacteria formed in the animal's

intestinal tract following exposure to the antimicrobial new animal drug (resistance), and (2) changes in the number of enteric bacteria in the animal's intestinal tract that cause human illness (pathogen load).

The discussion paper that is the subject of this notice is the second step of the agency's consideration of these issues. It augments the draft guidance made available in November 1998 by setting out a conceptual risk-based framework for evaluating the microbial safety (relating to human health impact) of antimicrobial new animal drugs intended for use in food-producing animals. FDA is making the discussion paper available to the public in order to initiate discussions with the scientific community and other interested parties on the agency's thinking about appropriate underlying concepts to be used to develop policies that are protective of the public health. The agency is seeking comment from the public in two areas. The first is whether the concepts set out in this document, if implemented, will accomplish the goal of protecting the public health by ensuring that significant human antimicrobial therapies are not lost as a result of use of antimicrobial new animal drugs in food-producing animals, while providing for the safe use of antimicrobials in food-producing animals. The second is to obtain input on important areas of scientific complexity outlined in the discussion paper.

This will not be the only opportunity for public comment on these issues. The agency intends to solicit further public comments at the next meeting of FDA's Veterinary Medicine Advisory Committee in Rockville, MD, which is scheduled to be held on January 25 and 26, 1999. Also, comments regarding the draft guidance entitled ''Guidance for Industry: Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals'' may be submitted at any time.

II. Comments

Interested persons may, on or before April 6, 1999, submit to the Dockets Management Branch (address above) written comments regarding this discussion paper. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the discussion paper and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the discussion paper using the World Wide Web (WWW). For WWW access, connect to CVM at ''http://www.fda.gov/cvm''.

Dated: December 30, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–34842 Filed 12–31–98; 12:04 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0046]

Quarterly List of Guidance Documents at the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a quarterly update of all guidance documents issued and withdrawn since the compilation of the quarterly list that published on July 6, 1998. FDA committed to publishing quarterly updates in its February 1997 ''Good Guidance Practices'' (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. This list is intended to inform the public of the existence and availability of guidance documents issued during this quarter. This list also includes some guidance documents that were inadvertently not included on previously published lists.

DATES: General comments on this list and on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Information on where to obtain single copies of listed guidance documents is provided for each agency center individually in the specific center's list of guidance documents.

FOR FURTHER INFORMATION CONTACT: Lisa L. Barclay, Office of Policy (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 27, 1997 (62 FR 8961), FDA published a notice announcing its ''Good Guidance Practices'' (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. The agency adopted the GGP's to ensure public involvement in the development of guidance documents and to enhance public understanding of the availability, nature, and legal effect of such guidance.

As part of FDA's effort to ensure meaningful interaction with the public regarding guidance documents, the agency committed to publish an annual comprehensive list of guidance documents and quarterly **Federal Register** notices that list all guidance documents that were issued and withdrawn during that quarter, including ''Level 2'' guidance documents. The following list of guidance documents represents all guidances issued or withdrawn by FDA since the compilation of the July 6, 1998 (63 FR 36413) quarterly list and any guidance documents inadvertently not included on previously published lists. The guidance documents are organized by the issuing Center or Office within FDA, and are further grouped by the intended users or regulatory activities to which they pertain. Dates provided in the following list refer to the date of issuance or, where applicable, the date of last revision of the document. Document numbers are provided where available.

II. Guidance Documents Issued by the Center for Biologics Evaluation and Research (CBER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Industry: Manufacturing, Processing or Holding Active Pharmaceutical Ingredients	March 1998	FDA Regulated Industry	Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800, FAX Information System: 1–888–CBER–FAX (within U.S.)or 301–827–3844 (outside U.S. and local to Rockville, MD). Internet access: http://www.fda.gov/cber
Draft Guidance for Industry: Instructions for Submitting Electronic Lot Release Protocols to the Center for Biologics Evaluation and Research	May 1998	Do	Do
Draft Guidance for Industry: Pilot Program for Electronic Investigational New Drug (eIND) Applications for Biological Products	May 1998	Do	Do
Draft Guidance for Industry: Electronic Submissions of Case Report Forms (CRF's), Case Report Tabulations (CRT's) and Data to the Center for Biologics Evaluation and Research	May 1998	Do	Do
Draft Guidance for Industry: Electronic Submissions of a Biologics License Application (BLA) or Product License Application (PLA)/Establishment License Application (ELA) to the Center for Biologics Evaluation and Research	May 1998	Do	Do
Guidance for Industry: Submitting and Reviewing Complete Responses to Clinical Holds	May 1998	Do	Do
Guidance for Industry: Classifying Resubmissions in Response to Action Letters	May 1998	Do	Do
Guidance for Industry: Pharmacokinetics in Patients with Impaired Renal Function—Study Design, Data Analysis and Impact on Dosing and Labeling	May 1998	Do	Do
Guidance for Industry: Standards for the Prompt Review of Efficacy Supplements, Including Priority Efficacy Supplements	May 1998	Do	Do
Guidance for Industry: Providing Clinical Evidence of Effectiveness for Human Drugs and Biological Products	May 1998	Do	Do
Draft Guidance for Industry: Stability Testing of Drug Substances and Drug Products	June 1998	Do	Do
ICH Draft Guidance on Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products	June 9, 1998	Do	Do
ICH Guidance on Ethnic Factors in the Acceptability of Foreign Clinical Data	June 10, 1998	Do	Do
Draft Guidance for Industry: Exports and Imports Under the FDA Export Reform and Enhancement Act of 1996	June 12, 1998	Do	Do
Draft Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product	June 1998	Do	Do
Guidance for Industry: Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug and Cosmetic Act	June 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Industry: In the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Virus Type 1	July 1998	Do	Do
Draft Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and For the Completion of the FDA Form 356h ''Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use''	July 1998	Do	Do
Guidance for Industry: Implementation of Section 126 of the Food and Drug Administration Modernization Act of 1997—Elimination of Certain Labeling Requirements	July 1998	Do	Do
Guidance for Industry: Environmental Assessment of Human Drug and Biologics Applications	July 1998	Do	Do
Draft Guidance for Industry: Recommendations for Collecting Red Blood Cells by Automated Apheresis Methods	July 1998	Do	Do
Draft Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test	August 1998	Do	Do
ICH Guidance on Statistical Principles for Clinical Trials	September 16, 1998	Do	Do
ICH Guidance on Quality of Biotechnological/Biological Products: Derivation and Characterization of Cell Substrates Used for Production of Biotechnological/Biological Products	September 21, 1998	Do	Do
Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Antibody to Hepatitis C Virus (Anti–HCV); (2) Supplemental Testing, and the Notification of Consignees and Blood Recipients of Donor Test Results for Anti–HCV	September 1998	Do	Do
ICH Guidance on Viral Safety Evaluation of Biotechnology Products Derived From Cell Lines of Human or Animal Origin	September 24, 1998	Do	Do
Guidance for Industry: Errors and Accidents Regarding Saline Dilution of Samples Used for Viral Marker Testing **(Level 2)**	June 1998	Do	Do
Guidance for Industry: How to Complete the Vaccine Adverse Reporting System Form (VAERS–1) **(Level 2)**	September 1998	Do	Do
Withdrawn			
Guidance for Industry: Supplemental Testing and the Notification of Consignees of Donor Test Results for Antibody to Hepatitis C Virus (Anti–HCV)—March 1998	September 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Memorandum: Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) by Blood and Blood Products—December 11, 1996 **(Partial Withdrawal) (Withdrawal of recommendations pertaining to retrieval, quarantine, destruction, and notification for plasma derivatives)**	September 1998	Do	Do

III. Guidance Documents Issued by the Center for Devices and Radiological (CDRH)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Medical Devices: Draft Global Harmonization Task Force Study Group 3 Process Validation Guidance (Draft)	July 16, 1998	Office of Compliance (OC)	Division of Small Manufacturers Assistance, 1–800–638–2041 or 301–827–0111 or (FAX) Facts-on-Demand at 1–800–899–0381 or Internet at http://www.fda.gov/cdrh
Global Harmonization Task Force: Draft Document on the Essential Principles of Safety and Performance of Medical Devices on a Global Basis	October 28, 1998	Do	Do
Global Harmonization Task Force: Availability of Draft Documents on Adverse Event and Vigilance Reporting of Medical Device Events	August 31, 1998	OC/Office of Surveillance and Biometrics (OSB)	Do
Guidance for Industry—Contents of a PDP	April 25, 1998	Office of Device Evaluation (ODE)	
Medical Device Labeling—Suggested Format and Content	May 9, 1997	Do	Do
Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices (replaces Reviewer Guidance for Computer-Controlled Medical Devices Undergoing 510(k) Review 8/29/91)	May 28, 1998	Do	Do
New Model Medical Device Development Process	June 3, 1998	Do	Do
Modifications to Devices Subject to Premarket Approval the PMA Supplement Decision Making Process	August 6, 1998	Do	Do
Guidance for Off-the Shelf Software Use in Medical Devices	August 17, 1998	Do	Do
Convenience Kits Interim Regulatory Guidance	May 20, 1997	Do	Do
Kit Certification for 510(k)s	July 1997	Do	Do
Guidance to Industry Supplements to Approved Applications for Class III Medical Devices: Use of Published Literature, Use of Previously Submitted Materials, and Priority Review	May 20, 1998	Do	Do
30-Day Notices and 135-Day PMA Supplements for Manufacturing Method or Process Changes, Guidance for Industry and CDRH	February 19, 1998	Do	Do
Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff	February 19, 1998	Do	Do
Guidance for Submission of Immunohistochemistry Applications to the FDA	June 6, 1998	ODE/Division of Clinical Laboratory Devices (DCLD)	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
In Vitro Diagnostic Creatinine Test System	July 2, 1998	Do	Do
In Vitro Diagnostic Bicarbonate/Carbon Dioxide Test System	July 6, 1998	Do	Do
In Vitro Diagnostic Chloride Test System	July 6, 1998	Do	Do
In Vitro Diagnostic Glucose Test System	July 6, 1998	Do	Do
In Vitro Diagnostic Potassium Test System	July 6, 1998	Do	Do
In Vitro Diagnostic Sodium Test System	July 6, 1998	Do	Do
In Vitro Diagnostic Urea Nitrogen Test System	July 6, 1998	Do	Do
In Vitro Diagnostic C-Reactive Immunological Test System	July 20, 1998	Do	Do
In Vitro Diagnostic Calibrators	July 20, 1998	Do	Do
Points To Consider For Hematology Quality Control Materials	September 30, 1997	Do	Do
Points to Consider for Approval of Home Drugs of Abuse Test Kits Draft	September 16, 1997	Do	Do
Review Criteria for Assessment of Professional Use Human Chorionic Gonadotropin (hCG) in Vitro Diagnostic Devices (IVD's)	November 6, 1996	Do	Do
Letter to IVD Manufacturers on Streamlined PMA	December 22, 1997	Do	Do
Reviewer Guidance for Premarket Notification (510(k)) Submissions—Labeling, Performance and Environmental Testing for Electronic Devices	July 19, 1995	ODE/Division of Cardiovascular, Respiratory, and Neurological Devices (DCRND)	Do
Draft Guidance for Format and Content for Premarket Notification 510(k)	July 19, 1995	Do	Do
Guidance on the Content and Format of Premarket Notifications [510(k)] Submissions for Liquid Chemical Sterilants and High Level Disinfectants	December 18, 1997	ODE/Division of Dental, Infection Control, and General Hospital Devices (DDIGD)	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for Surgical Masks	January 16, 1998	Do	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for Testing for Skin Sensitization to Chemicals in Latex Products	February 13, 1998	Do	Do
CDRH Regulatory Guidance Document for Preamendments Unclassified Washers and Washer-Disinfectors Intended for Processing Reusable Medical Devices	April 27, 1998	Do	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions of Washers and Washer-Disinfectors	August 4, 1998	Do	Do
Devices for the Treatment and/or Diagnosis of Temporomandibular Joint Dysfunction and/or Orofacial Pain	June 10, 1998	Do	Do
Dental Impression Materials Premarket Notification	August 17, 1998	Do	Do
OTC Denture Cushions, Pads, Reliners, Repair Kits, and Partially Fabricated Denture Kits	August 18, 1998	Do	Do
Dental Cements Premarket Notification	August 18, 1998	Do	Do
Further Information on the Regulation of Liquid Chemical Sterilants and High Level Disinfectants	August 18, 1997	Do	Do
Letter to Orthopedic Surgical Manufacturers Association	November 26, 1997	ODE/Division of General and Restorative Devices (DGRD)	Do
Letter to the Health Industry Manufacturers Association	November 26, 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance Document for Industry and CDRH Staff for the Preparation of Investigational Device Exemptions and Premarket Approval Applications for Bone Growth Stimulator Devices (Replaces: Guidance Document for the Preparation of Investigational Device Exemptions and Premarket Approval Applications for Bone Growth Stimulator Devices 8/12/88)	March 18, 1998	Do	Do
Guidance for Content of Premarket Notifications for Esophageal and Tracheal Prostheses	April 28, 1998	Do	Do
Guidance Document for Surgical Lamp 510ks	July 13, 1998	Do	Do
Retinoscope Guidance	July 8, 1998	ODE/Division of Opthalmic Devices (DOD)	Do
Opthalmoscope Guidance	July 8, 1998	Do	Do
Slit Lamp Guidance	July 8, 1998	Do	Do
Revised Procedures for Adding Lens Finishing Laboratories to Approved Premarket Approval Applications for Class III Rigid Gas Permeable Contact Lens for Extended Wear	August 11, 1998	Do	Do
Third Party Review Guidance for Vitreous Aspiration and Cutting Device Premarket Notification (510K)	January 31, 1997	Do	Do
Third Party Review Guidance for Phacofragmentation System Device Premarket Notification (510K)	January 31, 1997	Do	Do
Dear Sponsor Letter Concerning the Revocation of 21 CFR part 813 IOL IDE Regulations	May 20, 1997	Do	Do
Guidance for the Content of Premarket Notification for Conventional and High Permeability Hemodialyzers (replaces: Guidelines for Premarket Testing of New Conventional Hemodialyers, High Premeability Hemodialyzers and Hemofilters)	August 7, 1998	ODE/Division of Reproductive Abdominal, ENT, and Radiological Devices (DRAERD)	Do
Uniform Contraceptive Labeling	July 23, 1998	Do	Do
Guidance for the Content of Premarket Notifications for Conventional and High Permeability Hemodialyzers	August 7, 1998	Do	Do
Guidance for Industry and CDRH Reviewers on the Content of Premarket Notifications for Hemodialysis Delivery Systems	August 7, 1998	Do	Do
Devices Used for In Vitro Fertilization and Related Assisted Reproduction Procedures	September 10, 1998	Do	Do
Letter to Manufacturers of Falloposcopes	September 5, 1996	Do	Do
Letter to Manufacturers of Prescription Home Monitors for Non-Stress Tests	September 6, 1996	Do	Do
Continuing Education Credits for Reading/Writing Articles/Papers and Presenting Courses/Lectures	April 17, 1998	Office of Health and Industry Programs (OHIP)/Division of Mammography Quality and Radiation Programs (DMQRP)	Do
Accidental Radioactive Contamination of Human Food and Animal Feeds: Recommendations for State and Local Agencies	August 13, 1998	Do	Do
Additional Mammography Review Policy	March 26, 1998	Do	Do
Guidance For Review of Cases of Possible Suspension or Revocation of Mammography Facility Certificates Under the Mammography Quality Standards Act, 42. U.S.C. section 263b	March 26, 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Review of Requests for Reconsideration of Adverse Decisions on Accreditation of Mammography Facilities Under the Mammography Quality Standards Act, 42. U.S.C. section 263b	March 26, 1998	Do	Do
Guidance for Submission of Requests for Reconsideration of Adverse Decisions on Accreditation of Mammography Facilities Under the Mammography Quality Standards Act, 42. U.S.C. section 263b	March 26, 1998	Do	Do
Supplement to ''The Physician's Continuing Experience Requirement''	April 9, 1998	Do	Do
Requalification for Interpreting Physician's Continuing Experience	May 28, 1998	Do	Do
MQSA Policy Statements in a Question and Answer	June 2, 1998	Do	Do
Compliance Guidance: The Mammography Quality Standards Act Final Regulations	July 8, 1998	Do	Do
MQSA Policy Statements for the Interim Regulations	August 6, 1998	Do	Do
Policy for Facilities Changing Accreditation Bodies	April 15, 1998	Do	Do
Guidance on FDA's Expectations of Medical Device Manufacturers Concerning the Year 2000 Date	May 15, 1998	Office of Science and Technology (OST)/ Division of Electronics and Computer Science (DESC)	Do
Immunotoxicity Testing	1996	OST/Division of Life Sciences (DLS)	Do
Guidance on the Recognition and Use of Consensus Standards	February 19, 1998	OST/Office of the Director (OD)	Do
Deletions			
Biotechnology and FDA Regulation of Hybridoma In-Vitro Diagnostic Products: List of Current Devices and Guidelines for Manufacturers	January 1, 1986	ODE	Do
DCRND—Draft Guidance for Format and Content for Premarket Notification 510(k) [replaces 908] [cardiovascular, respiratory, neurological]	July 19, 1995	ODE/DCRND	Do
Guidance for Safety and Effectiveness Data Required in Premarket Notification (510(k)) Applications for Blood Oxygenators	March 1, 1983	Do	Do
Automated Defibrillators: Operator's Shift Checklist and Manual Defibrillators: Operator's Shift Checklist	August 8, 1991	Do	Do
Guidance for the Preparation and Content of Applications to the Food and Drug Administration for Ventricular Assist Devices and Total Artificial Hearts (draft)	December 4, 1987	Do	Do
Guidance Document for the Preparation of IDE and PMA Applications for Bone Growth Stimulator Devices	August 12, 1988	ODE/DGRD/ORDB	Do
Reviewer Guidance for Computer Controlled Medical Devices Undergoing 510(k) Review	August 29, 1991	ODE	Do
Guidelines for Premarket Testing of New Conventional Hemodialyzers, High Permeability Hemodialyzers, and Hemofilters	March 1, 1982	ODE/DRAERD/GRDB	Do
Frequently Asked Questions on Recognition of Consensus Standards	February 19, 1998	OST	Do
Corrections			

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Determining Equivalence of Intraaortic Balloon Catheters Under the 510(k) Regulations	December 8, 1993	ODE/DCRND	Do
Guidance for the Preparation of the Annual Report to the PMA Approved Heart Valve Prostheses	September 1, 1990	Do	Do
Electrocardiograph (ECG) Electrode	February 11, 1997	Do	Do
Electrocardiograph (ECG) Lead Switching Adapter	February 11, 1997	Do	Do
Electrocardiograph (ECG) Surface Electrode Tester	February 11, 1997	Do	Do
Reviewer Guidance for Nebulizers, Metered Dose Inhalers, Spacers and Actuators	October 1, 1993	Do	Do
Reexamination of the Evaluation Process for Liquid Chemical Sterilant and Height Level Disinfectants	May 19, 1997	ODE/DDIGD	Do
FDA Guidelines for Multifocal Intraocular Lens IDE Studies and PMAs	May 29, 1997	ODE/DOD	Do
Information for Manufacturers Seeking Marketing Clearance of Diagnostic Ultrasound Systems and Transducers	September 30, 1997	ODE/DRAERD/RDB	Do
Tympanostomy Tubes, Submission Guidance for a 510(k) Premarket Notification	January 14, 1998	ODE/DRAERD	Do

IV. Guidance Documents Issued by the Center for Drug Evaluation and Research (CDER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Topical Dermatological Drug Product NDA's and ANDA's—In Vivo Bioavailability, Bioequivalence, In Vitro Release and Associated Studies, Draft	June 18, 1998	Biopharmaceutic	Office of Training and Communication, Drug Information Branch, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Internet access: http://www.fda.gov/cder/guidance/index.htm
Buspirone Hydrochloride Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 15, 1998	Do	Do
SUPAC IR/MR: Immediate Release and Modified Release Solid Oral Dosage Forms Manufacturing Equipment Addendum, Draft	April 28, 1998	Chemistry	Do
Stability Testing of Drug Substances and Drug Products, Draft	June 8, 1998	Do	Do
PAC–ATLS: Postapproval Changes- Analytical Testing Laboratory Sites	April 28, 1998	Do	Do
Environmental Assessment of Human Drugs and Biologics Applications	July 27, 1998	Do	Do
Uncomplicated and Complicated Skin and Skin Structure Infections; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Clinical Antimicrobial Guidances	Do
Acute Bacterial Meningitis; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do
Uncomplicated Gonorrhea—Cervical, Urethral, Rectal, and/or Pharyngeal; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do
Complicated Urinary Tract Infections and Pylonephritis; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Streptococcal Pharyngitis and Tonsillitis; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do
Secondary Bacterial Infections of Acute Bronchitis; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do
Uncomplicated Urinary Tract Infections; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do
Nosocomial Pneumonia; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do
Vulvovaginal Candidiasis; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do
Lyme Disease; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do
Empiric Therapy of Febrile Neutropenia; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do
Community Acquired Pneumonia; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do
Bacterial Vaginosis; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do
Acute Otitis Media; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do
Acute Bacterial Sinusitis; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do
Acute Bacterial Exacerbation of Chronic Bronchitis; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do
General Considerations for Clinical Trials; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do
Acute or Chronic Bacterial Prostatitis; Developing Antimicrobial Drugs for Treatment, Draft	July 22, 1998	Do	Do
Submission of Abbreviated Reports and Synopses in Support of Marketing Applications; Draft	September 21, 1998	Clinical Medical	Do
Developing Medical Imaging Drugs and Biologics	October 13, 1998	Do	Do
Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products	May 15, 1998	Do	Do
Pharmacokinetics and Pharmacodynamics in Patients with Impaired Renal Function: Study Design, Data Analysis, and Impact on Dosing and Labeling	May 15, 1998	Clinical Pharmacology	Do
Manufacture, Processing or Holding of Active Pharmaceutical Ingredients, Draft	April 17, 1998	Compliance	Do
Investigating Out of Specification (OOS) Test Results for Pharmaceutical Production	September 30, 1998	Do	Do
ANDA's: Impurities in Drug Substances, Draft	July 24, 1998	Generic Drug	Do
E5 Ethnic Factors in the Acceptability of Foreign Clinical Data, Draft	June 10, 1998	ICH Efficacy	Do
E9 Statistical Principles for Clinical Trials	September 16, 1998	Do	Do
Q6B Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products, Draft	June 9, 1998	ICH Quality	Do
Q5D Quality of Biotechnological/Biological Products: Derivation and Characterization of Cell Substrates Used for Production of Biotechnological/Biological Products	September 21, 1998	Do	Do
Q5A Biotechnological/Biological Pharmaceutical Products; Viral Safety Evaluation	September 24, 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
OTC Topical Drug Products for the Treatment of Vaginal Yeast Infections (Vulvovaginal Candidiasis), Draft	July 16, 1998	Labeling	Do
Dipirefrin Hydrochloride Opthalmic Solution USP	October 1, 1998	Do	Do
Non-Contraceptive Estrogen Class Labeling	October 15, 1998	Do	Do
Submitting Debarment Certification Statements, Draft	October 2, 1998	Procedural Guidances	Do
National Uniformity for Nonprescription Drugs Ingredient Labeling for OTC Drugs	April 9, 1998	Do	Do
Standards for the Prompt Review of Efficacy Supplements, Including Priority Efficacy Supplements	May 15, 1998	Do	Do
Repeal of Section 507 of the Federal Food, Drug, and Cosmetic Act	June 15, 1998	Do	Do
Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act	June 29, 1998	Do	Do
180-Day Generic Drug Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act	July 14, 1998	Do	Do
Implementation of Section 126, Elimination of Certain Labeling Requirements of the FDA Modernization Act of 1997	July 21, 1998	Do	Do
Advisory Committees: Implementing Section 120 of the FDA Modernization Act of 1997	November 2, 1998	Do	Do
Submitting and Reviewing Complete Responses to Clinical Holds	May 14, 1998	User Fee	Do
Classifying Resubmissions in Response to Action Letters	May 14, 1998	Do	Do
Withdrawn			
Pharmacokinetic Considerations in Drug Studies		Biopharmaceutic	
Carbamazepine (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	January 20, 1988	Do	
Evaluation of Controlled Release Drug Products; Division Guidelines	April 18, 1984	Do	
Approaches to Statistical Data Analysis of Bioavailability/Bioequivalence Studies	November 11, 1985	Do	
Controlled Release Dosage Forms: Issues and Controversies (Conference Report)	September 10, 1985	Do	
Submission of Data for Bioequivalence Studies in Computer Format		Do	
Albuterol Inhalation Aerosols (Metered Dose Inhalers) In Vivo Bioequivalence and In Vitro Dissolution Testing	January 27, 1994	Do	
Albuterol Sulfate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 29, 1987	Do	
Amoxapine (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 5, 1988	Do	
Atenolol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	October 6, 1988	Do	
Clindamycin Hydrochloride (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 31, 1988	Do	
Diazepam In Vivo Bioequivalence Study	July 8, 1985	Do	
Dipyridamole Drug Products Bioavailability	September 25, 1987	Do	
Disopyramide Phosphate (Capsules)	July 9, 1985	Do	
Doxepin Hydrochloride Drug Products In Vivo Bioequivalence Study	October 9, 1986	Do	
Doxycycline Hyclate In Vivo Studies and In Vitro Dissolution Testing	April 11, 1988	Do	

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Erythromycin Capsules (Enteric Coated Pellets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	September 21, 1988	Do	
Fenoprofen (capsules and tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	February 3, 1988	Do	
Haloperidol (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	April 30, 1987	Do	
Hydroxyzine Pamoate (capsules) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	September 28, 1987	Do	
Isosorbide Dinitrate (chewable tablets, oral tablets, and sublingual tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	September 22, 1987	Do	
Isosorbide Dinitrate (Controlled Release) In Vivo Bioavailability Studies	November 6, 1985	Do	
Lorazepam (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	September 16, 1987	Do	
Megestrol Acetate (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	August 17, 1987	Do	
Methylprednisolone (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	June 12, 1986	Do	
Minoxidil (tablets)	June 12, 1986	Do	
Nafcillin Sodium (Capsules and Tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	September 10, 1987	Do	
Norethindrone and Ethinyl Estradiol (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	March 18, 1988	Do	
Norethindrone and Mestranol (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	May 13, 1988	Do	
Orphenadrine Citrate (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	July 22, 1983	Do	
Procainamide In Vivo Bioavailability Studies	September 28, 1987	Do	
Rifampin (capsules) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	September 8, 1988	Do	
Silver Sulfadiazine (cream)	May 7, 1987	Do	
Spironolactone In Vivo Single Dose Studies and In Vitro Dissolution Testing	January 1, 1986	Do	
Sulfasalazine (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	October 8, 1987	Do	
Sulindac (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 18, 1988	Do	
Theophylline (conventional dosage form) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 1, 1984	Do	
Timolol Maleate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 9, 1988	Do	
Tolmetin Sodium (tablets and capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	October 6, 1994	Do	
Triazolam (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 24, 1992	Do	
Acetohexamide (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 1, 1988	Do	
Allopurinol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 15, 1985	Do	

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Amiloride Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	March 29, 1985	Do	
Aminophylline (suppositories) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 5, 1983	Do	
Amitriptyline Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 5, 1983	Do	
Amoxicillin (capsules, tablets, and suspensions) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 10, 1988	Do	
Baclofen (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 5, 1988	Do	
Cefadroxil (capsules, tablets, and suspension) In Vivo Bioequivalence and In Vitro Dissolution Testing	October 7, 1988	Do	
Cephalexin (tablets and capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	March 19, 1987	Do	
Cephradine (capsule and suspension) In Vivo Bioequivalence Studies	September 10, 1986	Do	
Chlordiazepoxide and Chlordiazepoxide HCl Bioavailability and Dissolution Studies	July 5, 1983	Do	
Chlorpropamide In Vivo Bioavailability Studies	July 5, 1983	Do	
Chlorthalidone (tablets)	July 5, 1983	Do	
Clofibrate In Vivo Bioavailability Studies	April 7, 1986	Do	
Clonidine Hydrochloride Drug Products In Vivo Bioequivalence Study and In Vitro Dissolution Testing	December 5, 1984	Do	
Clorazepate In Vivo Bioequivalence Study and In Vitro Dissolution Testing	February 17, 1987	Do	
Cyclobenzaprine Hydrochloride (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	January 25, 1988	Do	
Desipramine Hydrochloride (tablets) In Vivo Bioequivalence Studies	September 22, 1987	Do	
Dicyclomine Hydrochloride Drug Products In Vivo Bioequivalence	August 10, 1984	Do	
Dissolution Testing (General)	April 1, 1978	Do	
Estopipate Tablets In Vivo Bioequivalence Study and In Vitro Dissolution Testing	August 26, 1992	Do	
Flurazepam Hydrochloride (capsules) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	October 15, 1985	Do	
Hydrochlorothiazide (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	September 28, 1987	Do	
Hydroxyzine Hydrochloride (tablets) (dissolution only)	March 4, 1986	Do	
Indomethacin (capsules) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	January 27, 1988	Do	
Isopropamide Iodide (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	May 12, 1982	Do	
Loxapine Succinate (capsules) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	September 10, 1987	Do	
Maprotiline Hydrochloride (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	August 27, 1987	Do	
Meclofenamate Sodium (capsules) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	November 12, 1986	Do	
Metaproterenol Sulfate (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	March 18, 1986	Do	

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Metoclopramide Hydrochloride (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	December 27, 1984	Do	
Nalidixic Acid In Vivo Bioequivalence Study and In Vitro Dissolution Testing	August 19, 1987	Do	
Nitrofurantion Macrocrystalline (capsules) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	January 10, 1986	Do	
Nitroglycerin Ointment In Vivo Bioequivalence Studies	December 17, 1986	Do	
Perphenazine (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	August 27, 1987	Do	
Perphenazine/Amitriptyline (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	August 27, 1987	Do	
Phenylbutazone Oxyphenbutazone (capsules and tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	September 28, 1987	Do	
Prazepam (capsules and tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	July 26, 1988	Do	
Prednisone (tablets) (dissolution only)	July 10, 1985	Do	
Probenecid Drug Products Bioavailability Study	July 26, 1983	Do	
Propoxyphene Napsylate with Acetaminphen (tablets)	March 26, 1980	Do	
Propranolol Hydrochloride (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	August 1, 1984	Do	
Propylthiouracil (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	August 13, 1986	Do	
Quinidine Gluconate (tablets, controlled release) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	September 22, 1987	Do	
Ritodrine Hydrochloride (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	August 27, 1987	Do	
Sulfinpyrazone (Capsules and Tablets)	September 25, 1987	Do	
Sulfones (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	November 7, 1986	Do	
Temazepam In Vivo Bioequivalence Study and In Vitro Dissolution Testing	August 8, 1985	Do	
Tolazamide (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	May 30, 1986	Do	
Tolbutamide (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	December 1, 1983	Do	
Trimipramine Maleate (capsules) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	August 18, 1987	Do	
Verapamil Hydrochloride (tablets) In Vivo Bioequivalence Study and In Vitro Dissolution Testing	July 18, 1985	Do	
Clinical Evaluation of Drugs for the Treatment of Peripheral Vascular Disease		Clinical	
Clinical Evaluation of Bronchodilator Drugs	November 1, 1978	Clinical/Medical	
Topical Corticosteriod Class Labeling		Labeling	

V. Guidance Documents Issued by the Center for Food Safety and Applied Nutrition (CFSAN)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Level I Guidances			
Draft Working Guide to Minimize Microbial Hazards for Fresh Fruits and Vegetables	1998	Farmers and Food Packers	Lou Carson (HFS–3), Food and Drug Administration, 200 C. St. SW., Washington, DC 20204 or jsaltsman@bangate.fda.gov
Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body	1998	Regulated Industry	Office of Food Labeling (HFS–150), Food and Drug Administration, 200 C. St. NW., Washington, DC 20204

VI. Guidance Documents Issued by the Center for Veterinary Medicine (CVM)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry: Use of Human Chorionic Gonadotropin (HCG) as a Spawning Aid for Fish	April 1998	FDA Regulated Industry	CVM Internet Home Page at http://www.fda.gov/cvm, or from CVM's Communications Staff (HFV–12), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755, fax 301–594–1831
Guidance for Industry: GMP's For Medicated Feed Manufacturers Not Required to Register and Be Licensed With FDA	May 1998	Do	Do
VICH Draft Guidance for Industry: Stability Testing of New Animal Drug Substances and Products	July 1998	Do	Do
VICH Draft Guidance for Industry: Stability Testing for New Dosage Forms of New Animal Drugs: Draft Guidance	July 1998	Do	Do
VICH Draft Guidance for Industry: Stability Testing: Photostability Testing of New Animal Drug Substances and Products	July 1998	Do	Do
Guidance for Industry: Questions and Answers; BSE Feed Regulations	July 1998	Do	Do
Guidance for Industry: Interpretation of On-Farm Feed Manufacturing and Mixing Operations; Draft	August 1998	Do	Do
Tolerances Established for Tetracyclines in Milk	August 11, 1998 (Updated)	Do	Do
Withdrawn			
Points to Consider Guideline: Development of a Pharmacokinetic Guideline Enabling Flexible Labeling of Therapeutic Antimicrobials	1993	Do	

VII. Guidance Documents Issued by the Office of Regulatory Affairs

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Compliance Policy Guide Medical Device Warning Letter Draft Pilot	August 27, 1998	FDA Staff Personnel	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420 or via Internet at www.fda.gov/ora/compliance_ref/dev_pl.pdf
Compliance Policy Guide 675.400 (CPG 7126.24): REVISION Rendered Animal Feed Ingredients	November 13, 1998	Do	Do—Internet at www.fda.gov/ora/compliance_ref/cpg/cpgvet/cpg675.400.html
Regulatory Procedures Manual: UPDATE/REVISION Subchapter/Seizure	June 1998	Do	Do—Internet at www.fda.gov/ora/compliance_ref/rpm_new2/ch6.html
Regulatory Procedures Manual: UPDATE/REVISION Subchapter/Supervisory Charges	June 1998	Do	Do—Internet at www.fda.gov/ora/compliance_ref/rpm_new2/ch9chgs.html
Regulatory Procedures Manual: NEW Subchapter/Civil Penalties—Electronic Product Radiation Control	July 1998	Do	Do—Internet at www.fda.gov/ora/compliance_ref/ch6civpen.html
Guide to Traceback of Fresh Fruits and Vegetables Implicated in Epidemiological Investigations	August 1998	Do	Division of Emergency and Investigational Operations (HFC–130), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301–443–3276
Guide to Inspections of Computerized Systems in the Food Processing Industry	August 1998	Do	Do—Internet at www.fda.gov/ora/inspect_ref/igf/iglist.html
Import Alerts	Continuously	Do	Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or via Internet at www.fda.gov/ora/fiars/ora_import_alerts.html
Investigations Operations Manual-REVISION; Chapter 4—Sampling	July 1998	Do	Division of Emergency and Investigational Operations (HFC–130), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301–443–3276 or via internet at www.fda.gov/ora/inspect_ref/iom/iomtc.html
Investigations Operations Manual-REVISION; Chapter 5—Establishment Inspection	July 1998	Do	Do
Documents Not Included on Previously Published Lists			
Compliance Policy Guide—DRAFT Commercialization of In Vitro Diagnostic Devices (IVD's) Labeled for Research Use Only or Investigational Use Only	January 5, 1998	Do	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 301–827–0420 or via internet at www.fda.gov/cdrh/comp/ivddrfg.html
Compliance Policy Guide—DRAFT Distributor Medical Device Reporting	August 28, 1998	Do	Do or via internet at www.fda/gov/ora/compliance_ref/cpg_mdr3.txt
Withdrawn			
Compliance Policy Guide 530.400 (CPG 7121.02) Vitamin Products for Human Use—Low Potency	September 23, 1997	Do	
Compliance Policy Guide 210.150 (CPG 7134.09)Importation of Licensed Biological Products for Human Use			
Corrections to July 6, 1998 Quarterly List			
Guideline for the Monitoring of Clinical Investigators	Revised November 1998	FDA Regulated Industry	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420
Computerized Systems Used in Clinical Trials Should be identified as a DRAFT	June 18, 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
ComplianceProgram 7348.808, Bioresearch Monitoring; Good Laboratory Practices (Nonclinical)	Revised August 17, 1998	FDA Staff Personnel	Do—Internet http://www.fda.gov/ora/compliance_ref/bimo/default.html
Compliance Program 7348.810; Sponsors, Contract Research Organizations and Monitors	Revised October 30, 1998	Do	Do—Internet http://www.fda.gov/ora/compliance_ref/bimo/default.html
Compliance Program 7348.811; Bioresearch Monitoring; Clinical Investigations	Revised September 2, 1998	Do	Do—Internet http://www.fda.gov/ora/compliance_ref/bimo/default.html
The following documents are not available via the internet: Food Laboratory Practice Program (Nonclinical Laboratories) 7348.808A; EPA Data Audit Inspections	October 1, 1991	Do	Do
Compliance Program 7348.809; Bioresearch Monitoring; Institutional Review Board	August 18, 1994		

VIII. Guidance Documents Issued by the Office of the Commissioner and the Office of Policy

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Industry; Exports and Imports under the FDA Export Review and Enhancement Act of 1996	June 1998	FDA Regulated Industry	Via Internet at http://www.fda.gov/opacom/fedregister/frexport.html
Policy & Guidance Handbook for FDA Advisory Committees	1994	FDA Staff Personnel	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, 703–487–4650 (Order No. PB94–158854)

Dated: December 28, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–155 Filed 1–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing: Therapeutic Respiratory Syncytial Virus Monoclonal Antibodies

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: Respiratory Syncytial Virus (RSV) is the major cause of serious viral lower respiratory tract illness in infants and children worldwide. Research at the National Institutes of Health (NIH) has resulted in the discovery of several different anti-RSV monoclonal antibody (MAb) technologies important for the treatment of this disease. Used separately or in combination, these technologies could provide the basis for the commercial development of a new anti-RSV therapeutic. The therapeutic technologies available for licensing consist of a patented human MAb against RSV, a unpatented panel of murine MAbs against RSV and patent applications relating to methods of treating RSV infection utilizing more than one antibody. The human and murine MAbs bind the F glycoprotein of RSV at different nonoverlapping epitopes. A product combining the human MAb with a humanized version of a least one of the murine antibodies may provide an improvement to current single MAb therapies by reducing the likelihood of the formation of RSB escape mutants.

ADDRESSES: Questions about these licensing opportunities, copies of the patent and/or patent applications should be addressed to Peter Soukas, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: 301/496–7735 ext. 268; Fax: 301/402–0220; E-mail: ps193c@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 USC 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patented applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

Human Neutralizing Monoclonal Antibodies to Respiratory Syncytial Virus and Human Neutralizing Antibodies to Respiratory Syncytial Virus

Inventors: Robert Chanock, Dennis Burton, Carlos Barbas III, Brian Murphy, and James Crowe Jr.

Serial Number 08/162,102 filed 10 Dec 93 (with priority to 16 Sep 92) which issued as U.S. Patent Number 5,762,905 on 09 Jun 98 and Serial Number 08/920,100 filed 26 Aug 97 (divisional of 08/162,102)

This invention is a human monoclonal antibody fragment (Fab) discovered utilizing phage display technology. It is described in Crowe et al., *P.N.A.S.* 91:1386–1390 (1994) and Barbas et al., *P.N.A.S.* 89:10164–10168 (1992). This MAb binds an epitope on the RSV F glycoprotein at amino acid 266 with an affinity of approximately $10^9\,M^{-1}$. This MAb neutralized each of 10 subgroup A and 9 subgroup B RSV strains with high efficiency. It was effective in reducing the amount of RSV in lungs of RSV-infected cotton rats 24 hours after treatment, and successive treatments caused an even greater reduction in the amount of RSV detected. The invention has been foreign filed as PCT/US93/08786.

Murine Monoclonal Antibodies Effective To Treat Respiratory Syncytial Virus

Inventors: Robert Chanock, Brian Murphy, Judy Beeler, and Kathleen van Wyke Coelingh

Available for licensing through a Biological Materials License Agreement are the murine MAbs described in Beeler, J. A. et al. ''Neutralization Epitopes of the F Glycoprotein of Respiratory Syncytial Virus: Effect of Mutation Upon Fusion function,'' *J. Virology* 63:2941–2950 (1989). The MAbs that are available for licensing are the following: 1129, 1153, 1142, 1200, 1214, 1237, 1121, 1112, 1269, and 1243. One of these MAbs, 1129, is the basis for a humanized murine MAb (see U.S. Patent Number 5,824,307 to humanized 1129 owned by MedImmune, Inc.), recently approved for marketing in the United States. MAbs in the panel reported by Beeler, et al. have been shown to be effective therapeutically when administered into the lungs of cotton rats by small-particle aerosol. Among these MAbs several exhibited a high affinity (approximately 10^9M^{-1}) for the RSV F glycoprotein and are directed at epitopes encompassing amino acid 262, 272, 275, 276 or 389. These epitopes are separate, nonoverlapping and distinct from the epitope recognized by the human Fab of patent 5,762,905 (see above for description).

Immunotherapeutic Method of Preventing or Treating Viral Respiratory Tract Disease

Inventors: Robert Chanock, Gregory Prince, James Young, Brian Murphy, Val Hemming, Judy Beeler, Kathleen Coelingh Serial Number 08/479,797 filed 97 Jun 95 (CIP of combined applications 07/555,091 and 07/937,909)

Rather than the use of a single monoclonal antibody to treat lower respiratory infections, this invention contemplates the use of a mixture of neutralizing, prophylactic and therapeutic monoclonal antibodies each directed to a specific epitope on the surface of a major viral protein (for example, the F glycoprotein of RSV) to treat infections. Utilizing a mixture of antibodies significantly lessens the possibility of escape mutants. This invention discloses an improved method of treating or preventing lower respiratory tract viral diseases through the administration of multiple neutralizing and therapeutic antibodies in a small particle aerosol. Prior to this invention, there has not been a convenient method of administration. Previously, small children and infants have only been able to use this therapy when incubated and attached to a ventilator. An aerosol nebulizer is utilized in this invention. Furthermore, a prophylactic, neutralizing, and therapeutic combination of various antiviral agents is also described.

Dated: December 28, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–240 Filed 1–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders A.

Date: February 18–19, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Wardman Park Hotel, 2660 Woodley Road, NW, Washington, DC 20008.

Contact Person: Katherine M. Woodbury, Phd, Scientific Review Administrator, National Institute of Neurological Disorders and Stroke, National Institutes of Health, PHS, DHHS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9223.

Name of Committee: Training Grant and Career Development Review Committee.

Date: February 19, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 ''M'' Street NW, Washington, DC 20037.

Contact Person: Lillian M. Pubols, Phd, Chief, Scientific Review Branch, Scientific Review Branch, Division of Extramural Activities, NINDS, National Institutes of Health, PHS, DHHS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892–9175, 301–496–9223, Ip28e@nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders B.

Date: February 25–26, 1999.

Time: 7:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: The Hotel Washington, 15 15th Street NW, Washington, DC 20004–1099.

Contact Person: Paul A. Sheehy, Phd, Scientific Review Administrator, National Institute of Neurological Disorders and Stroke, National Institutes of Health, PHS, DHHS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892–9175, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–237 Filed 1–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: January 21–22, 1999.

Open: January 21, 1999, 10 AM to 5 PM.

Agenda: The agenda includes: Report of the Director, NICHD, program plans and other business of the Council.

Place: Building 31C, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Closed: January 22, 1999, 8 AM to 1 PM.

Agenda: To review and evaluate grant applications.

Place: Building 31C, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Open: January 22, 1999, 1 PM to Adjournment.

Agenda: The meeting will reopen to discuss any policy issues that were raised.

Place: Building 31C, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Contact Person: Mary Plummer, Committee Management Officer, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: December 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–238 Filed 1–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: January 28–29, 1999.

Closed: January 28, 1999, 8:30 AM to 11 AM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Open: January 28, 1999, 11 AM to 6 PM.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of Council.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: January 29, 1999, 8:30 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: W. Sue Shafer, PhD, Deputy Director, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN–32C, Bethesda, MD 20892, (301) 594–4499.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–239 Filed 1–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–44]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* February 5, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal

for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 29, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Home Equity Conversion Mortgages; Consumer Protection Measures.

Office: Housing.

OMB approval number: 2502–xxx.

Description of the need for the information and its proposed use: This RULE provides for the collection of data to protect the homeowners in the HECM program from becoming liable for payment for excessive fees for third-party provided services of little or no value.

Form number: N/A.

Respondents: Individuals or Households.

Frequency of submission: One-Time Submission.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden:	8,000		1		.10		800
	16,000		1		.25		4,000
	8,000		1		.25		2,000

Total estimated burden hours: 6,800.

Status: New Collection.

Contact: Jeanette F. Walton, HUD, (202) 708–2700 x 3694, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–157 Filed 1–5–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for Six plants from the Mountains Surrounding the Los Angeles Basin for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for Six Plants from the Mountains Surrounding the Los Angeles Basin. These plants occur in the mountains surrounding the Los Angeles Basin in Ventura, Los Angeles, and Orange counties, California.

DATES: Comments received on the draft recovery plan by April 6, 1999, will be considered by the Service.

ADDRESSES: Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to the Field Supervisor at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 9393 (phone: 805/644–1766).

FOR FURTHER INFORMATION CONTACT: Tim Thomas, Botanist, at the Ventura address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The six plants from the mountains surrounding the Los Angeles Basin addressed in this recovery plan were added to the list of endangered and threatened plants on January 29, 1997 (62 FR 4172). Two of the plant species, Braunton's milkvetch (*Astragalus brauntonii*) and Lyon's pentachaeta (*Pentachaeta lyonii*), were listed as endangered. The remaining four species were listed as threatened. They are Conejo dudleya (*Dudleya abramsii* ssp. *parva*), marcescent dudleya (*Dudleya cymosa* ssp. *marcescens (marcescent dudleya*), Santa Monica Mountains dudleya (*Dudleya cymosa* ssp. *ovatifolia*), and Verity's dudleya (*Dudleya verityi*). These plants occur in grassland, chaparral, or coastal sage scrub vegetation in the mountains surrounding the Los Angeles Basin,

California. The six plants are threatened by one or more of the following—urban development, recreational activities, alteration of fire cycles and fire suppression activities, excessive collecting, habitat fragmentation and degradation, and competition from invasive weeds. Several of the plants are also threatened with stochastic extinction by virtue of their small numbers and small population sizes.

The goal of this plan is to stabilize and protect existing populations to allow for the downlisting of *Astragalus brauntonii* and *Pentachaeta lyonii* and their eventual delisting, and the delisting of all four of the *Dudleya* species. These plants all have very restricted distributions in specialized habitats, so the main conservation actions will be to protect existing populations of these plants, ensuring that the sites are managed for their benefit. The voluntary cooperation of private landowners will be sought.

Public comments solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 8, 1998.

Michael J. Spear,

Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service, Sacramento, California.

[FR Doc. 99–252 Filed 1–5–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the City of The Dalles Municipal Watershed, Wasco County, Oregon

AGENCY: Fish and Wildlife Service, DOI.

ACTION: Notice of receipt.

SUMMARY: This notice advises the public that the City of The Dalles (City) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application has been assigned permit number TE004366–0. The proposed permit would authorize the incidental take, in the form of habitat modification (i.e., harm), of the northern spotted owl (*Strix occidentalis caurina*) which is federally listed as threatened. The permit would be in effect for up to 30 years.

We request comments from the public on the City's incidental take permit application and the accompanying proposed City of The Dalles Habitat Conservation Plan (Plan). The Plan fully describes the proposed project and the measures the City will undertake to mitigate for project impacts to the owl. These measures and associated impacts are also described in the background and summary information that follow.

We also request comments from the public on our preliminary determination that the City's Plan would qualify as a ''Low Effect'' Plan, eligible for a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1). The basis for this determination is discussed in an Environmental Action Statement, which is also available for public review.

DATES: Written comments on the permit application and Plan should be received on or before February 5, 1999.

ADDRESSES: Individuals wishing copies of the permit application, copies of the Service's preliminary Low Effect Determination, or copies of the full text of the Plan, which includes a map of the permit area, references, legal descriptions of the permit area and an associated Memorandum of Understanding between the U.S. Forest Service and the City, should immediately contact the office and personnel listed below. Documents also will be available for public inspection, by appointment, during normal business hours at the address below. Comments regarding the permit application or the Plan should be addressed to State Supervisor, Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266, fax number (503) 231–6195. Please refer to permit number TE004366–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Zisa, Fish and Wildlife Service, Oregon State Office, telephone (503) 231–6179.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and federal regulation prohibits the ''taking'' of a species listed as endangered or threatened. However, the Service, under limited circumstances, may issue permits to ''take'' listed species, provided such take is incidental to, and not the purpose of, an otherwise lawful activity. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32. Regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

The proposed permit area encompasses 1,432 acres of City-owned land in the South Fork Mill Creek Watershed of Wasco County, Oregon. It is an access-restricted watershed that is managed for the purposes of municipal water supply and quality. The City has determined that forest management activities in the permit area are compatible with their water supply and quality purposes. The permit area occurs in a narrow, linear distribution along the upper South Fork Mill Creek and is nearly surrounded by adjacent Forest Service land.

Much of the permit area is young or degraded Douglas Fir-White Fir and Ponderosa Pine-White Fir stands that are unsuitable for use by spotted owls. However, about 850 of the 1,432 forested acres are classified as useable by spotted owls. Nearly 500 of the 850 acres are lower quality habitat that may provide for owl dispersal opportunities but are of limited value for owl foraging or nesting. The surrounding Forest Service lands are designated as ''matrix'' under the Northwest Forest Plan for the purpose of providing dispersal and connectivity opportunities for the spotted owl.

The City-owned lands that provide spotted owl habitat occur within the likely home ranges of two spotted owl activity centers: one is occupied by a pair of owls, and the other is occupied by a territorial single owl. Neither of these home ranges contain habitat quantities sufficient to support the long-term viability and occupancy of the resident owls. Currently, about 79 acres of the Plan area within these likely home ranges function as suitable nesting, roosting, or foraging habitat for owls. In addition, 270 acres of suitable nesting, roosting, or foraging habitat is considered unoccupied by owls.

Summary of the Habitat Conservation Plan

The Plan would ensure that the City's timber harvest impacts to spotted owls are minimized and mitigated to the maximum extent practicable by coordinating City activities with the Forest Service to manage the land on an ecosystem-wide basis. The City has entered into a Memorandum of Understanding with the Forest Service, Mt. Hood National Forest, to provide for coordinated and consistent management across the watershed. Standards and

guidelines established for management of federal lands designated as matrix under the Northwest Forest Plan will be applied to the municipal ownership for a period of 20 years. Under the Memorandum of Understanding the City shall:

(1) Maintain riparian buffers along South Fork Mill Creek and Crow Creek for a slope distance equal to or greater than the height of 2 site-potential trees from the edge of the stream channel in which 60 to 80 percent conifer canopy closure will be maintained.

(2) Cooperatively maintain, with the Forest Service, 100 acres of the best spotted owl habitat as close as possible to identified activity centers for all known spotted owl activity centers located on City-owned or Forest Service lands. City-owned habitat within activity centers on City-owned lands must be maintained until it is determined through accepted protocol survey efforts that the sites have been vacated by spotted owls for a period of 3 years.

(3) Timber management within retained 100-acre areas will be consistent with the guidelines for Late-Successional Reserves as defined in the Northwest Forest Plan.

(4) Provide for maintenance of adequate levels of coarse woody debris during timber harvest activities on City-owned lands based upon a target (where present and practicable) of 120 linear feet of logs per acre, 16 inches in diameter or greater and 16 feet long, for regeneration harvests, and appropriately modified for partial-cut harvests (modified targets to be developed jointly with the Forest Service).

Phase I of this Plan is a commitment by the City to abide by the terms of the Memorandum of Understanding for a period of 20 years. Phase II of the Plan will last for a period of 10 years, during which the City would either continue conditions set forth in the Memorandum of Understanding or ensure that the following conditions are met:

(1) Either 79 acres of owl nesting, roosting, or foraging habitat and an additional 730 acres of dispersal or better habitat is maintained on the permit lands or 100 acres of nesting, roosting, or foraging habitat and an additional 590 acres of dispersal or better habitat is maintained on the permit area. The above habitat requirements must be within the permit area, but need not be the same habitat currently existing on the permit area.

(2) Impacts to any known owl-occupied sites on or adjacent to the ownership would be minimized through: the avoidance of the 70-acre core area surrounding site centers until the sites have been determined by the Service to be vacant for 3 years; and no harvest activities within 1/4 mile of a known, active nest site between 01 March and 30 June.

The Service has made a preliminary determination that the City Plan qualifies as a ''Low-Effect'' Plan as defined by the Service's Habitat Conservation Planning Handbook. Low-Effect Plans are those involving: (1) minor or negligible effects on federally listed and candidate species and their habitats; and (2) minor or negligible effects on other environmental values or resources. As more fully explained in the Service's Environmental Action Statement, the City Plan qualifies as a Low Effect Plan for the following reasons:

(1) Approval of the Plan will result in minor or negligible effects on the owl and other listed or proposed species. Due to the low quality of this area for habitat suitability and occupation by owls and the minimization measures contained in the Plan, the amount of take likely to occur is low. The Service anticipates the take of approximately two owl sites over the entire 30-year permit duration. This level of loss would likely have occurred absent this proposed action due to management actions undertaken on adjacent federal land.

(2) The Plan will not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

(3) Approval of the Plan will not result in any cumulative or growth-inducing impacts and, therefore, will not result in significant adverse effects on public health or safety.

(4) The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, state, local or tribal law or requirement imposed for the protection of the environment.

(5) Approval of this Plan will not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service has therefore made a preliminary determination that approval of the City Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

This notice is provided pursuant to section 10(c) of the Act. The Service will evaluate the permit application, Plan, and comments submitted thereon to determine whether the application meets the requirements of 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 northern spotted owl. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: December 29, 1998.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–40 Filed 1–5–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Service Regulations Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Fish and Wildlife Service (hereinafter Service) will conduct an open meeting on January 27, 1999, to identify and discuss preliminary issues concerning the 1999–2000 migratory bird hunting regulations.

DATES: January 27, 1999.

ADDRESSES: The Service Regulations Committee will meet at the U.S. Fish and Wildlife Service, Arlington Square Building, Room 200 A/B, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert J. Blohm, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: Representatives from the Service, the Service's Migratory Bird Regulations Committee, and Flyway Council Consultants will meet on January 27, 1999, at 8:30 a.m. to identify preliminary issues concerning the 1999–2000 migratory bird hunting regulations for discussion and review by the Flyway Councils at their March meetings.

In accordance with 50 CFR 20.153 and Departmental policy regarding meetings of the Service Regulations Committee attended by any person

outside the Department, these meetings are open to public observation. Members of the public may submit written comments on the matters discussed to the Director.

Dated: December 30, 1998.

Thomas O. Melius,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–143 Filed 1–5–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–09–1220–00: GP9–0066]

Notice of Meeting of the Orgegon Trail interpretive Center Advisory Board

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Advisory Board for the National Historic Orgegon Trail Interpretive Center will be held on Wednesday, February 3, 1999 from 8:00 a.m. to 4:00 p.m. at the Best Western Sunridge Inn, One Sunridge Lane, Baker City, Oregon 97814.

At an appropriate time, the Board will recess for approximately one hour for lunch. Public comments will be received from 12:00 p.m. to 12:15 p.m., February 3, 1999. Topics to be discussed are the University of Idaho Marketing Internship, FY99 Budget, an update on FY99 Recommendations and reports from Coordinators of Subcommittees.

DATES: The meeting will begin at 8:00 a.m. and run to 4:00 p.m. February 3, 1999.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail, Interpretive Center, P.O. Box 987, Baker City, OR 97814, Telephone 541–523–1845.

Lynn P. Findley,

Acting District Manager.

[FR Doc. 99–171 Filed 1–5–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Policy Outreach Symposium on Reforestation at Surface Coal Mines; Public Meeting

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the objectives of the Government Performance and Results Act and the Vice-President's National Performance Review, the Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior is soliciting the participation of interested parties to discuss policy and technical issues related to reforestation on active and abandoned mines. On May 13, 1998, OSM held an initial meeting to seek public input on possible roles OSM might play in encouraging reforestation, where appropriate. Based on the results of that session, OSM is planning to host a number of events, including a Policy Outreach Symposium on Reforestation at Surface Coal Mines. The Symposium will be held in Washington, DC on January 14, 1999. The purpose of the symposium is to provide a forum to discuss current policy issues relevant to reforestation of mined lands and to obtain public input on how to encourage tree planting on active and abandoned mined lands.

DATES: The Policy Outreach Symposium On Reforestation at Surface Coal Mines will be a public meeting held in Washington, D.C., on January 14, 1999, beginning at 8:30 a.m.

ADDRESSES: The Policy Outreach Symposium On Reforestation will be held at the South Interior Building's Auditorium, 1951 Constitution Ave., NW, Washington, DC. Please refer to our home page, or contact Ms. Sarah Donnelly listed under For Further Information Contact, for additional information.

FOR FURTHER INFORMATION CONTACT: Sarah Donnelly at: Office of Surface Mining Reclamation and Enforcement, Room 210–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 208–2826; FAX: (202) 219–3111; E-Mail address on the Internet: sdonnell@osmre.gov. Any individual who needs special accommodations to attend the public meeting should contact Sarah Donnelly at the above address. Please refer to OSM's home page at www.osmre.gov for additional information on the Symposium. The meeting is open to the public. Limited seating for the public is available on a first-come, first serve basis. To assist us in planning seating for this event, please register via OSM's home page or at the address listed at the above address.

SUPPLEMENTARY INFORMATION: The planned program agenda for the Symposium includes the following:

State/Tribal/Industry Reforestation Comments—Review of State/Tribal and industry views on current reforestation policies, including nationwide overview of successful policies, practices, and of dilemmas.

State/Tribal Tree Planting Statistics—Nationwide overview of forestry as a post-mining land use. Quantity and quality of reforestation on active and abandoned sites, as well as, an assessment of State interest in reforestation issues will be addressed.

Site Preparation Issues—How do AOC and other grading requirements influence tree planting?; How does soil restoration, in particular, excessive compaction play into successful reforestation from a policy perspective?

Land Use Issues—How do the land use capability requirements and landowner desires influence the restoration of mined lands to forestry?

Erosion Control Issues—What are the effects of our soil stabilization policies and regulations (e.g., rills and gullies) on successful restoration of forestry land use?

Revegetation Issues—How do the revegetation standards for success influence tree planting?; Are there feasible alternatives within the current regulatory framework that would encourage reforestation?

Reforestation Efforts on AML Lands—What are the keys to current, successful AML reforestation programs?; What would encourage an increase in tree planting on AML sites—supplemental ''tree planting grants'', reforestation awards category, use of reforestation on remined lands?

Dated: December 29, 1998.

Robert J. Ewing,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 99–191 Filed 1–5–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–417]

Certain Code Hopping Remote Control Systems, Including Components and Integrated Circuits Used Therein; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 1, 1998, under section 337 of

the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Microchip Technology Inc., 2355 W. Chandler Blvd., Chandler, Arizona 85224–6199. A supplement to the Complaint was filed on December 21, 1998. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain code hopping remote control systems, including components and integrated circuits used therein, by reason of infringement of claims 1, 2, 4, 5, 11, 13, 23, 24, 25, 28, 30, 33, 38, 39 and/or 40 of U.S. Letters Patent 5,517,187. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.10 (1998).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on December 30, 1998, *Ordered that*—

(1) Pursuant to subsection (b) of Section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain code hopping remote control systems, including components and integrated circuits used therein, by reason of infringement of claims 1, 2, 4, 5, 11, 13, 23, 24, 25, 28, 30, 33, 38, 39 or 40 of U.S. Letters Patent 5,517,187. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Microchip Technology Incorporated, 2355 W. Chandler Blvd., Chandler, Arizona 85224–6199.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Chamberlain Group Inc., 845 Larch Avenue, Elmhurst, Illinois 60126

Sears Roebuck & Company, 3333 Beverly Road, Hoffmann Estates, Illinois 60179

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–Q, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.13. Pursuant to 19 C.F.R. §§ 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: December 31, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–251 Filed 1–5–99; 8:45 am]

BILLING CODE 7020–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection Under Review; Application for Waiver of Passport and/or Visa.

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 8, 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 for Waiver of Passport and/or Visa.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–193. Inspections Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. The form will be used by an alien who wishes to waive the documentary requirements for passports and/or visas due to an unforeseen emergency. The INS will use the information to determine whether applicants are eligible for entry into the United States under 8 CFR parts 212.1(b)(3) and 212.1(g).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 25,000 responses at 10 minutes (.166 per response).

(6) An estimate of the total public burden (in hours) associated with the collection: 4,150 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 31, 1998.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–213 Filed 1–5–99; 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; Nonimmigrant Petition Based on Blanket L Petition.

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 8, 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: Nonimmigrant Petition Based on Blanket L Petition.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–129S. Adjudications Division, Immigrant 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 an employer to classify employees as L–1 nonimmigrant intracompany transferees under a blanket L petition approval. The INS will use the data on this for to determine eligibility for the requested immigrant benefit.

(5) As estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 250,000 responses at 35 minutes (.583) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 145,750 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 29, 1998.

Richard S. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–214 Filed 1–5–99; 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; Application for Transmission of Citizenship Through a Grandparent.

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 8, 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 for Transmission of Citizenship Through a Grandparent.

(3) **Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:** Form N–600/N–643. 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. Section 322 of the Immigration and Nationality Act enables a United States citizen parent, who is unable to transmit citizenship of his or her children, to use a citizen grandparent's residence for transmission. This form is required so that information on a grandparent's residence may be collected to establish a child's eligibility for naturalization.

(5) **An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:** 9,641 responses at 30 minutes (.50) per response.

(6) **An estimate of the total public burden (in hours) associated with the collection:** 4,820 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, 415 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimate 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 20, 1998.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–215 Filed 1–5–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H–372]

RIN 1218–AB58

Metalworking Fluids Standards Advisory Committee: Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Metalworking Fluids Standards Advisory Committee: Notice of Meeting.

SUMMARY: The Metalworking Fluids Standards Advisory Committee (MWFSAC), established under section 7 of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on appropriate actions to protect workers from the hazards associated with occupational exposure to metalworking fluids, will meet in Washington, DC, on Monday through Wednesday, February 8, through February 10, 1999.

DATES: The meeting will be held February 8, 1999, from 10 a.m. to approximately 6 p.m.; on February 9, from 8 a.m. to approximately 5 p.m.; and on February 10, from 9 a.m. to approximately 4 p.m.

ADDRESSES: The Committee will meet at the Governor's House Hotel, 1615 Rhode Island Avenue, NW, Washington, DC 20036. Telephone: (202) 296–2100.

Mail comments, views, or statements in response to this notice to Dr. Peter Infante, U.S. Department of Labor, OSHA, Directorate of Health Standards Programs, Metalworking Fluids Standards Advisory Committee, Room N–3718, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, OSHA, (202) 693–1999.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of the Metalworking Fluids Standards Advisory Committee at the times and location indicated above. Individuals with disabilities wishing to attend should contact Theresa Berry at (202) 693–1999 (Fax: 202–693–1634) no later than February 1, 1999, to obtain appropriate accommodations.

Meeting Agenda

The Committee will discuss effective industrial hygiene practices that will lessen or prevent worker exposure to metalworking fluids. Discussions will focus on fluid management, mist control, medical exams and medical surveillance, along with related issues.

Public Participation

Written data, views, or comments for consideration by the MWFSAC on the various agenda items listed above may be submitted, preferably with 25 copies, to Dr. Peter Infante. Submissions received by January 28, 1999, will be provided to the members of the Committee. Anyone wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Dr. Peter Infante at the address listed above. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Requests to make oral presentations to the Committee may be granted if time permits.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, DC, this 30th day of December, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–236 Filed 1–5–99; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Oregon State Plan; Extension of Federal Jurisdiction to Shipyards and Indian Reservations

This document gives notice of assumption by the Federal Occupational Safety and Health Administration (OSHA) of additional enforcement jurisdiction in the State of Oregon for shore side shipyard and boatyard employment, and over private sector establishments, including tribal and Indian-owned enterprises, within the boundaries of all Indian reservations, and on trust lands outside of reservations, effective January 6, 1999.

On December 23, 1998, the Occupational Safety and Health Administration (OSHA) and the Oregon Occupational Safety and Health Division (OR–OSHA) signed a Memorandum of Understanding (MOU) relinquishing State jurisdiction and extending Federal OSHA's enforcement jurisdiction in the State of Oregon to include shipyards, and employment on Indian reservations and lands, and clarifying other areas of jurisdiction. The MOU serves as an addendum to the 1975 Operational Status Agreement between the parties. By this addendum, Federal OSHA is assuming additional jurisdiction for shore side shipyard and boatyard activity. By a separate December 1, 1998 addendum, which is also reflected in this MOU, Federal OSHA has also assumed jurisdiction over private sector employment, including tribal and Indian-owned enterprises, on all Indian reservations, including establishments on trust lands outside of reservations. A copy of the Memorandum of Understanding is annexed hereto.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Public Affairs, Occupational Safety and Health Administration, Room N3467, 200 Constitution Avenue, NW, Washington, DC, 20210, Telephone (202) 693–1999.

Signed at Washington, DC this 30th day of 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

Memorandum of Understanding and Addendum to the Operational Status Agreement Between U.S. Department of Labor Occupational Safety and Health Administration and The Oregon Occupational Safety and Health Division Department of Consumer and Business Services

This Memorandum of Understanding is intended to restate through compilation in a single document Federal OSHA's enforcement jurisdiction in the State of Oregon and to serve as an addendum to existing jurisdictional agreements contained in the January 23, 1975 Operational Status Agreement between the parties, as amended in December 1983, November 1991, and December 1998, and related subsequent clarifying Memoranda of Understanding dated August 1984, February 1987, October 1992 and September 1998. Generally, Federal OSHA has coverage in those areas identified as ''exclusive federal jurisdiction'' and also in those issues where OR–OSHA has declined or returned coverage. Also, OR–OSHA has jurisdiction over all work performed by employees of the State or of a political subdivision of the State, as provided by Section 18(c)(6) of the OSHAct, and Federal OSHA has jurisdiction over all Federal employees.

This agreement supersedes the Memorandum of Understanding signed September 21, 1998.

F–1. Shipyards and Boatyards—As established in the January 1975 Oregon OSHA/Federal OSHA Operational Agreement, Federal OSHA has jurisdiction for private sector employment on the navigable waters of the United States. By this addendum, OR–OSHA relinquishes to Federal OSHA additional jurisdiction for the shore side shipyard and boatyard activity, from the foot of the gangway on floating vessels, dry docks, graving docks and marine railways to the front gate at the work site, at all private sector work sites located on or immediately adjacent to the navigable waters. Federal OSHA will now exercise enforcement authority over all shipyard employment on or immediately adjacent to the navigable waters in Oregon from the front gate of the worksite to the U.S. statutory limits. OR–OSHA maintains jurisdiction in all other private sector shipyard and boatyard operations not located on or immediately adjacent to the navigable waters. OR–OSHA has exclusive jurisdiction for all employees of the State and its political subdivisions on land or any waters in the State.

F–2. Longshoring/Marine Terminals—Federal OSHA's jurisdiction for longshoring and marine terminal operations includes coverage of private sector employment on the wharves, bulkheads, quays, piers, docks and other berthing locations and adjacent storage or adjacent areas and structures associated with the primary movement of cargo or materials from vessel to shore or shore to vessel, including structures which are devoted to receiving, handling, holding, consolidating and loading or delivery of waterborne shipments or passengers, including areas devoted to the maintenance of the terminal or equipment. This does not include production or manufacturing areas nor does the term include storage facilities directly associated with those production or manufacturing areas. All employees of the State and its political subdivisions engaged in such activities are covered by OR–OSHA during all such operations.

This coverage is consistent with the approved State-Initiated Plan Change published in the **Federal Register**, effective June 15, 1977, where the jurisdiction for on-shore longshoring activities was returned to Federal OSHA. Federal OSHA has jurisdiction for all activities at marine grain terminals including all structures which are devoted to receiving, handling, holding, consolidating and loading or delivery of waterborne shipments.

F–3. Marine Construction—Federal OSHA has jurisdiction for construction activities emanating from or on floating vessels on the navigable waters of the United States. OR–OSHA has jurisdiction for construction activities emanating from land, piers, docks, wharves, bridges, or any other non-floating structure attached to land along navigable waters. OR–OSHA has exclusive jurisdiction for all employees of the State and its political subdivisions on land or any waters in the State.

F–4. Commercial Diving—The jurisdiction between Federal OSHA and OR–OSHA for commercial diving operations in the waters of Oregon is dependent on the dive location. Federal OSHA has coverage if the dive is originating from an object afloat (vessel, barge, etc.) a navigable waterway. OR–OSHA has jurisdiction if the dive originates from land or a dock, pier, wharf or bridge appended to land along navigable waters. OR–OSHA maintains jurisdiction for all other commercial diving. OR–OSHA has exclusive jurisdiction for all employees of the State and its political subdivisions on land or any waters in the State.

F–5. Other Waterfront Activity—At all other private sector places of employment on or adjacent to navigable waters, that are not described in F–1 through F–4 above, Federal OSHA will exercise its jurisdiction whenever the activity occurs on or from the water, and OR–OSHA will exercise its jurisdiction whenever the activity occurs on or from the land. Each agency will address readily apparent hazards whether on the land or on the water, in order to assure the safety of all activities within the worksite. OR–OSHA maintains jurisdiction for all other waterfront activity not on navigable waters.

F–6. U. S. Military Reservations—In an addendum to the Operational Status Agreement dated December 7, 1983, the Workers' Compensation Department relinquished back to Federal OSHA jurisdictional and enforcement authority for conducting safety and health inspections within the borders of all federal military reservations within the State of Oregon. All establishments and reservations of the U.S. Navy, Army, Air Force, Marine Corps, and Coast Guard are included except for private contractors working on U.S. Army Corp of

Engineers' dam construction projects, including reconstruction of docks and other appurtenances. The State retains jurisdiction for these private contractor activities, subject to the provisions in F–3. In addition, respective jurisdictional responsibilities for Oregon National Guard facilities are as follows:

1. Uniformed Military personnel: Neither Federal OSHA nor OR–OSHA has jurisdiction.
2. Federal National Guard civilians: Federal OSHA jurisdiction.
3. State National Guard civilians: OR–OSHA jurisdiction.
4. Private civilians contractors: Federal OSHA jurisdiction.

F–7. Warm Springs Indian Reservation—In the August 18, 1978, **Federal Register** (43 FR 36624) an approval of a supplement to the Oregon State Plan was published whereby the State of Oregon relinquished enforcement jurisdiction over all employment and places of employment on the Reservation and on Tribal Trust Lands, except for all employees of the State and its political subdivisions.

F–8. Umatilla Indian Reservation—In the September 14, 1997 **Federal Register** (62 FR 49908–49910) an approval of a supplement to the Oregon State Plan was published whereby the State of Oregon relinquished enforcement jurisdiction over all employment and places of employment on the Reservation and on Tribal Trust Lands, except for all employees of the State and its political subdivisions.

F–9. All Other Indian Reservations—By an addendum to the Operational Status Agreement dated December 1, 1998, OR–OSHA relinquished back to Federal OSHA enforcement jurisdiction over all private sector establishments, including tribal and Indian-owned enterprises, on all Indian and non-Indian lands within the currently established boundaries of all other Indian reservations, and on lands outside of these reservations that are held in trust by the Federal government for these tribes. These reservations include but are not limited to reservations of the: Confederated Tribes of the Grand Ronde Community of Oregon (Grand Ronde Tribes); Confederated Tribes of Coos, Lower Umpqua and Siuslaw (Coos Tribes); Confederated Tribes of Siletz (Siletz Tribes); Cow Creek Band of Umpqua (Cow Creek); Klamath Tribe; Coquille Tribe; and Burns Paiute Tribe. Oregon OSHA retains enforcement jurisdiction over all employees of the State and its political subdivisions working on these reservation or trust lands. Oregon OSHA also continues to offer its consultation and training services to private sector establishments on these lands.

F–10. Tribal or Indian Owned Businesses Outside Reservation and Trust Lands—Businesses owned by Indians or Indian Tribes that conduct work activities outside the Tribal Reservation or Trust Lands, are subject to the same jurisdiction as non-Indian owned businesses.

F–11. Superfund Sites—As a result of Federal OSHA Instruction CPL 2, dated February 8, 1988, OR-OSHA has assumed jurisdiction for private sector employees, as well as public sector employees, at most Superfund Sites in the State of Oregon. Federal OSHA also maintains jurisdiction for all Superfund Sites on U.S. military reservations. Federal OSHA approved this change in the September 14, 1997 **Federal Register** (62 FR 49908–49910).

Dated: December 18, 1998.

Richard Terrill,

Regional Administrator, Occupational Safety and Health Administration, Department of Labor.

Dated: December 23, 1998.

Peter DeLuca,

Administrator, Oregon Occupational Safety and Health Division, Department of Consumer and Business Services.

[FR Doc. 99–199 Filed 1–5–99; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting; Quarterly Meeting and Public Hearing

AGENCY: National Council on Disability.

SUMMARY: Ths notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting and public hearing of the National Council on Disability. Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (Pub. L. 94–409).

Quarterly Meeting Dates: February 22–24, 1999, 8:30 a.m. to 5 p.m.

Location: Hyatt Regency Louisville Hotel, 320 West Jefferson, Louisville, Kentucky; 502–587–3434.

For Information, Contact: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004–1107; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax).

Agency Mission: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the Untied States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

Accommodations: Those needing interpreters or other accommodations should notify the National Council on Disability prior to this meeting.

Environmental Illness: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

Open Meeting: This quarterly meeting and public hearing of the National Council on Disability will be open to the public.

Agenda: The proposed agenda includes:

Reports from the Chairperson and the Executive Director.

Committee Meetings and Committee Reports
Executive Session (closed)
Unfinished Business
New Business
Announcements
Adjournment

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on January 4, 1999.

Ethel D. Briggs,

Executive Director.

[FR Doc. 99–271 Filed 1–4–99; 12:20 pm]

BILLING CODE 6820–MA–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Panel (Millennium Projects category) to the National Council on the Arts will be held on January 19, 1999. The panel will meet by teleconference from 1 p.m. to 2:10 p.m. in Room 514 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5691.

Dated: December 30, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 99–216 Filed 1–5–99; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8948–MLA; ASLBP No. 99–760–03–MLA]

Shieldalloy Metallurgical Corp.; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 F.R. 28710 (1972), and §§ Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.1207 of the Commission's regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

Shieldalloy Metallurgical Corporation Cambridge, Ohio

(Request for Materials License Amendment)

The hearing, if granted, will be conducted pursuant to 10 CFR subpart L of the commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a request for hearing submitted by Attorney Michael Bruce Gardner on behalf of citizens of Guernsey County, Ohio in response to a license amendment request by Shieldalloy Metallurgical Corporation. The proposed amendment would allow Shieldalloy to receive and place slag/soil from a temporary onsite staging area to an area abutting the ''West Slag Pile.'' The amendment request is part of the decommissioning planning for the Cambridge, Ohio site. A notice of the proposed amendment was published in the **Federal Register** at 63 FR 64976 (November 24, 1998).

The Presiding Officer designated for this proceeding is Administrative Judge G. Paul Bollwerk. Pursuant to the provisions of 10 CFR 2.722, Administrative Judge Thomas D. Murphy has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bollwerk and Judge Murphy in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge G. Paul Bollwerk, III, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Thomas D. Murphy, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Rockville, MD., this 30th day of December 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–194 Filed 1–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–34318–EA; ASLBP No. 99–759–01–EA]

Special Testing Laboratories, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Special Testing Laboratories, Inc.

Order Suspending License (Effective Immediately)

In accordance with 10 CFR part 202, this Board is established as a result of a request by Richard Speciale on behalf of Special Testing Laboratories, Inc., for a hearing on a December 23, 1998, NRC Order. That Order, *inter alia*, suspended, effective immediately, Special Testing Laboratories, Inc.'s license to operate under License No. 06–30361–01. Mr. Speciale has requested that the Order be overturned and the immediate effectiveness of the Order be set aside.

The Board is comprised of the following administrative judges:

Thomas S. Moore, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Thomas D. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

All correspondence, documents and other materials in this proceeding shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Rockville, MD., this 29th day of December 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–192 Filed 1–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1600, Rev.1]

NRC Enforcement Policy; Discretion Involving Natural Events

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement; revision.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing a revision to its Enforcement Policy (NUREG–1600, Rev.1, ''General Statement of Policy and Procedure for NRC Enforcement Actions'') to address enforcement discretion in cases involving natural events, such as severe weather conditions.

DATES: This action is effective January 6, 1999, while comments are being received. Submit comments on or before February 22, 1999.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–2741.

SUPPLEMENTARY INFORMATION: The changes to the Enforcement Policy (in the order that they appear in the Policy) are described below:

III. Responsibilities

This section has been modified to indicate that the Commission is to be

provided notification when enforcement discretion is exercised in accordance with Section VII.C for natural events, such as severe weather conditions. Item (1) concerning Commission consultation was also modified to include a parenthetical phrase indicating that cases involving severe weather or other natural phenomena may be addressed by the staff without prior Commission consultation in accordance with Section VII.C.

VII. Exercise of Discretion

C. Exercise of Discretion for an Operating Facility

This section is being modified to allow the NRC staff to exercise enforcement discretion in the form of a Notice of Enforcement Discretion (NOED) in cases involving severe weather or other natural phenomena, based upon balancing the public health and safety or common defense and security of not operating, against the potential radiological or other hazards associated with continued operation, and a determination that safety will not be impacted unacceptably by exercising this discretion. Exercising enforcement discretion for this type of situation previously required prior Commission approval in accordance with Section III. This change in policy should not be viewed as lowering the threshold for granting NOEDs. The Commission has concluded that public health and safety is best served by allowing the staff to take expedited regulatory action in these cases. This section is also being modified to reflect that the Commission is to be informed expeditiously following the grant of a NOED in such situations.

Paperwork Reduction Act

This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

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

Small Business Regulatory Enforcement Fairness Act

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

Accordingly, the NRC Enforcement Policy is revised to read as follows:

General Statement of Policy and Procedure For NRC Enforcement Actions

* * * * *

III. Responsibilities

* * * * *

Unless Commission consultation or notification is required by this policy, the NRC staff may depart, where warranted in the public's interest, from this policy as provided in Section VII, ''Exercise of Enforcement Discretion.''

The Commission will be provided written notification for the following situations:

(1) All enforcement actions involving civil penalties or orders;

(2) The first time that discretion is exercised for a plant that meets the criteria of Section VII.B.2;

(3) (Where appropriate, based on the uniqueness or significance of the issue) when discretion is exercised for violations that meet the criteria of Section VII.B.6; and

(4) All Notices of Enforcement Discretion (NOEDs) issued involving natural events, such as severe weather conditions.

The Commission will be consulted prior to taking action in the following situations (unless the urgency of the situation dictates immediate action):

(1) An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating against the potential radiological or other hazards associated with continued operation (cases involving severe weather or other natural phenomena may be addressed by the staff without prior Commission consultation in accordance with Section VII.C);

* * * * *

VII. Exercise of Discretion

* * * * *

C. Exercise of Discretion for an Operating Facility

On occasion, circumstances may arise where a licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. In these circumstances, the NRC staff may choose not to enforce the applicable TS or other license condition. This enforcement discretion, designated as a Notice of Enforcement Discretion (NOED), will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. The staff may also grant enforcement discretion in cases involving severe weather or other natural phenomena, based upon balancing the public health and safety or common defense and security of not operating, against the potential radiological or other hazards associated with continued operation, and a determination that safety will not be impacted unacceptably by exercising this discretion. The Commission is to be informed expeditiously following the granting of an NOED in such situations. A licensee seeking the issuance of a NOED must provide a written justification, or in circumstances where good cause is shown, oral justification followed as soon as possible by written justification, that documents the safety basis for the request and provides whatever other information the NRC staff deems necessary in making a decision on whether or not to issue a NOED.

* * * * *

Dated at Rockville, MD, this 30th day of December, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 99–193 Filed 1–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of January 4, 11, 18, and 25, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 4

Thursday, January 7

11:00 a.m. Affirmation Session (Public Meeting) (If Needed)

Week of January 11—Tentative

Monday, January 11

2:00 p.m. Briefing on Risk-Informed Initiatives (Public Meeting) (Contact: Gary Holahan/Tom King, 301–415–5790)

Tuesday, January 12

9:00 a.m. Briefing on Decommissioning Criteria for West Valley (Public Meeting) (Contact: Jack Parrot, 301–415–6700)

Wednesday, January 13

10:00 a.m. Briefing on Reactor Licensing Initiatives (Public Meeting) (Contact: Roy Zimmerman/Bob Perch, 301–415–1422)
11.30 a.m. Affirmation Session (Public Meeting) (If Needed)

Friday, January 15

9:00 a.m. Briefing on Investigative Matters (Closed—Ex. 5 & 7)
10:00 a.m. Briefing by Executive Branch (Closed—Ex. 1)

Week of January 18—Tentative

Tuesday, January 19

2:00 p.m. Briefing on Status of Third Party Oversight of Millstone Station's Employee Concerns Program and Safety Conscious Work Environment (Public Meeting) (Contact: Bill Dean, 301–415–7380)

Wednesday, January 20

9:30 a.m. Briefing on Reactor Inspection, Enforcement And Assessment (Public Meeting) (Contact: Frank Gillespie, 301–415–1275)
11:00 a.m. Affirmation Session (Public Meeting) (If Needed)

Week of January 26—Tentative

Tuesday, January 26

3:30 p.m. Affirmation Session (Public Meeting) (If Needed)

*The Schedule for Commission Meetings is Subject to Change on Short Notice. To Verify the Status of Meetings Call (Recording)—(301) 415–1292. Contact Person for More Information: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: December 31, 1998.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 98–34850 Filed 12–31–98; 3:35 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–275 and 50–323]

Pacific Gas & Electric Co., Diablo Canyon Nuclear Power Plant (Units 1 and 2); Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by petition dated November 24, 1998, Mr. David A. Lochbaum has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to Diablo Canyon Nuclear Power Plant, Units 1 and 2. Petitioner requests that the NRC modify the licenses for Diablo Canyon Units 1 and 2 to require that the plant's owner have an independent contractor evaluate the plant's safety culture and that the independent contractor monitor the safety culture until the NRC concurs that a safety-conscious work environment has been established and maintained. The petition also requests an informal hearing near Diablo Canyon to present new information on the safety culture at Diablo Canyon.

As the basis for this request, petitioner states that the safety culture at the Diablo Canyon site is not conducive to employees' raising safety issues freely without fear of retaliation.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by § 2.206, appropriate action will be taken on this petition within a reasonable time. A copy of the petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 30th day of December 1998.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–195 Filed 1–5–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Commission Visit; John F. Kennedy Airport

AGENCY: Postal Rate Commission.

ACTION: Notice of Commission visit.

SUMMARY: Members of the Postal Rate Commission will visit the air mail facility at John F. Kennedy Airport (outside New York City) to observe handling of inbound and outbound international mail, the nearby Halmar facility to observe handling of global package link, and the New York bulk mail center to observe handling of international mail. Discussions will be held at all facilities with supervisory personnel concerning data collection.

DATES: The visit is scheduled for January 5 and 6, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, 202–789–6820.

Dated: January 4, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–270 Filed 1–4–99; 1:56 pm]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Grubb & Ellis Company, Common Stock, Par Value, $.01 Per Share); File No. 1–1822

December 30, 1998.

Grubb & Ellis Company (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Pacific Stock Exchange, Inc. (''PCX'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company has been listed for trading on the Exchange and, pursuant to a Registration Statement on Form 8A which became effective on April 15, 1981, was listed for trading on the American Stock Exchange (''Amex''). Trading in Company's Security on the New York Stock Exchange (''NYSE'') commenced

at the opening of business on April 14, 1983, and concurrently the Security was suspended from trading on the Amex.

The Company has complied with the rules of the PCX by filing with the Exchange a certified copy of resolutions adopted by the Company's Board of Directors authorizing withdrawal of its Security from listing on the Exchange and by setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof. In making the decision to withdraw its Security from listing on the Exchange, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Security on the NTSE and the PCX. The Company does not see any particular advantage in the dual trading of its Security and believes that dual listing would fragment the market for its Security.

The Exchange has informed the Company that its has no objection to the withdrawal of the Company's Security from listing on the Exchange.

This Application relates solely to the withdrawal from listing of the Company's Security from the Exchange and shall have no effect upon the continued listing of such Security on the NYSE.

By reason of Section 12(b) of the Act and the rules and regulations of the Commission, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before January 28, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–222 Filed 1–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40854; File No. SR–NASD–98–58]

Self-Regulatory Organization; Order Approving Proposed Change by National Association of Securities Dealers, Inc. Relating to The Elimination of the Requirement for Personal Service of Decisions in Cases Involving Bars and Expulsions

December 28, 1998.

On August 7, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The filing was thereafter amended on August 18 and 20, 1998, October 29, 1998 and December 8 and 21, 1998.[3] The proposal seeks to eliminate the requirement contained in the Rules of the Association directing the NASD to use best efforts to personally serve a respondent who faces a bar or expulsion from NASD membership. Notice of the proposal was published in the **Federal Regiser** on September 3, 1998 (''Notice'').[4] The Commission did not receive comment letters on the filing.

I. Introduction and Background

In its filing with the Commission, the NASD proposed amendment to the Rules of the Association to eliminate the current requirement that the Association make reasonable efforts to provide personal service of decisions in cases involving bars and expulsions.[5] Originally, personal service was required because decisions imposing bars or expulsions become effective immediately. As discussed in greater detail below, the Association now argues that service by overnight courier, facsimile or other means is as effective as personal service, and equally likely to obtain prompt service. For this and other reasons, the Commission has decided to approve the Association's proposal.

II. Description of the Proposal

The proposed changes to Rules 9269 and 9360, as approved today, permit service of decisions in cases involving bars or expulsions from the NASD to be done by overnight courier, facsimile or other means likely to obtain prompt service. Rule 9360 currently requires that the chief Hearing Officer serve all final disciplinary decisions, and that reasonable efforts be made to personally serve (hand deliver) all final decisions imposing a bar or expulsion. The service provisions in Rule 9269 are presented for the first time in this rule filing.[6]

III. Discussion

As discussed below, the Commission has determined at this time to approve the Association's proposal. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.[7] In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the proposal.[8]

The proposed changes to Rules 9269 and 9360 would establish that in cases involving bars or expulsions, service of decisions should be done by overnight courier, facsimile or other means likely to obtain prompt service. Rule 9269 does not presently contain service requirements. Rule 9360 currently requires that the Chief Hearing Officer serve all final disciplinary decisions, and that reasonable efforts be made to

[1] 15 U.S.C. 78s(b)(1).

[2] CFR 240.19b–4.

[3] *See* Letter from Joan C. Conley, Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 18, 1998; E-mail from Eric Moss, Office of General Counsel (''OGC''), NASD Regulation, to Mandy Cohen, Division, Commission, dated August 20, 1998; letter from Eric Moss, OGC, NASD Regulation to Katherine A. England, Assistant Director, Division, Commission, dated September 24, 1998; and letter from Eric Moss, OGC, NASD Regulation to Katherine A. England, Assistant Director, Division, Commission, dated December 8, 1998. The Association also consented to an extension until December 31, 1998 for Commission action. *See* letter from Eric Moss, OGC, NASD Regulation to Katherine A. England, Assistant Director, Division, Commission, dated December 8, 1998. Finally, the Association extended the effective date of the filing to thirty days after publication in a *Notice to Members* following Commission approval. *See* letter from Alden Adkins, General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division, Commission, dated December 8, 1998. All of the amendments filed after the Notice were technical in nature and therefore do not require publication for notice and comment.

[4] *See* Securities Exchange Act Release No. 40379 (August 27, 1998), 63 FR 47058 (September 3, 1998)(File No. SR–NASD–98–58).

[5] *See* Rules 9269 and 9360.

[6] NASD Regulation has also filed a related rule change with the Commission in Exchange Act Release No. 40378 (August 27, 1998)(File No. SR–NASD–98–57). The text of the proposed rule change contained herein treats SR–NASD–98–57 as already approved.

[7] 15 U.S.C. 78s(b).

[8] 15 U.S.C. 78o–3.

personally serve (hand deliver) all final decisions imposing a bar or expulsion. Rule 9360's personal service provision for final decisions imposing bars or expulsions was created because these decisions become effective immediately and personal service was believed to be the best means of achieving prompt service.

The Association argues that the proposed rule change, eliminating the personal service requirement in the case of a bar or expulsion, is consistent with Section 15A(b)(7) in that it provides a reasonable means for notifying respondents of final disciplinary actions. In the proposal, the Association represented that other methods of prompt service, such as facsimile and commercial courier, are as effective in providing prompt service to a respondent as personal service. The NASD argues that reasonable efforts at personal service (hand delivery) in final default decisions imposing bars or expulsions are generally not successful. Moreover, with respect to litigated decisions, the most effective type of service is a commercial courier or facsimile, not personal service. In addition, the staff of NASD Regulation has told the Commission that these alternative types of service are less costly than personal service.[9]

The Commission believes that personal service is the best means of ensuring actual service. Notwithstanding this, however, the Act requires *reasonable means*. Given the Association's representations concerning the costs and effectiveness of the different types of alternative service, the Commission has decided to approve the Association's proposal. Moreover, the protection afforded respondents against whom default decisions have been entered—specifically, the provisions permitting set aside of a default decision in Rule 9269(c)—further supports use of the less costly methods of service. Finally, the Commission notes that all persons subject to bar or expulsion by the Association are NASD members, and as such, have agreed to such alternative service upon association with the NASD.[10]

IV. Conclusion

The Commission believes that the proposed rule change is consistent with Act, and, particularly, with Section 15A thereof.[11] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.[12]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NASD–98–58), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–166 Filed 1–5–99; 8:45 am]

BILLING CODE 8010–01–M

[9] Conversation between Eric Moss, Office of General Counsel, NASD Regulation and Mandy Cohen, Division of Market Regulation on November 24, 1998.

[10] *See Uniform Application for Securities Industry Registration or Transfer (Form U–4)*, at page 4, paragraph 7 (version effective November 1995).

[11] 15 U.S.C. § 78*o*–3.

[12] 15 U.S.C. § 78c(f).

[13] 15 U.S.C. § 78(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3150]

State of Florida

Sumter County and the contiguous Counties of Citrus, Hernando, Lake, Marion, Pasco, and Polk in the State of Florida constitute a disaster area as a result of damages caused by a fire at the Bushnell Flea Market in Bushnell, Florida that occurred on December 6, 1998. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on February 19, 1999 and for economic injury until the close of business on September 21, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.750
Homeowners Without Credit Available Elsewhere	3.375
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 315005 and for economic injury the number is 9A6000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 21, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 99–224 Filed 1–5–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

(Declaration of Disaster #3145); State of Texas, (Amendment #5)

In accordance with information received from the Federal Emergency Management Agency dated December 17 and 18, 1998, the above-numbered Declaration is hereby amended to include Jim Wells, Kendall, Lavaca, and Walker Counties in the State of Texas as a disaster area due to damages caused by severe storms, flooding, and tornadoes beginning on October 17 and continuing through November 15, 1998, and to extend the deadline for filing applications for physical damage to January 21, 1999 in the above-named counties.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Brooks, Duval, and Kerr in the State of Texas may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for economic injury is July 21, 1999.

Dated: December 28, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–223 Filed 1–5–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 2954]

International Joint Commission; Boundary Waters Treaty of 1909

An invitation for public comment on two proposed projects in the Niagara River.

The International Joint Commission (IJC) has been asked by the Governments of Canada and the United States to address two projects in the Niagara River pursuant to the terms of the Boundary Waters Treaty of 1909.

Peace Bridge Capacity Expansion Project

On December 9, 1998, the IJC received an application by the Buffalo and Fort Erie Public Bridge Authority to approve the Peace Bridge Capacity Expansion Project. The proposed project consists of a multi-span, multiple steel arch bridge over the Niagara River and Black Rock Canal between Fort Erie, Ontario and Buffalo, New York. The project will be constructed parallel to the existing Peace Bridge, which will remain in use after the project is completed.

Under the Boundary Waters Treaty, the IJC approves any uses, obstructions and diversions of boundary waters that would affect the natural level or flow across the boundary, unless the two federal governments give approval by a special agreement. The IJC will evaluate potential effects on water levels and flows, and other potential transboundary effects, of the proposed bridge construction. The original Peace Bridge was approved by the IJC in 1925.

Ontario Hydro Water Diversion Facilities Project

On December 21, 1998, the IJC received a reference from the Governments of the United States and Canada to investigate and report on the effects of a proposed Ontario Hydro project on the remedial works associated with its water diversion facilities in the Niagara River and on other transboundary effects, including environmental effects, as the IJC considers necessary or helpful.

The proposed project by Ontario Hydro would require modification of remedial works in the Niagara River that were previously recommended and approved by the IJC. Under the reference, the IJC will be investigating the effects of the proposed project on the remedial works and will be recommending any changes in the design plans or operating conditions needed to achieve objectives recommended by the IJC in 1953. The objectives included ensuring that there is an unbroken crest line over Horseshoe Falls and no effect on the level of Lake Erie.

Public Hearings

The IJC has scheduled public hearings at the following times and locations to receive comment from any interested citizens or organizations in Canada or the United States:

Canada

7:00–10:00 p.m., January 27, 1999, Marriott Hotel of Niagara Falls, 6740 Oakes Drive, Niagara Falls, ON L2G 3W6, 905.871.2546

United States

7:00–10:00 p.m., January 28, 1999, Buffalo-Niagara Marriott, 1340 Millersport Highway, Amherst, NY 14221, Ballrooms 1, 2 and 3, 716.689.6900

Topics will be addressed in the following order at the public hearings:

(1) Comment on the proposed Peace Bridge Capacity Expansion Project;

(2) Comment on the proposed redevelopment and expansion of Ontario Hydro's water diversion facilities in the Niagara River;

(3) Comment on the effects of the two projects combined.

The IJC has asked its International Niagara Board of Control to review and advise the IJC on certain issues with respect to the Peace Bridge application and the Ontario Hydro project reference. The IJC has asked the board to provide a status report on January 22, 1999 on potential issues and to make a presentation at the public hearings. The IJC's request to the board will be available and the board's status report will also be available, when it is received, on the IJC's website at: *www.ijc.org.*

Document Availability

Descriptions of the proposed projects, along with the application and reference, will be available for inspection at the following locations:

IJC website: *www.ijc.org*

Buffalo and Fort Erie Public Bridge Authority*, The Peace Bridge—Peace Bridge Plaza, Buffalo, NY 14213, 716.884.6744 (United States), 905. 871.1608 (Canada), *Peace Bridge information only

Ontario Hydro Public Reference Centre**, 700 University Avenue, Mezzanine Floor, Toronto, ON M5G 1X6, 416.592.5111, **Ontario Hydro information only,

Business, Science and Technology Dept., Buffalo and Erie County Public Library, Lafayette Square, Buffalo, NY 14203, 716.858.7181

Reference Desk, Niagara Falls Public Library, 1425 Main Street, Niagara Falls, NY 14305, 716.286.4881

Fort Erie Public Library, 136 Gilmore Road, Fort Erie, Ontario L2A 2M1

Written Comment

All interested persons and organizations are encouraged to submit comments in writing. Depending on the number of people wishing to speak, speakers may only have the opportunity to summarize their comments at the public hearing. Written comments may be submitted to the IJC's secretaries at the public hearing, or at the following addresses to be received by February 4, 1999:

Secretary, United States Section, 1250 23rd Street NW, Suite 100, Washington, DC 20440, Fax 202.736.9015, Email Commission@washington.ijc.org

Secretary, Canadian Section, 100 Metcalfe Street, 18th Floor, Ottawa, Ontario K1P 5M1, Fax 613.993.5583, Email Commission@ottawa.ijc.org

The International Joint Commission

The International Joint Commission was created under the Boundary Waters Treaty of 1909 to help prevent and resolve disputes over the use of waters along the United States-Canada boundary. Its responsibilities include approving certain projects that would alter water levels on the other side of the boundary and providing independent advice on matters of mutual concern on request from the Governments of the Canada and United States. For more information, please consult the Commission's Web site at *www.ijc.org*, or contact Frank Bevacqua at 202.736.9024.

Dated: December 23, 1998.

Gerald E. Galloway,

Secretary, United States Section.

[FR Doc. 99–170 Filed 1–5–99; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF STATE

[Public Notice #2951]

Advisory Committee on International Communications and Information Policy; Notice of Meeting; U.S. Telecommunications and Information Policy Regarding APEC and the OECD

The Department of State announces meetings to prepare U.S. communications and information policy for upcoming sessions of the Asia-Pacific Economic Cooperation (APEC) forum and the Organization for Economic Cooperation and Development (OECD).

First, a meeting to prepare for TEL 19, the 19th meeting of APEC's Telecommunciations Working Group, will be held on Wednesday, January 20, 1999, in room 1205 from 2:30–4:00 p.m. Then a second meeting will be held Thursday, January 21, 1999, in room 1205 from 2:30–4:00 p.m., to prepare for the spring meetings of the OECD's Committee for Information, Computer and Communications Policy (ICCP).

Members of the General Public may attend these meetings and join the discussions, subject to the instructions of the Chair. Admittance of public

members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. Persons intending to attend the meetings should send a fax to (202) 647–7404 not later than 24 hours prior to the meeting date. On the fax please include the name of the meeting, your name, social security number, date of birth, and organization. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or a U.S. Government identification (company ID's are no longer accepted by Diplomatic Security). Enter from the 'C' Street Main Lobby.

Dated: December 22, 1998.

Michael V. McCabe,

Director for APEC & OECD, International Communications and Information Policy.

[FR Doc. 99–167 Filed 1–5–99; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 2953]

Privacy Act of 1974; Altered System of Records and Creation of a New System of Records

Notice is hereby given that the Department of State proposes to alter an existing system of records, STATE–47; and also proposes to create a new system of records, STATE–34, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 522a (r)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on December 23, 1998.

It is intended that the current system STATE–47 will retain the name ''Senior Personnel Appointments Records.'' However, due to the expanded scope of the current system, the altered system description will include revisions and/or additions to each section except the location. The Department also proposes to implement a new system of records entitled ''Records of the Office of White House Liaison.'' Changes to the existing system description and the creation of a new system of records are proposed in order to reflect more accurately the Bureau of Personnel's and the Office of White House Liaison's record-keeping systems for individuals who are pursuing non-career employment through the White House Liaison Office, and Presidential appointments through the Department of State.

Any persons interested in commenting on the altered system of records or on the creation of the new system of records may do so by submitting comments in writing to Rosemary Melendy; Acting Chief; Programs and Policies Division; Office of IRM Programs and Services; Room 1512; Department of State; 2201 C Street, NW; Washington, DC 20520–1512. These systems of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The altered system description, ''Senior Personnel Appointments Records, STATE–47'' and the newly created system of records ''Records of the Office of White House Liaison, STATE–34'' will read as set forth below.

Dated: December 23, 1998.

Jerome F. Tolson,

Acting Assistant Secretary for the Bureau of Administration.

STATE–47

SYSTEM NAME:

Senior Personnel Appointments Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State; 2201 C Street, NW; Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals—career members of the Foreign Service and non-career persons from outside the Department of State—who have been selected for a Presidential appointment or title. Appointments/titles include: Chiefs of mission, ranks and personal ranks of ambassador, principal officers of the Department of State, representatives and alternate representatives to the annual United Nations (UN) General Assembly and to the annual General Conference of the International Atomic Energy Agency. In addition, selectees who serve in Presidential appointed positions as representatives or alternate representatives on various UN boards and commissions such as the UN Human Rights Commission, the UN Commission on the Status of Women and UNICEF, and commissioners of the various international fisheries commissions are covered.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 2651a (Organization of the Department of State); 22 U.S.C. 3921 (Management of the Foreign Service); and 5 U.S.C. 301 (Management of the Department of State).

CATEGORIES OF RECORDS IN THE SYSTEM:

Appointment documents are maintained first in a working file and, once appointed, the individual's material is moved to a country or position file. At the completion of the appointment, the documents are moved to a name-retrievable file.

The files contain documents pertaining to an individual's Presidential appointment. Specifically, they include: Director General welcome/congratulatory letter; Candidate Information Summary; security clearance forms; a White House Personal Data Statement; Questionnaire for Sensitive Positions; Consumer Credit Check form; Financial Disclosure Report; Office of the Legal Adviser's certification of financial disclosure report; Congressional forms (Senate Foreign Relations Committee form, Federal Campaign Contribution Report); biographic summary; White House press release; agreement telegrams (if bilateral ambassadorial positions); memoranda to the Office of Legislative Affairs transmitting Congressional documents; copies of letters to home State Senators and to members of the Senate Foreign Relations Committee; nomination papers for the White House (transmittal memorandum, biographic summary, nomination, and a competence statement required under section 304(a)(4) of the Foreign Service Act); correspondence and/or e-mail exchanges with the individual regarding appointment processing; memoranda to the regional bureaus concerning selection and nomination; memoranda and appointment documents concerning federal employment for non-career selectees; resignation letters and responses from the President; official appointment notice prepared following Presidential attestation of an appointment; copies of memoranda, if applicable, concerning recall to the Foreign Service, waiver of the mandatory Foreign Service retirement age requirement, and termination of Chief of Mission services pursuant to section 401(b) of the Foreign Service Act.

Accreditation documents are maintained in the country files for bilateral and multilateral chiefs of mission. These documents consist of: A Presidential letter of responsibility, a Secretary of State administrative letter of instruction; copies of the Letters of Credence and Recall which are presented to the host government or secretariat of a multilateral organization.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The documents noted above that are contained in the appointment files are used for the clearance and appointment of an individual to a Presidential position/title. Specifically,

—The original of the White House Personal Data Statement is sent to the White House Counsel's office for processing. Originals of a Tax Check Waiver, Acknowledgment/Consent memorandum, a FBI name check form and a FBI full field security form when the appointment is at the Assistant Secretary-level or above, are also sent to the White House Counsel's office. (Copies of these security release forms are not maintained in the files of Presidential appointments requiring Senate confirmation). A copy of the Candidate Information Summary is sent to the White House Presidential Personnel Office and to the Department's White House Liaison Office.

—Security forms—Questionnaire for Sensitive Positions, and the Consumer Credit Check forms are sent to the Bureau of Diplomatic Security under cover of a memorandum requesting a security clearance. Original fingerprint charts (if appropriate) are also sent to the Bureau of Diplomatic Security where they are retained.

—The Ethics Division of the Office of the Legal Adviser reviews and certifies the financial disclosure documents to ensure that there is no conflict of interest. As part of the review and certification, that office also receives copies of the Personal Data Statement; the Senate Foreign Relations Committee form; and, if a chief of mission position, the Federal Campaign Contribution Report. In addition, it may be necessary to share this information with the Office of Government Ethics.

—Agreement telegrams document the initial request for a host government approval of a bilateral chief of mission and subsequent responses from overseas posts.

—Biographic summaries, cleared by appointees, are sent to the White House and the Senate Foreign Relations Committee.

—Nomination papers, including accreditation documents for bilateral chiefs of mission, are sent to the Office of the Executive Clerk in the White House who reviews the documents and obtains Presidential signature at the appropriate time. The nomination paper and the competence statement for chiefs of mission are sent to the U.S. Senate once White House final clearance is forthcoming.

—Congressional documentation is prepared and transmitted to the Office of Legislative Affairs and that office then submits the material to the U.S. Senate at the appropriate time.

—Memoranda sent to the regional bureaus serve as notification documents of the status of an appointment and transmit any needed appointment briefing materials.

—Official notification memoranda of an appointment are addressed to the appropriate Bureau Executive Director, with copies to various administrative and personnel offices in order to advise such offices of a Presidential appointment.

—The original letter of resignation of a Presidential appointee is sent under cover of a transmittal memorandum to the Office of White House Correspondence. That office sends back a Presidential response which is forwarded to the appointee.

—The original accreditation documents for a bilateral chief of mission are hand-carried to post by the chief of mission for presentation to the host government.

—Employment documents for non-career selectees are processed and forwarded to the appropriate offices in the Bureau of Personnel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer media and hard copy.

RETRIEVABILITY:

By individual name, country or position title.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough security background investigation. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive at which time they will be retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specified information may be obtained by writing to the Director, Office of IRM Programs and Services; Room 1512; Department of State; 2201 C Street, NW; Washington, DC 20520–1512.

SYSTEM MANAGER(S) AND ADDRESS:

The Director General of the Foreign Service and Director of Personnel; Department of State; 2201 C Street, NW; Washington, DC 20520.

NOTIFICATION PROCEDURES:

Individuals who have reason to believe that the Bureau of Personnel's Presidential Appointments Staff Office might have records pertaining to themselves should write to the Director, Office of IRM Programs and Services (address above). The individual must specify that he/she wishes the Senior Personnel Appointments Records to be checked. At a minimum, the individuals must include: Name; date and place of birth; Social Security number; approximate dates of employment with the Department of State particularly the time during which the individual held a Presidential appointment or was in process for a Presidential appointment; current mailing address and zip code; and signature.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of IRM Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained directly from the individual who is the subject of these records, the Bureau of Personnel, Office of the Legal Adviser, the Bureau of Diplomatic Security, U.S. embassies (in the case of *agreement* telegrams), and/or the White House.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

Pursuant to 5 U.S.C. 552a(k)(5), certain records in this system contain confidential source information and are exempted from 5 U.S.C. 522a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). See Department of State Rules published in the **Federal Register**.

STATE–34

SYSTEM NAME:

Records of the Office of White House Liaison.

SECURITY CLASSIFICATION:

Classified and unclassified.

SYSTEM LOCATION:

Department of State; 2201 C Street, NW; Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Candidates who are being or would like to be considered for non-career appointments within the Department of State including Presidential appointments requiring Senate confirmation, non-career Senior Executive Service, Schedule C and limited term non-career appointments. Individuals who have been selected for non-career appointments within the Department and who are at various stages of the employment approval and confirmation clearance processes. Individuals who currently hold a non-career position within the Department and some career ambassadors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 2651a (Organization of the Department of State); 22 U.S.C. 3921 (Management of the Foreign Service); 5 U.S.C. 301 (Management of the Department of State).

CATEGORIES OF RECORDS IN THE SYSTEM:

The files contain documents pertaining to an individual's prospective and/or confirmed Presidential appointment. Specifically, they include: Candidate Information Summary; Acknowledgement and Consent Regarding Intent to Appoint form; Declaration for Federal Employment (OF–306); Optional Application for Federal Employment (OF–612); and Public Financial Disclosure Report (SF–278), Confidential Financial Disclosure Report (OGE–450); Office of the Legal Adviser's Certification of Financial Disclosure Report; security clearance forms including Consent to FBI Investigation form, FBI Name Check Waiver form; White House Personal Data Statement; Questionnaire for Sensitive Positions (SF–86); Disclosure and Authorization pertaining to Consumer Reports pursuant to the Fair Credit Reporting Act form; IRS Tax Check Waiver form; Congressional forms (Senate Foreign Relations Committee questionnaire, competence statements for the Senate Foreign Relations Committee, Federal Campaign Contribution Report); memoranda to the Office of Legislative Affairs transmitting Congressional documents; letters of recommendation; biographic summary; White House draft press release; agrement telegrams (if bilateral ambassadorial positions); employment documents for non-career selectees; correspondence, memoranda and/or e-mail exchanges relative to appointment processing, selection and nomination; transmittal correspondence from the private sector, other government agencies, and the Executive and Legislative branches of Federal government; official appointment notice prepared following Presidential attestation of an appointment; documents related to accretion of duties requests including requests for approval submitted to the White House and internal Department processing of the accretion of duties; position description; Foreign Service Residence and Dependency Report, Race and National Origin Identification, and resignation letters and responses from the President.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the Records of the White House Liaison Office (WHLO) is used for the consideration, review, clearance and appointment of an individual to a Presidential position/title. Specifically,

—Background information such as resumes, applications, letters of recommendation and Congressional Committee documents are reviewed by WHLO, the Bureau of Personnel, and the Bureau of Legislative Affairs for consideration of an appointment; released to or discussed in consultation with Bureaus that have vacancies for which the individual is being considered, and when appropriate released to the White House Office of Presidential Personnel for approval/disapproval.

—Responses to letters of recommendation are sent to the individual offering the recommendation and correspondence are forwarded to the Bureau of Legislative Affairs for tracking purposes.

—Background information is also used by WHLO to draft documentation related to the appointment and in discussions with the candidate; it may be provided to the Bureau of Personnel to determine salary levels and to the appropriate Bureau Executive Office for assignment processing.

—Competency statements for the Senate Foreign Relations Committee are drafted by WHLO using the individual's resume and biographical information and once approved by the Bureau of Legislative Affairs, the statement is forwarded to the White House Office of Presidential Personnel.

—Security forms are provided to the Bureau of Diplomatic Security for appropriate processing.

—The Public Financial Disclosure Report and the Confidential Financial Disclosure Report are provided to the Department's Office of the Legal Adviser and to the Office of Government Ethics for a conflict of interest analysis.

—Information regarding the accretion of duties is given to the White House Office of Presidential Personnel for approval and to the Bureau of Personnel for processing.

—Press releases drafted by WHLO are forwarded to the White House Office of Presidential Personnel to be released to the press by the White House Press Office when appropriate.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer media and hard copy.

RETRIEVABILITY:

By individual name, country or position title.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough security background investigation. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive at which time they will be retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specified information may be obtained by writing to the Director, Office of IRM Programs and Services; Room 1512; Department of State; 2201 C Street, NW; Washington, D.C. 20520–1512.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Adviser to the Secretary and White House Liaison; Room 6311; Department of State; 2201 C Street, NW; Washington, DC 20520.

NOTIFICATION PROCEDURES:

Individuals who have reason to believe that the Office of the White House Liaison might have records pertaining to themselves should write to the Director, Office of IRM Programs and Services (address above). The individual must specify that he/she wishes the Records of the White House Liaison Office to be checked. At a minimum, the individuals must include: name; date and place of birth; Social Security number; approximate dates of employment with the Department of State particularly the time during which the individual was a candidate or held a non-career Presidential appointment; current mailing address and zip code; and signature.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of IRM Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained directly from the individual who is the subject of these records; Office of the Legal Adviser; Bureau of Diplomatic Security; Bureau of Personnel; Bureau of Legislative Affairs; the White House Office of Presidential Personnel; and/or individuals who know or worked with the subject and may offer recommendations.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

Pursuant to 5 U.S.C. 552a (k)(5), certain records in this system contain confidential source information and are exempted from 5 U.S.C. 522a(c)(3), (d), (e)(l), (e)(4)(G), (H) and (I), and (f). See Department of State Rules published in the **Federal Register**.

[FR Doc. 99–169 Filed 1–5–99; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–3]

Bonds; Approval To Use Authorized Facsimile Signatures and Seals

The use of facsimile signatures and seals on Customs bonds by the following corporate surety has been approved effective January 11, 1999: Washington International Insurance Company. Authorized facsimile signatures on file for: James A. Carpenter, Attorney-in-Fact; Michael L. Host, Attorney-in-Fact.

The corporate surety has provided the Customs Service with copies of the signatures to be used, a copy of the corporate seal, and a certified copy of the corporate resolution agreeing to be bound by the facsimile signatures and seals. This approval is without prejudice to the surety's right to affix signatures seals manually.

Dated: December 29, 1998.

Larry L. Burton,

Acting Chief, Entry Procedures and Carriers Branch.

[FR Doc. 99–211 Filed 1–5–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 8867

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8867, Paid Preparer's Earned Income Credit Checklist.

DATES: Written comments should be received on or before March 8, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Paid Preparer's Earned Income Credit Checklist.

OMB Number: 1545–1629.

Form Number: Form 8867.

Abstract: Form 8867 helps preparers meet the due diligence requirements of Internal Revenue Code section 6695(g), which was added by section 1085(a)(2) of the Taxpayer Relief Act of 1997. Paid preparers of Federal income tax returns or claims for refund involving the earned income credit (EIC) must meet the due diligence requirements in determining if the taxpayer is eligible for the EIC and the amount of the credit. Failure to do so could result in a $100 penalty for each failure. Completion of Form 8867 is one of the due diligence requirements.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 8,368,447.

Estimated Time Per Response: 1 hour, 7 minutes.

Estimated Total Annual Burden Hours: 9,372,661.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 29, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–153 Filed 1–5–99; 8:45 am]

BILLING CODE 4830–01–U

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Availability of the Decision Notice and Finding of No Significant Impact for the Construction of the Diamond Fork Campground; Utah County, Utah

AGENCY: The Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission) and the Spanish Fork Ranger District of the Uinta National Forest, U.S. Department of Agriculture.

ACTION: Notice of availability of the decision notice and finding of no significant impact.

SUMMARY: The U.S. Bureau of Reclamation (Reclamation) issued a Final Environmental Impact Statement in 1984 and a Final Supplement to the Final Environmental Impact Statement in 1990 for the Diamond Fork System recommending, among other things, construction of recreation facilities in Diamond Fork Canyon to mitigate for camping facilities impacted by the construction of the Central Utah Project and to provide recreational opportunities for growing populations along the Wasatch Front. The Spanish Fork Ranger District of the Uinta National Forest and the Mitigation Commission released an Environmental Assessment dated February 23, 1997. It describes environmental effects of a proposal to redesign and upgrade the existing Diamond and Palmyra campgrounds in an effort to complete these recommendations. Based on public and agency input, the Spanish Fork Ranger District and the Mitigation Commission released a revised EA dated September 28, 1998, to incorporate a new alternative that responded to concerns raised. The new proposal rehabilitates the existing Diamond and Palmyra campgrounds, yet reduces the capacity by approximately 33 percent. Individual campsites and loops within the 100-year flood plain will be moved to a higher terrace to protect riparian vegetation and facilitate future stream restoration efforts. Group-site facilities will be closed and reconstructed in a more suitable location that will be analyzed under a separate action. Sections of the campground impacting wild turkey roosting habitat will be closed and reclaimed.

These changes represent a significant change from the previous proposal where the campground capacity would have been increased by approximately 46 percent. This change reduces impacts on riparian vegetation and minimizes potential impacts on future stream restoration efforts, which were the two primary concerns raised by agencies and the public during initial release of the EA.

Six alternatives were considered and analyzed in the September 28, 1998 EA. The Spanish Fork Ranger District and the Mitigation Commission selected Alternative G, the Proposed Action, for implementation.

FOR FURTHER INFORMATION CONTACT: Copies of the Decision Notice and Finding of No Significant Impact can be obtained at the address and telephone number below: Richard Mingo, Natural Resource Specialist, Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, UT 84101, Telephone: (801) 524–3146.

Dated: December 21, 1998.

Michael C. Weland,

Acting Executive Director, Utah Reclamation Mitigation and Conservation Commission.

[FR Doc. 99–172 Filed 1–5–99; 8:45 am]

BILLING CODE 4310–05–P

Corrections

Federal Register

Vol. 64, No. 3

Wednesday, January 6, 1999

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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–6987a; A–1–FRL–6192–7]

Approval and Promulgation of Air Quality Implementation Plans; Interim Final Determination of Correction of Deficiencies in 15 Percent Rate-of-Progress and Contingency Plans; Rhode Island

Correction

In rule document 98–32415 beginning on page 67594 in the issue of Tuesday, December 8, 1998, make the following correction:

§ 52.2084 [Corrected]

On page 67600, in the first column, in amendatory instruction 3., in the second line, ''revising'' should read ''reserving''.

[FR Doc. 98–32415 Filed 1–5–99; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

Correction

In rule document 98–32079 beginning on page 66428 in the issue of Wednesday, December 2, 1998, make the following correction:

Appendix H of Part 305 [Corrected]

On page 66431, in the third column, in amendatory 13., in the last line, ''112.64¢'' should read ''12.64¢''

[FR Doc. 98–32079 Filed 1–5–99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday
January 6, 1999

Part II

Department of Health and Human Services

Health Resources and Services Administration

Availability of the HRSA Preview; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Availability of the HRSA Preview

AGENCY: Health Resources and Services Administration, HHS.

ACTION: General notice.

SUMMARY: HRSA announces the availability of the *HRSA Preview* for fall 1998. This edition of the *HRSA Preview* is a comprehensive review of HRSA's Fiscal Year 1999 programs. The next edition of the *HRSA Preview* is scheduled to be published by early summer 1999.

The purpose of the *HRSA Preview* is to provide the general public with a single source of program and application information related to the Agency's competitive grant reviews. The *HRSA Preview* is designed to replace multiple **Federal Register** notices which traditionally advertised the availability of HRSA's discretionary funds for its various programs. In this edition of the *HRSA Preview,* HRSA's programs which provide funding for loan repayments and scholarships to individuals have been included in the section ''Other HRSA Programs.'' It should be noted that other program initiatives responsive to new or emerging issues in the health care area and unanticipated at the time of publication of the *HRSA Preview,* may be announced through the **Federal Register** from time to time. Deadlines or other requirements appearing in the **Federal Register** are not changed by this notice.

The *HRSA Preview* contains a description of competitive and additional programs scheduled for review in Fiscal Year 1999 and includes instructions on how to access the Agency for information and receive application kits for all programs announced. Specifically, the following information is included in the *HRSA Preview:* (1) Program Title; (2) Legislative Authority; (3) Purpose; (4) Eligibility; (5) Estimated Amount of Competition; (6) Estimated Number of Awards; (7) Funding Priorities and/or Preferences; (8) Application Deadline; (9) Projected Award Date; (10) Application Kit Availability; (11) Catalog of Federal Domestic Assistance (CFDA) program identification number; and (12) Programmatic contact. Certain other information including, how to obtain and use the *HRSA Preview,* and grant terminology also may be found in the *HRSA Preview.*

This issue of the *HRSA Preview* includes funding for HRSA discretionary authorities and programs as follows:

Rural Health Programs

- State Rural Hospital Flexibility Program.
- Rural Network Development Grant Program.
- Rural Health Outreach Grant Program.
- Rural Health Policy Analytic Centers.

Health Professions Programs

- Nurse Anesthetists: Program Grants.
- Advanced Nurse Education.
- Physician Assistant Training.
- Departments of Family Medicine.
- Geriatric Education Centers.
- Basic/Core Area Health Education Centers.
- Model State-Supported Area Health Education Centers.
- Health Education and Training Centers.
- Quentin N. Burdick Rural Health Interdisciplinary Program.
- Allied Health Projects.
- Centers of Excellence.
- Health Careers Opportunity Program.
- Minority Faculty Fellowship Program.

Primary Health Care Programs

- Community and Migrant Health Centers.
- Health Care for the Homeless.
- Healthy Schools/Healthy Communities.
- Grants to States for Loan Repayment Programs.
- Black Lung Clinics.
- New Delivery Sites and New Starts in Programs Funded Under The Health Centers Consolidation Act.

HIV/AIDS Programs

- AIDS Education And Training Centers.
- Ryan White Title III HIV Early Intervention Services Grants.
- Ryan White Title III HIV Early Intervention Services Planning Grants.
- Ryan White Title IV Coordinated HIV Services and Access to Research—Geographic Areas With Currently Funded Title IV Projects.
- Ryan White Title IV Coordinated HIV Services and Access to Research—New Geographic Areas.

Maternal and Child Health Programs

- Genetic Services.
- Genetic Services—Integrated Services for Children with Genetic Conditions.
- Genetic Services—Newborn Screening.
- Genetic Services—National Genetic Resource Center.
- Comprehensive Hemophilia Diagnostic and Treatment Centers.
- Partnership for Information and Communications (PIC).
- Maternal and Child Health Research.
- Training—Continuing Education/Collaboration Pediatrics/Child Psychiatry.
- Training—Continuing Education and Development—Training Institute.
- Children With Special Health Care Needs: Adolescent Transition.
- Children with Special Health Care Needs Institute.
- Children With Special Health Care Needs: Medical Home Cooperative Agreement.
- Health Care Information and Education for Families of Children With Special Health Care Needs.
- Early Discharge (Data).
- Healthy Tomorrows Partnership for Children.
- Community and School-Based Sealant Grants.
- Oral Health Integrated Systems Development Grants.
- Child Health Insurance Program Partnership.
- Border Health Initiative.
- Emergency Medical Services for Children, Implementation Grants.
- Emergency Medical Services for Children, Partnership Grants.
- Emergency Medical Services for Children, Targeted Issue Grants.
- Emergency Medical Services for Children, Native American Project.
- Traumatic Brain Injury State Implementation Grants.
- Traumatic Brain Injury State Planning Grants.
- Improving Screening for Alcohol Use During Pregnancy Among Providers.
- Healthy Start Initiative: Eliminating Racial/Ethnic Disparities in Perinatal Health.
- Healthy Start Initiative: Infrastructure/Capacity Building Projects.

Other HRSA Programs

- Faculty Loan Repayment Program.
- Scholarships for Disadvantaged Students.
- Nursing Education Loan Repayment Program.

Contact Information: Individuals may obtain the *HRSA Preview* by calling the toll free number, 1–888–333–HRSA (4772). The HRSA *Preview* may also be accessed on the World Wide Web on the HRSA Home Page at: http://www.hrsa.dhhs.gov/. Please see our web site, or obtain a copy of the *HRSA Preview,* for a special message from the Administrator.

Dated: December 28, 1998.

Claude Earl Fox,

Administrator.

The Access Agency: Health Resources and Services Administration Office of Field Operations

HRSA has established a field structure that can address the changing health care needs of the Nation as we begin the 21st century. HRSA field staff implement HRSA programs to increase access to primary care for underserved populations, serve as a source of expertise on health services development, increase the capacity and capability of maternal and child health programs, provide a link to the community and school age children for information and financial aid regarding careers in the health professions, assist in health facilities construction and assist other health related programs such as Rural Health and HIV/AIDS

programs. The HRSA Field Offices, by virtue of their unique location in communities and States, are more than just an extension of HRSA programs; they are HRSA's resource for integrating and coordinating programs at the customer level. These ten Field Offices are organized into five Field Clusters. HRSA's customers, youth as well as adults, who want information about HRSA programs and opportunities for careers in the health professions, may contact the closest HRSA Field Office:

Northeast Cluster

HRSA Boston Field Office, Barbara Tausey, (617) 565–1433
HRSA New York Field Office, Ronald Moss, (212) 264–2664
HRSA Philadelphia Field Office, Joseph Healey, (215) 861–4365

Southeast Cluster

HRSA Atlanta Field Office, Ketty Gonzalez, (404) 562–7980

Midwest Cluster

HRSA Chicago Field Office, Deborah Willis-Fillinger, (312) 353–6835
HRSA Kansas City Field Office, Hollis Hensley, (816) 426–5226

West Central Cluster

HRSA Dallas Field Office, Frank Cantu, (214) 767–3872
HRSA Denver Field Office, Jerry Wheeler, (305) 844–3203

Pacific West Cluster

HRSA San Francisco Field Office, Antonio Duran, (415) 437–8090
HRSA Seattle Field Office, Douglas Woods, (206) 615–2491

HRSA PROGRAMS AT A GLANCE

	Deadline
Rural Health Programs	
State Rural Hospital Flexibility Program	04/14/1999
Rural Network Development Grant Program	03/16/1999
Rural Health Outreach Grant Program	03/01/1999
Rural Health Policy Analytic Centers	03/05/1999
Health Professions Programs	
Nurse Anesthetist Program: Program Grants (as published in the summer *HRSA Preview*)	12/21/1998
Advanced Nurse Education (as published in the summer *HRSA Preview*)	12/21/1998
Physician Assistant Training	02/23/1999
Departments of Family Medicine	03/15/1999
Geriatric Education Centers (as published in the summer *HRSA Preview*)	12/21/1998
Basic/Core Area Health Education Centers	02/26/1999
Model State-Supported Area Health Education Centers	02/26/1999
Health Education and Training Centers	02/19/1999
Quentin N. Burdick Rural Health Interdisciplinary Program	02/12/1999
Allied Health Projects	02/16/1999
Centers of Excellence	03/29/1999
Health Careers Opportunity Program	03/12/1999
Minority Faculty Fellowship Program	01/29/1999
Primary Health Care Programs	
Community and Migrant Health Centers	(1)
Health Care for the Homeless	02/01/1999
Healthy Schools/Healthy Communities	05/01/1999
Grants to States for Loan Repayment Programs	05/01/1999
Black Lung Clinics	04/01/1999
New Delivery Sites and New Starts in Programs Funded under The Health Centers Consolidation Act	04/01/1999
HIV/AIDS Programs	
AIDS Education And Training Centers	04/01/1999
Ryan White Title III HIV Early Intervention Services Grants	05/01/1999
Ryan White Title III HIV Early Intervention Services Planning Grants	06/01/1999
Ryan White Title IV: Existing Geographic Areas	04/30/1999
Ryan White Title IV: New Geographic Areas	04/30/1999
Maternal and Child Health Programs	
Genetic Services	04/23/1999
Genetic Services—Integrated Services for Children with Genetic Conditions	04/23/1999
Genetic Services—Newborn Screening	04/23/1999
Genetic Services—National Genetic Resource Center	04/23/1999
Comprehensive Hemophilia Diagnostic and Treatment Centers	05/15/1999
Partnership for Information and Communications (PIC)	02/23/1999
Maternal and Child Health Research	03/01/1999
Training—Continuing Education/Collaboration Pediatrics/Child Psychiatry	04/01/1999
Training—Continuing Education and Development—Training Institute	06/01/1999
Children With Special Health Care Needs: Adolescent Transition	03/01/1999
Children with Special Health Care Needs Institute	03/01/1999
Children With Special Health Care Needs: Medical Home Cooperative Agreement	03/01/1999
Health Care Information and Education for Families of Children With Special Health Care Needs	03/01/1999
Early Discharge (Data)	04/01/1999
Healthy Tomorrows Partnership for Children	04/01/1999
Community and School-Based Sealant Grants	05/03/1999
Oral Health Integrated Systems Development Grants	05/03/1999
Child Health Insurance Program Partnership	02/22/1999
Border Health Initiative	05/03/1999

HRSA PROGRAMS AT A GLANCE—Continued

	Deadline
Emergency Medical Services for Children, Implementation Grants	03/15/1999
Emergency Medical Services for Children, Partnership Grants	03/15/1999
Emergency Medical Services for Children, Targeted Issue Grants	03/15/1999
Emergency Medical Services for Children, Native American Project	03/15/1999
Traumatic Brain Injury State Implementation Grants	03/01/1999
Traumatic Brain Injury State Planning Grants	03/01/1999
Improving Screening for Alcohol Use During Pregnancy Among Providers	04/01/1999
Healthy Start Initiative: Eliminating Racial/Ethnic Disparities in Perinatal Health	04/01/1999
Healthy Start Initiative: Infrastructure/Capacity Building Projects	04/01/1999
Other HRSA Programs	
Faculty Loan Repayment Program	06/30/1999
Scholarships for Disadvantaged Students	05/14/1999
Nursing Education Loan Repayment Program	06/30/1999

[1] Varies by Service Area.

How to Obtain And Use The HRSA Preview

It is recommended that you read the introductory materials, terminology section, and individual program category descriptions before contacting the general number 1–888–333–HRSA. Likewise, we urge applicants to fully assess their eligibility for grants before requesting kits. As a general rule, no more than one kit per category will be mailed to applicants.

To Obtain A Copy of The HRSA Preview

To have your name and address added to or deleted from the *HRSA Preview* mailing list, please call the toll free number 1–888–333–HRSA (4772) or e-mail us at hrsa.gac@ix.netcom.com.

To Obtain An Application Kit

Upon review of the program descriptions, please determine which category or categories of application kit(s) you wish to receive and contact the 1–888–333–HRSA (4772) number to register on the specific mailing list. Application kits are generally available 60 days prior to application deadline. If kits are already available, they will be mailed immediately.

World Wide Web Access

The *HRSA Preview* is available on the HRSA Homepage via the World Wide Web at: http://www.hrsa.dhhs.gov/. The fall 1998 *HRSA Preview* is also available in Spanish at HRSA's Homepage http://www.hrsa.dhhs.gov/. It is hoped that the availability of the Spanish edition of the *HRSA Preview* increases your access to HRSA programs. Questions or comments in Spanish about our programs may be directed to Laura Shepherd, Office of Minority Health, at lshepherd@hrsa.dhhs.gov/.

Application materials are currently available for downloading in the current cycle for some HRSA programs. HRSA's goal is to post application forms and materials for all programs as soon as possible. You can download this issue of the *HRSA Preview* in Adobe Acrobat format (.pdf) from HRSA's web site at: http://www.hrsa.dhhs.gov/preview.htm

Also, you can register on-line to be sent specific grant application materials by following the instructions on the web page or accessing http://www.hrsa.gov/g__order3.htm directly. Your mailing information will be added to our database and material will be sent to you as it becomes available.

Grant Terminology

Application Deadlines

Applications will be considered ''on time'' if they are either received on or before the established deadline date or postmarked on or before the deadline date given in the program announcement or in the application kit materials.

Authorizations

The citations of provisions of the laws authorizing the various programs are provided immediately preceding groupings of program categories.

CFDA Number

The Catalog of Federal Domestic Assistance (CFDA) is a Government-wide compendium of Federal programs, projects, services, and activities which provide assistance. Programs listed therein are given a CFDA Number.

Cooperative Agreement

A financial assistance mechanism used when substantial Federal programmatic involvement, with the recipient during performance, is anticipated by the Agency.

Eligibility

Authorizing legislation and programmatic regulations specify eligibility for individual grant programs. In general, assistance is provided to nonprofit organizations and institutions, State and local governments and their agencies, and occasionally to individuals. For-profit organizations are eligible to receive awards under financial assistance programs unless specifically excluded by legislation.

Estimated Amount of Competition

The funding level listed is provided for planning purposes and is subject to the availability of funds.

Funding Priorities and/or Preferences

Special priorities or preferences are those which the individual programs have identified for the funding cycle. Some programs give preference to organizations which have specific capabilities such as telemedicine networking or established relationships with managed care organizations. Preference also may be given to achieve an equitable geographic distribution and other reasons to increase the effectiveness of the programs.

Key Offices

The Grants Management Office serves as the focal point for business matters. A ''key'' symbol indicates the appropriate office for each program area and the main telephone number for the office.

Matching Requirements

Several HRSA programs require a matching amount, or percentage of the total project support, to come from sources other than Federal funds. Matching requirements are generally mandated in the authorizing legislation for specific categories. Also, matching requirements may be administratively required by the awarding office. Such requirements are set forth in the application kit.

Project Period

The total time for which support of a discretionary project has been programmatically approved. Continuation of any project beyond the budget period is subject to satisfactory performance, availability of funds and program priorities.

Review Criteria

The following are generic review criteria applicable to HRSA programs:

- That the estimated cost to the Government of the project is reasonable considering the anticipated results.
- That project personnel or prospective fellows are well qualified by training and/or experience for the support sought, and the applicant organization or the organization to provide training to a fellow has adequate facilities and manpower.
- That, insofar as practical, the proposed activities (scientific or other), if well executed, are capable of attaining project objectives.
- That the project objectives are capable of achieving the specific program objectives defined in the program announcement and the proposed results are measurable.
- That the method for evaluating proposed results includes criteria for determining the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program.
- That, in so far as practical, the proposed activities, when accomplished, are replicable, national in scope and include plans for broad dissemination.

The specific review criteria used to review and rank applications are included in the individual guidance material provided with the application kits. Applicants should pay strict attention to addressing these criteria as they are the basis upon which their applications will be judged.

Technical Assistance

A contact person is listed for each program and his/her e-mail address and telephone number provided. Some programs have scheduled workshops and conference calls as indicated by the ''magnifying glass'' in the *HRSA Preview*. If you have questions concerning individual programs or the availability of technical assistance, please contact the person listed. Also check your application materials and the HRSA web site http://www.hrsa.dhhs.gov/ for the latest technical assistance information.

Frequently Asked Questions

1. HRSA lists many telephone numbers and e-mail addresses. Who do I phone or e-mail and when?

Phone 1–888–333–HRSA (4772) to register for application kits. It will be helpful to the information specialist if you have the CFDA Number and title of the program handy for reference.

If, before you register, you want to know more about the program, an e-mail/phone contact is listed. This contact can provide information concerning the specific program's purpose, scope and goals, and eligibility criteria. Usually, you will be encouraged to request the application kit so that you will have clear, comprehensive and accurate information available to you. The application kit lists telephone numbers for a program expert and a grants management specialist who will provide technical assistance concerning your specific program, if you are unable to find the information within the materials provided.

2. The dates listed in the *HRSA Preview* and the dates in the application kit do not agree. How do I know which is correct?

First, register at 1–888–333–HRSA (4772) for *each* program that you are interested in as shown in the *HRSA Preview*.

HRSA Preview dates for application kit availability and application receipt deadline are based upon the best known information at the time of publication, often nine months in advance of the competitive cycle. Occasionally, the grant cycle does not begin as projected and dates must be adjusted. The deadline date stated in your application kit is correct. If the application kit has been made available and subsequently the date changes, notification of the change will be mailed to known recipients of the application kit. Therefore, if you are registered at 1–888–333–HRSA (4772), you will receive the most current information.

3. Are programs announced in the *HRSA Preview* ever canceled?

Infrequently, programs announced may be withdrawn from competition. If this occurs, a cancellation notice will be provided through the *HRSA Preview* at the HRSA Homepage http://www.hrsa.dhhs.gov/.

If you still have unanswered questions, please contact Jeanne Conley of the Grants Policy Branch at 301–443–4972 (jconley@hrsa.dhhs.gov).

Rural Health Programs

Grants Management Office: 1–301–594–4235.

The Office of Rural Health Policy (ORHP) promotes better health care in rural America through its grant programs for rural health outreach, network development, and research centers. Grants for the outreach program are used to expand access to essential health care services in rural areas, as well as to reduce the cost and improve the quality of these services. Since recipients of these grants are required to partner with at least two other organizations, outreach grants encourage the development of new and innovative health care delivery systems. Unlike the outreach grants, which focus on the actual delivery of health care services, the network grants are aimed at improving organizational capabilities. Network grants specifically support the planning and development of vertically integrated health care systems in rural areas. In the rapidly changing health care market, rural areas that develop vertically integrated systems will be better able to keep vital health care support within the community. ORHP's research grants fund centers to study a wide range of policy-relevant subjects in rural health, including issues of multi-State and national significance such as the emergence of managed care in rural communities. The work of the research centers is published in appropriate refereed journals and disseminated to a national audience.

State Rural Hospital Flexibility Program

Authorization

Section 1820 of the Social Security Act (42 U.S.C. 1395I–4) as amended in Public Law 105–33 SEC. 4201.

Purpose

The purpose of this grant program is to help States work with rural communities and hospitals to develop and implement a rural health plan, develop integrated networks of care, improve emergency medical services and designate Critical Access Hospitals.

Eligibility

The 50 States are eligible to apply.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$25,000,000.

Estimated Number of Awards

Up to 50.

Estimated Project Period

3 Years.

Application Availability: 02/10/1999

To Obtain This Application Kit

CFDA Number: 93.912C.

Contact: 1–888–333–HRSA (4772).
Application Deadline: 04/14/1999.
Projected Award Date: 09/1999.
Contact Person: Jerry Coopey, jcoopey@hrsa.dhhs.gov 1–301–443–0835.

Rural Network Development Grant Program

Authorization

Section 330A of the Public Health Service Act, 42 U.S.C. 254c

Purpose

The purpose of this program is to support the planning and development of vertically integrated health care networks in rural areas. Vertically integrated networks must be composed of three different types of providers. The emphasis of the program is on projects to develop the organizational capabilities of these networks. The network is a tool for overcoming the fragmentation of health care delivery services in rural areas. As such, the network provides a range of possibilities for structuring local delivery systems to meet health care needs of rural communities.

Eligibility

A rural public or nonprofit private organization that is or represents a network which includes three or more health care providers or other entities that provide or support the delivery of health care services is eligible to apply. The administrative headquarters of the organization must be located in a rural county or in a rural census tract of an urban county, or an organization constituted exclusively to provide services to migrant and seasonal farm workers in rural areas and supported under Section 330(g) of the Public Health Service Act. These organizations are eligible regardless of the urban or rural location of the administrative headquarters.

Funding Priorities and/or Preferences

Funding preference may be given to applicant networks that include: (1) a majority of the health care providers serving in the area or region to be served by the network; (2) any Federally Qualified Health Centers, Rural Health Clinics, and local public health departments serving in the area or region; (3) outpatient mental health providers serving in the area or region; or (4) appropriate social service providers, such as agencies on aging, school systems and providers under the women, infants, and children program (WIC) to improve access to and coordination of health care services.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$4,420,000.

Estimated Number of Awards

25.

Estimated Project Period

1–3 Years.
Group Conference Call Date: 01/28/99, 2:00 p.m.(ET): Contact ORHP Operator, (301) 656–3100 or FAX (301) 652–5264.

Application Availability: 12/01/1998

To Obtain This Application Kit

CFDA Number: 93.912B.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/16/1999.
Projected Award Date: 09/1999.
Contact Person: Eileen Holloran ehollaran@hrsa.dhhs.gov, 1–301–443–0835.

Rural Health Outreach Grant Program

Authorization

Section 330A of the Public Health Service Act, 42 U.S.C. 254c.

Purpose

The purpose of this grant program is to expand access to, coordinate, restrain the cost of, and improve the quality of essential health care services, including preventive and emergency services, through the development of integrated health care delivery systems or networks in rural areas and regions. Funds are available for projects to support the direct delivery of health care and related services, to expand existing services, or to enhance health service delivery through education, promotion, and prevention programs. The emphasis is on the actual delivery of specific services rather than the development of organizational capabilities. Projects may be carried out by networks of the same providers (e.g. all hospitals) or more diversified networks.

Eligibility

Rural public or nonprofit private organizations that include three or more health care providers or other entities that provide or support the delivery of health care services are eligible to apply. The administrative headquarters of the organization must be located in a rural county or in a rural census tract of an urban county, or an organization constituted exclusively to provide services to migrant and seasonal farmworkers in rural areas and supported under Section 330(g) of the Public Health Service Act. Organizations that provide services to migrant and seasonal farmworkers in rural areas and are supported under Section 330(g) of the Public Health Service Act are eligible regardless of the urban or rural location of the administrative headquarters.

Funding Priorities and/or Preferences

Funding preference may be given to applicant networks that include: (1) A majority of the health care providers serving in the area or region to be served by the network; (2) any Federally Qualified Health Centers, Rural Health Clinics, and local public health departments serving in the area or region; (3) outpatient mental health providers serving in the area or region; or (4) appropriate social service providers, such as agencies on aging, school systems, and providers under the women, infants, and children program (WIC), to improve access to and coordination of health care services.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$8,580,000.

Estimated Number of Awards

50.

Estimated Project Period

1–3 Years.
Group Conference Call Date: 01/26/99, 2:00 p.m.(ET): Contact ORHP Operator, (301) 656–3100 or FAX (301) 652–5264.

Application Availability: 12/01/1998

To Obtain This Application Kit

CFDA Number: 93.912A.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/01/1999.
Projected Award Date: 09/1999.
Contact Person: Eileen Holloran, eholloran@hrsa.dhhs.gov, 1–301–443–0835.

Rural Health Policy Analytic Centers

Authorization

Section 301 of the Public Health Service Act, 42 U.S.C. [241].

Purpose

The purpose of this program is to fund rural health services policy analytic centers to conduct policy relevant research on rural health services issues of multi-state and national significance, and disseminate the findings of their research. The

centers study the critical issues facing rural communities in their quest to secure adequate, affordable, high quality health services. Rural health research findings are published in appropriate refereed journals and disseminated to a national audience.

Eligibility

All public and private entities, both nonprofit and for-profit, are eligible to apply.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,000,000.

Estimated Number of Awards

2–4.

Estimated Project Period

3 Years.

Application Availability: 12/01/1998

To Obtain This Application Kit

CFDA Number: 93.155.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/05/1999.
Projected Award Date: 07/1999.
Contact Person: Jake Culp, jculp@hrsa.dhhs.gov, 1–301–443–0835.

Health Professions Programs

Grants Management Office: 1–301–443–6880.

Note: As the *HRSA Preview* was going to print, new legislation was passed reauthorizing many of the Health Professions Programs. Because the legislation may have altered important elements, such as program requirements, please read the application materials carefully.

Underlined areas provide additional or changed information to the Summer 1998 HRSA Preview.

Nurse Anesthetist Program: Program Grants

Authorization

Section 811 of the Public Health Service Act (Previously Section 831), 42 U.S.C. 297–1.

Purpose

Grants are awarded to assist eligible institutions to meet the costs of developing projects for the education of nurse anesthetists.

Eligibility

Eligible applicants are public or private nonprofit institutions which provide registered nurses with full-time nurse anesthetist training and are accredited by an entity or entities designated by the Secretary of Education.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 860(e) of the Public Health Service Act, preference will be given to qualified applicants that: (A) have a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) have achieved, during the 2-year period preceding the fiscal year for which such an award is sought, a significant increase in the rate of placing graduates in such settings. This preference will only be applied to education program applications that rank above the 20th percentile of proposals recommended for approval by the peer review group.

''High rate'' and ''significant increase in the rate'' have been redefined for this program. ''High rate'' is defined as a minimum of 35 percent of graduates in academic year 1995–1996, academic year 1996–1997, or academic year 1997–1998, who spend at least 50 percent of their work time in clinical practice in the specified settings. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

''Significant increase in the rate'' means that, between academic years 1996–1997 and 1997–1998, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and not less than 15 percent of graduates from the most recent year are working in these settings.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$400,000.

Estimated Number of Awards

2 Programs.

Estimated Project Period

3 Years.

Application Availability: 07/13/1998

To Obtain This Application Kit

CFDA Number: 93.916.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 12/21/1998.
Projected Award Date: 04/1999.
Contact Person: Marcia Starbecker, mstarbecker@hrsa.dhhs.gov, 1–301–443–6333.

Advanced Nurse Education

Authorization

Section 811 of the Public Health Service Act (Previously Section 821), 42 U.S.C. 296.

Purpose

Grants are awarded to assist eligible institutions plan, develop and operate new programs, or significantly expand existing programs leading to advanced degrees that prepare nurses to serve as nurse educators or public health nurses, or in other clinical nurse specialties determined by the Secretary to require advanced education.

Eligibility

Eligible applicants are public and nonprofit private collegiate schools of nursing.

Funding Priorities and/or Preferences

Statutory General Preference: As provided in Section 860(e)(1) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This preference will only be applied to applications that rank above the 20th percentile of proposals recommended for approval by the peer review group.

''High rate'' and ''significant increase in the rate'' have been redefined for this program. ''High rate'' is defined as a minimum of 35 percent of graduates in academic year 1995–1996, academic year 1996–1997, or academic year 1997–1998, who spend at least 50 percent of their work time in clinical practice in the specified settings. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

''Significant increase in the rate'' means that, between academic years 1996–1997 and 1997–1998, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and not less than 15 percent of graduates from the most recent year are working in these settings.

Established Funding Priorities: A funding priority will be given to applications which develop, expand or implement course(s) concerning ambulatory, home health care and/or inpatient case management services for individuals with HIV disease.

In determining the order of funding of approved applications, a funding priority will be given to applicant institutions which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or low-income populations identified as at-risk of poor health outcomes.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of the Competition

$4,000,000.

Estimated Number of Awards

20.

Estimated Project Period

3 Years.

Application Availability: 07/13/1998

To Obtain This Application Kit

CFDA Number: 93.299.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 12/21/1998.
Projected Award Date: 04/1999.
Contact Person: Karen Pane, kpane@hrsa.dhhs.gov, 1–301–443–6333.

Physician Assistant Training

Authorization

Section 747 of the Public Health Service Act (Previously Section 750), 42 U.S.C. 293n.

Purpose

Grants are awarded under Section 747 of the Public Health Service Act for projects: (1) for the training of physician assistants; and (2) for the training of individuals who will teach in programs to provide such training. The projects supported must meet the following definition of a training program for physician assistants as defined under Section 799B of the Public Health Service Act: (1) has as its objective the education of individuals who will, upon completion of their studies in the program, be qualified to provide primary care under the supervision of a physician; (2) extends for at least one academic year and consists of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; (3) has an enrollment of not less than eight students; and (4) trains students in primary care, disease prevention, health promotion, geriatric medicine, and home health care. The program assists schools to meet the costs of projects to plan, develop and operate or maintain programs for the training of physician assistants and for the training of individuals who will teach in programs to provide such training. Programs must develop and use methods designed to encourage graduates of the program to work in health professional shortage areas. Programs also must develop and use methods for placing graduates in positions for which they have been trained.

Eligibility

Public or nonprofit private hospitals, schools of medicine, or osteopathic medicine or a public or private nonprofit entity are eligible to apply. Eligible physician assistant programs are those which are either accredited by the American Medical Association's Committee on Allied Health Education and Accreditation (AMA–CAHEA) or its successor organization, the Commission on Accreditation of Allied Health Education Programs (CAAHEP).

Funding Priorities and/or Preferences

As provided in Section 791(a) of the Public Health Service Act, statutory preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

A statutory priority will be given to qualified applicants that have a record of training individuals who are from disadvantaged backgrounds (including racial and ethnic minorities underrepresented among physician assistants).

A special consideration will be given under Section 747(c)(3) in awarding grants to projects which prepare practitioners to care for underserved population and other high-risk groups such as the elderly, individuals with HIV–AIDS, substance abusers, homeless, and victims of domestic violence.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$900,000.

Estimated Number of Awards

6.

Estimated Project Period

3 Years.

Technical Assistance Group Conference Call: To be held on January 21, 1999. Contact Ed Spirer by January 14, 1999 to participate by calling 301–443–1467 or e-mail espirer@hrsa.dhhs.gov.

Application Availability: 12/15/1998

To Obtain This Application Kit

CFDA Number: 93.886.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 02/23/1999.
Projected Award Date: 06/1999.
Contact Person: Ed Spirer, espirer@hrsa.dhhs.gov, 1–301–443–1467.

Departments of Family Medicine

Authorization

Section 747 of the Public Health Service Act, 42 U.S.C. 293k.

Purpose

Grants are awarded to establish, maintain, or improve academic administrative units to provide clinical instruction in family medicine; to plan and develop model educational predoctoral, faculty development, and graduate medical education programs in family medicine which will meet the requirements of Section 747(a) by the end of the project period of Section 747(b) support; to support academic and clinical activities relevant to the field of family medicine; and to strengthen the administrative base and structure responsible for the planning, direction, organization, coordination, and evaluation of all undergraduate and graduate family medicine activities.

Eligibility

Public, or private nonprofit accredited schools of medicine or osteopathic medicine are eligible to apply.

Funding Priorities and/or Preferences

As provided in Section 791(a) of the Public Health Service Act, statutory preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th

percentile of applications recommended for approval by the peer review group.

Under Section 747(b), a funding preference is provided for qualified applicants that agree to expend the award for the purpose of: (1) establishing an academic administrative unit defined as a department, division, or other unit, for programs in family medicine; or (2) substantially expanding the programs of such a unit.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$3,600,000.

Estimated Number of Awards

20.

Estimated Project Period

3 Years.

Technical Assistance Conference Call: February 15, 1999. Contact Shelby Biedenkapp by January 29 to participate, 301–443–1467, or e-mail sbiedenkapp@hrsa.dhhs.gov.

Application Availability: 10/09/1998

To Obtain This Application Kit

CFDA Number: 93.984.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/15/1999.
Projected Award Date: 08/1999.
Contact Person: Shelby Biedenkapp, sbiedenkapp@hrsa.dhhs.gov, 1–301–443–1467.

Geriatric Education Centers

Authorization

Section 753 of the Public Health Service Act (Previously Section 777(a)), 42 U.S.C. 294o.

Purpose

Grants are awarded to support the development of collaborative arrangements involving several health professions schools and health care facilities. Geriatric Education Centers (GECs) facilitate training of health professional faculty, students, and practitioners in the diagnosis, treatment, and prevention of disease, disability, and other health problems of the aged. Health professionals include allopathic physicians, osteopathic physicians, dentists, optometrists, podiatrists, pharmacists, nurse practitioners, physician assistants, chiropractors, *behavioral and mental health professionals,* health administrators, and other allied health professionals. Projects supported under these grants must offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine, and must address one or more of the following statutory purposes: (a) improve the training of health professionals in geriatrics; (b) develop and disseminate curricula relating to the treatment of health problems of elderly individuals; (c) support the training and retraining of faculty to provide such instruction *in geriatrics;* (d) support continuing education of health professionals and allied health professionals who provide such treatment; and (e) provide students with clinical training in geriatrics in nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers.

Eligibility

Grants may be made to accredited health professions schools as defined by Section 799B(1), or programs for the training of physician assistants as defined by Section 799B(3), or schools of allied health as defined by Section 799B(4), or schools of nursing as defined by Section 853(2).

Funding Priorities and/Or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,100,000.

Estimated Number of Awards

8.

Estimated Project Period

3 years.

Application Availability: 10/05/1998

To Obtain This Application Kit

CFDA Number: 93.969.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 12/21/1998.
Projected Award Date: 04/1999.
Contact Person: Barbara Broome, bbroome@hrsa.dhhs.gov 1–301–443–6887.

Basic/Core Area Health Education Centers

Authorization

Section 751(a)(1) of the Public Health Service Act (Previously Section 746(a)(1)), 42 U.S.C. 293j.

Purpose

Grants are awarded to assist schools to improve the distribution, supply and quality of health personnel in the health services delivery system by encouraging the regionalization of health professions schools. Emphasis is placed on community-based training of primary care oriented students, residents, and providers. The Area Health Education Centers (AHEC) program assists schools in the planning, development, and operation of AHEC's to initiate educational system incentives, to attract and retain health care personnel in scarcity areas. By linking the academic resources of the university health science center with local planning, educational and clinical resources, the AHEC program establishes a network of community-based training sites to provide educational services to students, faculty and practitioners in underserved areas and ultimately, to improve the delivery of health care in the service area. The program embraces the goal of increasing the number of health professions graduates who ultimately will practice in underserved areas.

Eligibility

The types of entities eligible to apply for this program have been expanded from public or private nonprofit accredited schools of medicine and osteopathic medicine *to include incorporated consortia of such schools, or the parent institution of such schools. Also, in States in which no area health education center program is in operation, an accredited school of nursing is also an eligible applicant.*

Matching Requirements

Awardees shall make available (directly or through contributions from State, county or municipal governments, or the private sector) non-Federal contributions in cash in an amount that is not less than 50 percent of the operating costs of the AHEC Program, except that the Secretary may grant a waiver for up to 75 percent of the amount required in the first 3 years in which an awardee receives funds under Section 751(a)(1).

Funding Priorities and/or Preferences

Funds shall be awarded to approved applicants in the following order: (1) competing continuations; (2) new starts in States with no AHEC program; (3) other new starts; and (4) competing supplementals. Applications reviewed and scored in the lowest 25th percentile may be partially funded or may not be funded.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$7,625,000.

Estimated Number of Awards

9.

Estimated Project Period

3 Years.

Application Availability: 10/09/1998

To Obtain This Application Kit

Contact: 1–888–333–HRSA (4772)
CFDA Number: 93.824.
Application Deadline: 02/26/1999.
Projected Award Date: 05/1999.
Contact Persons: Louis D. Coccodrilli (lcoccodrilli@hrsa.dhhs.gov); Carol S. Gleich (cgleich@hrsa.dhhs.gov), 1–301–443–6950.

Model State-Supported Area Health Education Centers

Authorization

Section 751(a)(2) of The Public Health Service Act (Previously Section 746 (a)(3)), 42 U.S.C. 293j.

Purpose

The program assists schools to improve the distribution, supply, and quality of health personnel in the health services delivery system by encouraging the regionalization of health professions schools. Emphasis is placed on community-based training of primary care oriented students, residents, and providers. The Area Health Education Centers (AHEC) program assists schools in the development, and operation of AHEC's to implement educational system incentives to attract and retain health care personnel in scarcity areas. By linking the academic resources of the university health science center with local planning, educational and clinical resources, the AHEC program establishes a network of health-related institutions to provide educational services to students, faculty and practitioners and ultimately, to improve the delivery of health care in the service area. These programs are collaborative partnerships which address current health workforce needs within a region of a State, or in an entire State.

Eligibility

The types of entities eligible to apply for this program have been expanded from public or private nonprofit accredited schools of medicine and osteopathic medicine *to include incorporated consortia of such schools, or the parent institution of such schools.* Applicants must also have previously received funds but are no longer receiving funds under Section 751(a)(1), formerly Section 746(a)(1), and are operating an AHEC program.

Matching Requirements

Awardees shall make available (directly or through contributions from State, county or municipal governments, or the private sector) recurring non-Federal contributions in cash in an amount not less than 50 percent of the operating costs of the Model State-Supported AHEC Program.

Funding Priorities and/or Preferences

Funds shall be awarded to approved applicants in the following order: (1) competing continuations; (2) new starts in States with no AHEC program; (3) other new starts; and (4) competing supplementals. Applications reviewed and scored in the lowest 25th percentile may be partially funded or may not be funded.

Review Criteria

Final criteria are included in the application kit.

Estimated Number of Awards

9.

Application Availability: 10/09/1998

To Obtain This Application Kit

CFDA Number: 93.107.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 02/26/1999.
Projected Award Date: 05/1999.
Contact Persons: Louis D. Coccodrilli (lcoccodrilli@hrsa.dhhs.gov); Carol S. Gleich (cgleich@hrsa.dhhs.gov), 1–301–443–6950.

Health Education and Training Centers

Authorization

Section 752 of The Public Health Service Act (Previously Section 746(f)), 42 U.S.C. 293j.

Purpose

Grants are awarded to assist schools to improve the distribution, supply, quality and efficiency of personnel providing health services in the State of Florida or along the border between the United States and Mexico and in other urban/rural areas of the United States to any population group that has demonstrated serious unmet health care needs. The program encourages health promotion and disease prevention through public education in border and non-border areas. Each Health Education and Training Center (HETC) project will: (a) conduct or support not less than one training and educational program for physicians and one for nurses for at least a portion of the clinical training of such students in the proposed service area; (b) conduct or support training in health education services. A school of public health located in the HETC service area shall participate in the HETC program if the school requests to participate.

Note that funds shall be awarded in such a way that 50 percent of amounts appropriated for each fiscal year are for the establishment or operation of health education training centers in States along the United States and Mexican border and in the State of Florida.

Eligibility

The types of entities eligible for this program have been expanded from public or private nonprofit accredited schools of medicine and osteopathic medicine, *to include incorporated consortia of such schools, or the parent institution of such schools. In States in which no area health education center program is in operation, an accredited school of nursing is also an eligible applicant.*

Funding Priorities and/or Preferences

Fifty percent of the appropriated funds each year must be made available for approved applications for Border HETCs. The amount allocated for each approved Border HETC application shall be determined in accordance with a formula. Approved non-Border HETC applications scored in the lowest 25th percentile may be partially funded or may not be funded. The following funding priorities are being applied in FY 1999: (1) Implementation of HETC Programs training a minimum of 50 under-represented minority trainees annually for service to medically underserved populations; (2) Implementation of a substantial public health training experience between 4 to 8 weeks for a minimum of 25 trainees annually; (3) As part of their advisory group, a proposed project must have representation from a health department from the area being served.

Matching Requirement

Awardees shall provide matching funds from non-Federal sources (directly or through donations from public or private entities, in cash or in-kind) in an amount not less than 25 percent of total operating costs of the HETC project.

Review Criteria

Final criteria are included in the application kit.

Estimated amount of This Competition

$3,550,000.

Estimated Number of Awards

10–15.

Estimated Project Period

3 Years.

Application Availability: 10/09/1998

To Obtain This Application Kit

CFDA Number: 93.189.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 02/19/1999.
Projected Award Date: 06/1999.
Contact Persons: Louis D. Coccodrilli (lcoccodrilli@hrsa.dhhs.gov); Carol S. Gleich (cgleich@hrsa.dhhs.gov), 1–301–443–6950.

Quentin N. Burdick Rural Health Interdisciplinary Program

Authorization

Section 754 of the Public Health Service Act, 42 U.S.C. 294p.

Purpose

The goal of this program is to provide or improve access to health care in rural areas. Specifically, projects funded under this authority shall be designed to: (a) Use new and innovative methods to train health care practitioners to provide services in rural areas; (b) demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective comprehensive health care; (c) deliver health care services to individuals residing in rural areas; (d) enhance the amount of relevant research conducted concerning health care issues in rural areas; and (e) increase the recruitment and retention of health care practitioners in rural areas and make rural practice a more attractive career choice for health care practitioners.

Eligibility

Applications will be accepted from health professions schools, academic health centers, State or local governments or other appropriate public or private nonprofit entities for funding and participation in health professions and nursing training activities.

Applications shall be jointly submitted by at least two eligible applicants with the express purpose of assisting individuals in academic institutions in establishing long-term collaborative relationships with health care providers in rural areas.

Applicants must designate a rural health care agency or agencies for clinical treatment or training including hospitals, community health centers, migrant health centers, rural health clinics, community behavioral and mental health centers, long-term care facilities, Native Hawaiian health centers or facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self Determination Act.

Funding Priorities and/or Preferences

A preference will be given to any qualified applicant that: (1) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (2) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in Section 791(c)(3) concerning medically underserved communities and populations.

A priority will be given to approved applicant institutions (academic) which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority and low income populations identified as at risk of poor outcomes.

Special Considerations

Special consideration will be given to qualified applicants who increase the number of disadvantaged health professions students and provide community-based training experiences designed to improve access to health care services in underserved areas. This will include being responsive to population groups addressed in the President's Executive Orders 12876, 12900, and 13021. These include such applicants as Hispanic Serving Institutions, Historically Black Colleges and Universities, and Tribal Colleges and Universities serving Native Americans.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$1,800,000.

Estimated Number of Awards

12.

Estimated Project Period

3 Years.

Application Availability: 11/01/1998

To Obtain This Application Kit

CFDA Number: 93.192.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 02/12/1999.
Projected Award Date: 05/1999.
Contact Person: Judith E. Arndt, jarndt@hrsa.dhhs.gov, 1–301–443–6763.

Allied Health Projects

Authorization

Section 755 of the Public Health Service Act, 42 U.S.C. 294e.

Purpose

Grants are awarded to assist eligible entities in meeting the costs associated with expanding or establishing programs that will: expand enrollments in allied health disciplines that are in short supply or whose services are most needed by the elderly; provide rapid transition training programs in allied health fields to individuals who have baccalaureate degrees in health-related sciences; establish community-based training programs that link academic centers to rural clinical settings; provide career advancement training for practicing allied health professionals; expand or establish clinical training sites for allied health professionals in medically underserved or rural communities in order to increase the number of individuals trained; develop curriculum that will emphasize knowledge and practice in the areas of prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics; expand or establish interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly; expand or establish demonstration centers to emphasize innovative models to link allied health, clinical practice, education, and research; and, to plan, develop, and operate or maintain graduate programs in behavioral and mental health professions.

Eligibility

''Eligible entity'' for the purpose of this grant program means health professions schools, academic health centers, State or local governments or other appropriate public or private nonprofit entities for funding and participation in health professions training activities.

Eligible academic institutions shall also be required to use funds in collaboration with two or more disciplines.

Funding Priorities and/or Preferences

A funding preference will be given to applicants who: (a) have a high rate for placing graduates in practice settings having the focus of serving residents of medically underserved communities, or (b) during the 2-year period preceding the fiscal year for which such an award is sought, have achieved a significant increase in the rate of placing graduates

in such settings. So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in Section 791(c)(3) concerning medically underserved communities and populations.

A priority will be given to qualified applicants who provide community-based training experiences designed to improve access to health care services in underserved areas. This will include being responsive to population groups addressed in the President's Executive Orders 12876, 12900 and 13021. These will include such applicants as Hispanic Serving Institutions, Historical Black Colleges and Universities, and Tribal Colleges and Universities serving Native Americans.

Special consideration will be given to applicants that work with school systems through the high school level, especially in those areas where there is a high percentage of disadvantaged students, to encourage them to work toward careers in the allied health professions.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$ 830,000.

Estimated Number of Awards

9.

Estimated Project Period

3 Years.

Application Availability: 11/01/1998

To Obtain This Application Kit

CFDA Number: 93.191.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 02/16/1999.
Projected Award date: 06/1999.
Contact Person: Norman L. Clark, nclark@hrsa.dhhs.gov, 1–301–443–1346.

Centers of Excellence (COE)

Authorization

Section 736 of the Public Health Service Act, 42 U.S.C. 293c.

Purpose

The goal of this program is to assist eligible schools in supporting programs of excellence in health professions education for underrepresented minority individuals. The grantee is required to use the funds awarded: to develop a large competitive applicant pool through linkages with institutions of higher education, local school districts, and other community-based entities and establish an education pipeline for health professions careers; to establish, strengthen, or expand programs to enhance the academic performance of underrepresented minority students attending the school; to improve the capacity of such school to train, recruit, and retain underrepresented minority faculty including the payment of stipends and fellowships; to carry out activities to improve the information resources, clinical education, curricula and cultural competence of the graduates of the schools as it relates to minority health issues; to facilitate faculty and student research on health issues particularly affecting underrepresented minority groups, including research on issues relating to the delivery of health care; to carry out a program to train students of the school in providing health services to a significant number of under-represented minority individuals through training provided to such students at community-based health facilities that provide such health services and are located at a site remote from the main site of the teaching facilities of the school; and to provide stipends. *The $500,000 minimum award per year is no longer required.*

Eligibility

Eligible applicants are accredited schools of allopathic medicine, osteopathic medicine, dentistry, pharmacy, graduate programs in *behavioral or mental health, or other public and nonprofit health or educational entities.*

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$11,000,000.

Estimated Number of Awards

20.

Estimated Project Period

3 Years.

Application Availability: 11/01/1998

To Obtain This Application Kit

CFDA Number: 93.157.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/29/1999.
Projected Award Date: 09/1999.
Contact Person: Roland Garcia, rgarcia@hrsa.dhhs.gov, 1–301–443–2100.

Health Careers Opportunity Program (HCOP)

Authorization

Section 739 of the Public Health Service Act, 42 U.S.C. 293d.

Purpose

The goal of this program is to assist individuals from disadvantaged backgrounds to undertake education to enter a health profession. The HCOP program works to build diversity in the health fields by providing students from disadvantaged backgrounds an opportunity to develop the skills needed to successfully compete, enter, and graduate from health professions schools.

The legislative purposes for which HCOP funds may be awarded are: identifying, recruiting, and selecting individuals from disadvantaged backgrounds for education and training in a health profession; facilitating the entry of such individuals into such a school; providing counseling, mentoring, or other services designed to assist such individuals to complete successfully their education at such a school; providing, for a period prior to the entry of such individuals into the regular course of education of such a school, preliminary education and health research training designed to assist them to complete successfully such regular course of education at such a school, or referring such individuals to institutions providing such preliminary education; publicizing existing sources of financial aid available to students in the education program of such a school or who are undertaking training necessary to qualify them to enroll in such a program; paying scholarships, as the Secretary may determine, for such individuals for any period of health professions education at a health professions school; paying such stipends for such individuals for any period of education in student-enhancement programs (other than regular courses), except that such a stipend may not be provided to an individual for more than 12 months; carrying out programs under which such individuals gain experience regarding a career in a field of primary health care through working at facilities of public or private nonprofit community-based providers of primary health services; and conducting activities to develop a larger and more competitive applicant pool through partnerships with institutions of higher education, school districts, and other community-based entities.

The ''scholarships'' provision will not be implemented in FY 1999.

Eligibility

Eligible applicants include schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, podiatric medicine, public or nonprofit private schools that offer graduate programs in behavioral and mental health, programs for the training of physician assistants, and other public or private nonprofit health or educational entities.

Funding Priorities and/or Preferences

A funding preference will be given to approved applications for programs that involve a comprehensive approach by several public or nonprofit private health or educational entities to establish, enhance and expand educational programs that will result in the development of a competitive applicant pool of individuals from disadvantaged backgrounds who desire to pursue health professions careers.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$13,000,000.

Estimated Number of Awards

67.

Estimated Project Period

3 Years.

Application Availability: 11/01/1998

To Obtain This Application Kit

CFDA Number: 93.822.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/12/1999.
Projected Award Date: 08/1999.
Contact Person: Mario Manecci, mmanecci@hrsa.dhhs.gov, 1–301–443–4493.

Minority Faculty Fellowship Program (MFFP)

Authorization

Section 738(b) of the Public Health Service Act, 42 U.S.C. 293b.

Purpose

The purpose of the Minority Faculty Fellowship Program is to increase the number of underrepresented minority individuals who are members of the faculty in health professions schools. Applicants must demonstrate that they have or will have the ability to: (1) identify, recruit and select underrepresented minority individuals who have the potential for teaching, administration, or conducting research at a health professions institution; (2) provide such individuals with the skills necessary to enable them to secure a tenured faculty position at such institution, which may include training with respect to pedagogical skills, program administration, the design and conduct of research, grant writing, and the preparation of articles suitable for publication in peer reviewed journals; (3) provide services designed to assist individuals in their preparation for an academic career, including the provision of counselors; and (4) provide health services to rural or medically underserved populations.

Eligibility

Eligible applicants are schools of medicine, nursing, osteopathic medicine, dentistry, pharmacy, allied health, podiatric medicine, optometry, veterinary medicine, public health, or schools offering graduate programs in behavioral and mental health.

Funding Priorities and/or Preferences

In determining awards, the Secretary will also take into consideration equity among health disciplines and geographic distribution.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$200,000.

Estimated Number of Awards

6.

Estimated Project Period

3 Years.

Application Availability: 11/1/1998

To Obtain This Application Kit

CFDA Number: 93.923.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 01/29/1999.
Projected Award Date: 05/1999.
Contact Person: Armando Pollack, apollack@hrsa.dhhs.gov, 1–301–443–2100.

Primary Health Care Programs

Grants Management Office: 1–301–594–4235.

Community and Migrant Health Centers

Authorization

Section 330 of the Public Health Service Act, 42 U.S.C. 254b.

Purpose

The Community Health Center and Migrant Health Center (C/MHC) programs are designed to promote the development and operation of community-based primary health care service systems in medically underserved areas for medically underserved populations. It is the intent of HRSA to continue to support health services in these areas, given the unmet need inherent in their provision of services to medically underserved populations. HRSA will open competition for awards under Section 330 of the Public Health Service Act (U.S.C. 254b for CHCs and U.S.C. 254b(g) for MHCs) to support health services in the areas currently served by these grants. Fifty-six C/MHC grantees will reach the end of their project periods during the second half of FY 1999.

Eligibility

Applicants are limited to currently funded programs whose project periods expire during the second half of FY 1999 and new organizations proposing to serve the same populations currently being served by these existing programs.

City	State	Deadline
HRSA Boston Field Office (617) 565–1482		
Boston	MA	03/01/1999
Littleton	NH	03/01/1999
HRSA New York Field Office (212) 264–2664		
St. Thomas	VI (2)	02/01/1999
West New York	NJ	03/01/1999
Brooklyn	NY	03/01/1999
New Brunswick	NJ	03/01/1999

City	State	Deadline
HRSA Philadelphia Field Office (215) 861–4422		
Blacksville	WV	02/01/1999
St. Charles	VA	02/01/1999
Philadelphia	PA	02/01/1999
Suffolk	VA	03/01/1999
HRSA Atlanta Field Office (404) 562–2996		
Little River	SC	02/01/1999
Jefferson	SC	02/01/1999
Trenton	FL	02/01/1999
Shabuta	MS	02/01/1999
St. Petersburg	FL	02/01/1999
Broward County	FL	02/01/1999
Waycross	GA	03/01/1999
Wilmington	NC	03/01/1999
Tallahassee	FL	03/01/1999
Columbus	GA	03/01/1999
Jacksonville	FL	03/01/1999
HRSA Chicago Field Office (312) 353–1715		
Champaign	IL	02/01/1999
Wausau	WI	03/01/1999
Kenosha	WI	03/01/1999
Evansville	IN	03/01/1999
Ft. Wayne	IN	03/01/1999
Lafayette	IN	03/01/1999
Chicago	IL	03/01/1999
Muskegon Hts.	MI	03/01/1999
Indianapolis	IN	02/01/1999
HRSA Dallas Field Office (214) 767–3872		
Benavides	TX	02/01/1999
Clarendon	AR	02/01/1999
St. Gabriel	LA	03/01/1999
Oklahoma City	OK (2)	03/01/1999
El Paso	TX	03/01/1999
Lordsburg	NM	03/01/1999
HRSA Kansas Field Office (816) 426–5296		
Garden City	KS	03/01/1999
Emporia	KS	03/01/1999
Council Bluffs	IA	03/01/1999
HRSA Denver Field Office (303) 844–3203		
Dove Creek	CO	02/01/1999
Helena	MT	03/01/1999
Livingston	MT	03/01/1999
HRSA San Francisco Field Office (415) 437–8090		
Carson City	NV	02/01/1999
Nogales	AZ	02/01/1999
San Mateo	CA	03/15/1999
Berkeley	CA	03/01/1999
Elfrida	AZ	03/01/1999
Waimanalo	HI	03/01/1999
Redding	CA	03/01/1999
Flagstaff	AZ	03/01/1999
HRSA Seattle Field Office (206) 615–2491		
Grays Harbor	WA	03/01/1999
Sand Point	AK	03/01/1999
Everett	WA	03/01/1999
Longview	WA	03/01/1999

Special Considerations

Communication with Field Office staff is essential for interested parties in deciding whether to pursue Federal funding as a C/MHC. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the HRSA Field Office.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$30,280,000.

Estimated Number of Awards

56.

Estimated Project Period

1–5 Years.

Application Availability: Continuous

To Obtain This Application Kit

CFDA Number:
93.224 Community Health Centers
93.246 Migrant Health Centers
Contact: 1–888–333–HRSA (4772)
Application Deadline: Current grant expiration dates vary by area.

Applications for competing continuation grants are due 120 days prior to the expiration of the current grant award.

Contact Person: Richard Bohrer, rbohrer@hrsa.dhhs.gov, 1–301–594–4300.

Health Care for the Homeless

Authorization

Section 330 of the Public Health Service Act, 42 U.S.C. 254b(h).

Purpose

The Health Care for the Homeless (HCH) program is designed to increase the access of homeless populations to cost-effective, case managed, and integrated primary care and substance abuse services provided by existing community-based programs/providers. It is the intent of HRSA to continue to support health services to the homeless populations in these areas/locations given the continued need for cost-effective, community-based primary care services for medically underserved populations within these geographic areas. One HCH grantee will reach the end of its project period during the second half of FY 1999.

Eligibility

Applicants are limited to the currently funded program whose project period expires in FY 1999 and new organizations proposing to serve the same population currently being served by this existing program.

Special Consideration

Communication with Field Office staff is essential for interested parties in deciding whether to pursue Federal funding as an HCH. Detailed information about each service area, such as census tracts, can be obtained by contacting the appropriate HRSA Field Office listed below:

City	State	Deadline
HRSA Chicago Field Office (312) 353–1715		
Indianapolis	IN	02/01/1999

Estimated Amount of This Competition

$350,000.

Estimated Project Period

1–5 Years.

Application Availability: Continuous

To Obtain This Application Kit

CFDA Number: 93.151.
Contact: 1–888–333–HRSA (4772).
Application Deadline: Current grant expiration dates vary by area. Applications for competing continuation grants are normally due 120 days prior to the expiration of the current grant award.

Contact Person: Jean Hochron, jhochron@hrsa.dhhs.gov, 1–301–594–4430.

Healthy Schools/Healthy Communities

Authorization

Title III of the Public Health Service Act, 42 U.S.C. 241 *et seq.*

Purpose

The Healthy Schools, Healthy Communities (HSHC) program supports community-based primary health care providers with experience in this area as demonstrated by having entered into partnerships with schools or school districts to establish school-based health centers that provide comprehensive primary and preventive services. The Bureau of Primary Health Care plans to hold one competition during the summer of 1999 for the funds associated with: (1) the entire group of HSHC grantees that will be completing their approved project period on one of the two dates listed below, plus (2) a portion of the FY 1999 increase in funds appropriated to programs supported under the Health Centers Consolidation Act that will be used to support new Healthy Schools Healthy Communities projects. Any application submitted by a currently-funded grantee with a December 1 start date that is successful in this competition will be held and awarded early in FY 2000, subject to the availability of funds.

Eligibility

Public and private nonprofit organizations are eligible to apply.

Funding Priorities and/or Preferences

Final administrative funding priorities/preferences are included in the application materials.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$8,000,000.

Estimated Number of Awards

40.

Estimated Project Period

3 Years.

Application Availability: 02/01/1999

To Obtain This Application Kit

CFDA Number: 93.151A.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 05/01/1999.
Projected Award Date: 09/1999 and 12/1999.

Contact Person: LaVerne Green, lgreen@hrsa.dhhs.gov, 1–301–594–4450.

Grants to States for Loan Repayment Programs

Authorization

Section 338I of the Public Health Service Act, 42 U.S.C. 254q–1.

Purpose

The purpose of these grant funds is to assist States in operating programs for the repayment of educational loans of health professionals in return for their practice in federally designated Health Professional Shortage Areas to increase the availability of primary health

services in health professionals shortage areas.

Eligibility

Any State is eligible to apply for funding.

Funding Priorities and/or Preferences

None.

Matching Requirements

States seeking support must provide adequate assurance that, with respect to the costs of making loan repayments under contracts with health professionals, the State will make available (directly or through donations from public or private entities) non-Federal contributions in cash in an amount equal to not less than $1 for $1 of Federal funds provided in the grant. In determining the amount of non-Federal contributions in cash that a State has to provide, no Federal funds may be used in the State's match.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$2,454,000.

Estimated Number of Awards

13.

Estimated Project Period

3 Years.

Application Availability: 01/01/1999

To Obtain This Application Kit

CFDA Number: 93.165.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 05/01/1999.
Projected Award Date: 09/1999.
Contact Person: Susan Salter, ssalter@hrsa.dhhs.gov 1–301–594–4400.

Black Lung Clinics

Authorization

Section 427(a) of the Black Lung Benefits Reform Act of 1977, 30 U.S.C. 937(a).

Purpose

The primary purpose of the Black Lung Clinics grant program is to provide treatment and rehabilitation for Black Lung patients and others with occupationally-related pulmonary diseases. In addition, individual grantee programs are expected to include case finding and outreach, preventive and health promotion services, education for patients and their families, and testing to determine eligibility for Department of Labor or State benefits. Although the number of active coal miners has decreased substantially because of mechanization, there has been an increase in the number of retired coal miners with the disease and in the number of pulmonary patients from other occupations. A current objective of the program is to expand outreach so that more of the eligible population is made aware of the services offered by the grantee clinics.

Eligibility

Health clinics that serve patients with Black Lung disease and other occupationally-related respiratory diseases are eligible to apply.

Funding Priorities and/or Preferences

A priority will be given to clinics that provide a combination of services, i.e., outreach, testing, treatment and rehabilitation.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$5,000,000.

Estimated Number of Awards

15.

Estimated Project Period

3 Years.

Application Availability: 01/04/1999

To Obtain This Application Kit

CFDA Number: 93.965.
Contact: 1–888–333–HRSA (4772).
Application Deadline: 04/01/1999.
Projected Award Date: 09/1999.
Contact Person: Remy Arnoff, rarnoff@hrsa.dhhs.gov, 1–301–594–4450.

New Delivery Sites and New Starts in Programs Funded Under the Health Centers Consolidation Act

Authorization

Section 330 of the Public Health Service Act, 42 U.S.C. 254b, 254b(g), 254b(h) and 254d

Purpose

The HRSA will support the establishment of new service delivery sites for existing centers and/or new health centers in some or all of the following programs: Community and Migrant Health Centers, Health Care for the Homeless and Public Housing Primary Care. The purpose of the Community/Migrant Health Centers programs is to extend preventive and primary health services to populations currently without such services and to improve the health status of medically underserved individuals by supporting the establishment of new points of access to care. The Health Care for the Homeless program is designed to increase the homeless population's access to cost-effective community-based programs/providers. The Public Housing Primary Care program increases access to health care and improves the health status of public housing residents by providing comprehensive primary health care services in or near public housing projects, directly or through collaborative arrangements with existing community based programs/providers.

Eligibility

Public and private nonprofit entities are eligible to apply.

Funding Priorities and/or Preferences

Final priorities and/or preferences are included in the application materials.

Review Criteria

Final criteria are included in the application kits.

Estimated Amount of this Competition

$25,000,000.

Estimated Number of Awards

75–100.

Estimated Project Period

3 Years.

Application Availability: 11/01/1998

To Obtain These Application Kits

CFDA Numbers:
93.224 Community Health Centers
93.246 Migrant Health Centers
93.151 Health Care for the Homeless
93.927 Public Housing
Contact: 1–888–333–HRSA (4772).
Application Deadline: 04/01/1999.
Projected Award Date: 09/1999.

Contact Persons

93.224 Dick Bohrer (dbohrer@hrsa.dhhs.gov) 1–301–594–4300
93.246 Jack Egan (jegan@hrsa.dhhs.gov) 1–301–594–4303
93.151 Jean Hochron (jhochron@hrsa.dhhs.gov) 1–301–594–4430
93.927 Sherilyn Pruitt (spruitt@hrsa.dhhs.gov) 1–301–594–4430

HIV/AIDS Programs

Grants Management Office: 1–301–443–2280

Aids Education and Training Centers

Authorization

Section 2692(a) of the Public Health Service Act, 42.U.S.C. 300ff–11.

Purpose

The purpose of this competition is to provide funding to public and private nonprofit entities and schools and academic health science centers in meeting the costs of projects—training health personnel, including practitioners under this title and other community providers in the diagnosis, treatment and prevention of HIV disease, including the prevention of perinatal transmission of the disease and including measures for the prevention and treatment of opportunistic infections; to train the faculty of schools and graduate departments or programs of medicine, nursing, osteopathic medicine, dentistry, public health, allied health, and mental health practice to teach health professions students to provide for the health care needs of individuals with HIV disease; and to develop and disseminate curricula and resource materials relating to the care and treatment of individuals with such disease and the prevention of the disease among the individuals who are at risk of contracting the disease.

Eligibility

Eligible organizations are public and nonprofit private entities and schools and academic health science centers.

Funding Priorities and/or Preferences

Preference will be given to projects which will: (A) train or result in the training of health professionals who will provide treatment for minority individuals with HIV disease and other individuals who are at high risk of contracting such disease; and (B) train, or result in the training of, minority health professionals and minority allied health professionals to provide treatment for individuals with such disease.

Special Considerations

Special consideration will be given to projects that are consistent, logical, geographical or epidemiological conformations and those projects that can demonstrate educational outcomes or clinical impact of their projects.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$17,000,000.

Estimated Number of Awards

5–10.

Estimated Project Period

1–3 Years.

Application Availability: 01/04/1999

To Obtain This Application Kit

CFDA Number: 93.145

Contact: 1–888–333–HRSA (4772).
Application Deadline: 04/01/1999.
Projected Award Date: 07/1999.
Contact Person: Joan Holloway, jholloway@hrsa.dhhs.gov, 1–301–443–9091.

Ryan White Title III HIV Early Intervention Services Grants

Part C of Title XXVI of The Public Health Service Act, as amended by the Ryan White Care Act Amendments of 1996, Public Law 104–146, 42 U.S.C. 300ff–51—300ff–67.

Purpose

The purpose of this program is to provide, on an outpatient basis, high quality early intervention services/primary care to individuals with HIV infection. This is accomplished by increasing the present capacity and capability of eligible ambulatory health service entities. These expanded services become a part of a continuum of HIV prevention and care for individuals who are at risk for HIV infection or are HIV infected. All Title III programs must provide: HIV counseling and testing; counseling and education on living with HIV; appropriate medical evaluation and clinical care; and other essential services such as oral health care, outpatient mental health services and nutritional services, and appropriate referrals for specialty services.

Eligibility

Eligible applicants are public or nonprofit private entities that are: Section 330 Health Centers; grantees funded under Section 1001 regarding Family Planning; Comprehensive Hemophilia Diagnostic and Treatment Centers; Federally Qualified Health Centers; or nonprofit private entities that provide comprehensive primary care services to populations at risk of HIV disease.

Funding Priorities and/or Preferences

In awarding these grants, priority will be given to approved/unfunded applicants who submitted an application for funding in FY 1998.

Review Criteria

Final criteria will be included in the application kit.

Estimated Amount of This Competition

$6,400,000.

Estimated Number of Awards

20.

Estimated Project Period

3 Years.

Application Availability: 01/30/1999

To Obtain This Application Kit

CFDA Number: 93–918A

Contact: 1–888–333–HRSA (4772).
Application Deadline: 05/01/1999.
Projected Award Date: 07/1999.
Contact Person: Andrew Kruzich, akruzich@hrsa.dhhs.gov, 1–301–443–0735.

Ryan White Title III HIV Early Intervention Services Planning Grants

Part C of Title XXVI of the Public Health Service Act, as amended by The Ryan White Care Act Amendments of 1996, Public Law 104–146, 42 U.S.C. 300ff–51—300ff–67.

Purpose

The purpose of this grant program is to support communities and health care service entities in their planning efforts to develop a high quality and broad scope of primary health care services for people in their service areas who are living with HIV or at risk of infection. Applications must propose planning activities which will lead to the establishment of comprehensive outpatient HIV primary care services. This grant program supports activities of the planning process and does not fund any service delivery or patient care.

Eligibility

Eligible applicants are public or nonprofit private entities; applicants can not be current Ryan White Title III Early Intervention Service Program grant recipients.

Funding Priorities and/or Preferences

In awarding these grants, priority will be given to: 1) applicants located in rural or underserved areas where emerging or ongoing HIV primary health care needs have not been adequately met and 2) applicants proposing to build HIV primary care capacity of indigenous organizations serving African American populations.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$3,943,000.

Estimated Number of Awards

79.

Estimated Project Period

1 or 2 Years.

Application Availability: 02/28/1999

To Obtain This Application Kit

CFDA Number: 93.918B

Contact: 1–888–333–HRSA (4772).
Application Deadline: 06/18/1999.
Projected Award Date: 09/1999.
Contact Person: Andrew Kruzich, akruzich@hrsa.dhhs.gov, 1–301–443–0735.

Ryan White Title IV: Existing Geographic Areas

Authorization

Section 2671 of The Public Health Service Act, 42 U.S.C. 300ff–71.

Purpose

The purpose of the Title IV funding is to improve access to primary medical care, research, and support services for children, youth, women and families infected with HIV. Funded projects will link clinical research and other research with comprehensive care systems, and improve and expand the coordination of a system of comprehensive care for women, infants, children and youth who are infected/affected by HIV. Funds will be used to support programs that: (1) cross established systems of care to coordinate service delivery, HIV prevention efforts, and clinical research and other research activities; and (2) address the intensity of service needs, high costs, and other complex barriers to comprehensive care and research experienced by underserved at-risk and limited populations. Activities under these grants should address the goals of: enrolling and maintaining clients in HIV primary care; increasing client access to research by linking HIV/AIDS clinical research trials and activities with comprehensive care; fostering the development and support of comprehensive, community-based and family centered care infrastructures, and emphasizing prevention within the care system including the prevention of perinatal HIV transmission.

Eligibility

Eligible organizations are public or private nonprofit entities that are currently funded Title IV programs whose project periods expire in FY 1999 and new organizations proposing to serve the same populations currently being served by these existing projects. These areas are:

State	Areas
AL	Birmingham/Montgomery.
CA	LaJolla/San Diego.
	San Francisco.
CT	Hartford/New London/New Haven.
	Bridgeport/Stamford.
DC	Washington.
FL	Orlando.
MD	Statewide.
MI	Detroit.
NC	Charlotte/Durham.
NH	Statewide.
NY	Manhattan.
	Stony Brook.
	Queens.
PA	Philadelphia.
SC	Statewide.

Funding Priorities and/or Preferences

Funding priority in this category will be given to projects that support a comprehensive, coordinated system of HIV care serving children, youth, women and families and are linked with or have initiated activities to link with clinical trials or other research.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$9,400,000.

Estimated Number of Projects

16.

Estimated Project Period

3 Years.

Application Availability: 02/26/1999

To Obtain This Application Kit

CFDA Number: 93.153A

Contact: 1–888–333–HRSA (4772).
Application Deadline: 04/30/1999.
Projected Award Date: 08/1999.
Contact Person: Wayne Sauseda, wsauseda@hrsa.dhhs.gov, 1–301–443–9051.

Ryan White Title IV: New Geographic Areas

Authorization

Section 2671 of The Public Health Service Act, 42 U.S.C. 300ff–71.

Purpose

Organizations should be able to demonstrate expertise in the coordination or provision of comprehensive medical and social services to children, youth, women and families. The purpose of the Title IV funding is to improve access to primary medical care, research and support services for children, youth, women and families infected with HIV. Funded projects will link clinical research and other research with comprehensive care systems, and improve and expand the coordination of a system of comprehensive care for women, infants, children and youth who are infected/affected by HIV. Funds will be used to support programs that: (1) Cross established systems of care to coordinate service delivery, HIV prevention efforts, and clinical research and other research activities; and (2) address the intensity of service needs, high costs, and other complex barriers to comprehensive care and research experienced by underserved, at-risk and limited populations. Activities under these grants should address the goals of: enrolling and maintaining clients in HIV primary care; increasing client access to research by linking HIV/AIDS clinical research trials and activities with comprehensive care; fostering the development and support of comprehensive, community-based and family centered care infrastructures; and, emphasizing prevention within the care system including the prevention of perinatal HIV transmission.

Eligibility

Eligible organizations are public or private nonprofit entities that provide or arrange for primary care.

Funding Priorities and/or Preferences

Preference for funding may be given to applicants which help to achieve an equitable geographical distribution of programs across all States and Territories, especially programs that provide services in rural or underserved communities where the HIV/AIDS epidemic is increasing.

Special Consideration

This initiative is targeted to applicants in geographic areas where the HIV/AIDS epidemic is increasing among women, children and adolescents and where other resources targeted to these populations are limited or non-existent. These grants are for geographic areas *not* listed below.

State	Areas
AZ	Phoenix.
CA	Los Angeles.
	Oakland.
CO	Denver.
FL	Tampa/St. Petersburg.
	Ft. Lauderdale.
	Miami.
	Jacksonville.
GA	Atlanta.
IL	Chicago.
LA	New Orleans.
MA	Statewide.
MO	St. Louis.
NC	Washington.
NJ	Statewide.
NV	Las Vegas.
NY	Albany.
	Bronx.
	Brooklyn.

State	Areas
OH	Columbus.
PR	Statewide.
RI	Statewide.
TN	Memphis.
TX	Dallas.
	Fort Worth.
	Houston.
	San Antonio.
WA	Seattle.
WI	Statewide.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,450,000.

Estimated Number of Awards

5.

Estimated Project Period

3 Years.

Application Availability: 02/26/1999

To Obtain This Application Kit

CFDA Number: 93.153B

Contact: 1–888–333–HRSA (4772).
Application Deadline: 04/30/1999.
Projected Award Date: 08/1999.
Contact Person: Wayne Sauseda, wsauseda@hrsa.dhhs.gov, 1–301–443–9051.

HIV/AIDS Program Notes

The Bureau of HIV/AIDS anticipates the announcement of the Fiscal Year 1999 Special Projects of National Significance (SPNS) Program later in the Summer 1999 *HRSA Preview*.

Maternal and Child Health Programs

Grants Management Office: 1–301–443–1440.

Eligibility

42 CFR Part 51a.3 *.

(a) With the exception of training and research, as described in paragraph (b) of this section, any public or private entity, including Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b) is eligible to apply for Federal funding under this Part; (b) Only public or nonprofit private institutions of higher learning may apply for training grants. Only public or nonprofit institutions of higher learning and public or private nonprofit agencies engaged in research or in programs relating to maternal and child health and/or services for children with special health care needs may apply for grants, contracts or cooperative agreements for research in maternal and child health services or in services for children with special health care needs.

Genetic Services

Authorization

Title V of The Social Security Act, 42 U.S.C. 701.

Purpose

This program supports a cooperative agreement to develop standardized guidelines for vision screening for the preschool child. Funds will be used to promote: (1) development and maintenance of systems of care that ensure early identification of children with special health care needs, including those with genetic conditions, (2) development and demonstration of linkages between screening programs and medical homes for timely and appropriate intervention, (3) creative approaches for provider and consumer genetics education, and (4) strategies for developing and tracking quality indicators that focus on the structure of delivery and outcome of care. Such information will provide the basis for needs assessment, policy development and quality improvement efforts. Federal involvement will be specified in the application materials.

Eligibility

42 CFR Part 51a.3 *.

Funding Priorities and/or Preferences

Special consideration for funding will be given to organizations with special knowledge and expertise of vision screening programs at the State and local level.

Review Criteria

Final criteria are included in the application kit

Estimated Amount of This Competition

$200,000.

Estimated Number of Awards

1.

Estimated Project Period

1 Year.

Application Availability: 01/11/1999

To Obtain This Application Kit

CFDA Number: 93.110A

Contact: 1–888–333–HRSA (4772).
Application Deadline: 04/23/1999.
Projected Award Date: 09/1999.
Contact Person: Michele Lloyd-Puryear, mpuryear@hrsa.dhhs.gov 1–301–443–1080.

Genetic Services—Integrated Services For Children With Genetic Conditions

Authorization

Title V of The Social Security Act, 42 U.S.C. 701.

Purpose

Grants are awarded for projects that coordinate care and integrate community services for individuals with genetic conditions such as individuals with thalassemia and infants with sickle cell disease identified through State newborn screening programs.

Eligibility

42 CFR Part 51a.3 *.

Funding Priorities and/or Preferences

Special consideration for funding will be given to: (1) projects that evaluate the impact of early intervention on morbidity and mortality of infants with disease detected by State newborn screening programs, (2) public and private community based entities; community/State agency partnerships; and community coalitions.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$800,000.

Estimated Number of Awards

4–7.

Estimated Project Period

1–3 Years.

Application Availability: 01/11/1999

To Obtain This Application Kit

CFDA Number: 93.110A

Contact: 1–888–333–HRSA (4772).
Application Deadline: 04/23/1999.
Projected Award Date: 09/1999.
Contact Person: Michele Lloyd-Puryear, mpuryear@hrsa.dhhs.gov, 1–301–443–1080.

Genetic Services—Newborn Screening

Authorization

Title V of the Social Security Act, 42 U.S.C. 701.

Purpose

Grants are awarded for projects that develop and demonstrate the use of information systems for the integration of State newborn screening programs with population based, community based and family centered early intervention programs that are tied to outcome driven systems of service to families with special health needs.

Eligibility

42 CFR Part 51a.3 *.

Funding Priorities and/or Preferences

Priority will be given to Community/State agency partnerships in coalition

with public and private community based providers.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$700,000.

Estimated Number of Awards

8–12.

Estimated Project Period

1–3 Years.

Application Availability: 01/11/1999

To Obtain This Application Kit

CFDA Number: 93.110A

Contact: 1–888–333–HRSA (4772).
Application Deadline: 04/23/1999.
Projected Award Date: 09/1999.
Contact Person: Michele Lloyd-Puryear, mpuryear@hrsa.dhhs.gov, 1–301–443–1080.

Genetic Services—National Genetic Resource Center

Authorization

Title V of The Social Security Act, 42 U.S.C. 701.

Purpose

The purpose of this cooperative agreement is to support a national policy center to outline national policy to improve the quality, accessibility and utilization of genetic services at the national, State, and community level. The center's activities would include: (1) provide assistance to implement strategic planning to assure the availability of genetic services at the State and community level, (2) collect and analyze State newborn screening data to provide information at the State and community level, (3) address relevant issues pertinent to the utilization of genetic medicine and technologies at regional and national conferences, (4) develop, coordinate, and promote genetics educational activities for primary care providers and consumers, and (5) form a newborn screening expert panel to respond to state requests for consultation and technical assistance. Federal involvement will be specified in the application materials.

Eligibility

42 CFR Part 51a.3 *.

Funding Priorities and/or Preferences

Preferences will be given to national organizations with expertise in the arena of newborn screening and genetics and with an existing infrastructure for policy analysis at the national level on issues related to genetics.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of Tthis Competition

$350,000.

Estimated Number of Awards

1.

Estimated Project Period

1–3 Years.

Application Availability: 01/11/1999

To Obtain This Aapplication Kit

CFDA Number: 93.110A

Contact: 1–888–333–HRSA (4772).
Application Deadline: 04/23/1999.
Projected Award Date: 09/1999.
Contact Person: Michele Lloyd-Puryear, mpuryear@hrsa.dhhs.gov, 1–301–443–1080.

Comprehensive Hemophilia Diagnostic & Treatment Centers

Authorization

Title V of The Social Security Act, 42 U.S.C. 701.

Purpose

This program supports the provision of comprehensive care to people with hemophilia and their families through an integrated regional network of centers of excellence in the diagnosis and treatment of hemophilia and related bleeding disorders. Funds will be used to promote: (1) maintenance and enhancement of comprehensive care teams to meet the medical, psychosocial, peer support, genetic counseling, and financial support needs of patients and their families, (2) continued outreach to unserved and underserved people with congenital bleeding disorders, (3) collaboration with the prevention and peer support and education activities funded at these centers by the Centers for Disease Control and Prevention (CDCP), (4) continued collaboration with hemophilia treatment centers within the defined Maternal and Child Health Bureau (MCHB) regions and promotion of family-centered care within the patient population.

Eligibility

42 CFR Part 51a.3 *.

Funding Priorities and/or Preferences

Special consideration for funding will be given to: (1) previously funded Regional grantees who have developed, maintained, and improved the network of integrated treatment centers within their respective MCHB regions; (2) public and private organizations that can demonstrate the ability to organize and administer a regional network of affiliated treatment centers, meeting the standards and criteria for comprehensive care centers of the National Hemophilia Foundation (NHF) and the requirements of the MCHB Hemophilia Program Guidance for 1999.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$5,300,000.

Estimated Number of Awards

12.

Estimated Project Period

3 Years.

Application Availability: 03/19/1999

To Obtain This Application Kit

CFDA Number: 93.110B

Contact: 1–888–333–HRSA (4772).
Application Deadline: 05/15/1999.
Projected Award Date: 09/1999.
Contact Person: Patrick McGuckin, pmcguckin@hrsa.dhhs.gov, 1–301–443–1080.

Partnership For Information and Communications (PIC)

Authorization

Title V of the Social Security Act, 42 U.S.C. 701.

Purpose

This program supports cooperative agreements with governmental, professional and private organizations represented by leaders concerned with issues related to maternal and child health and involved in sustaining systems of care and/or providing family support to persons affected by severe illness or injury.

Further, these partnerships will promote attention to issues related to services across the continuum of care, including training, prevention and service delivery enhancement, through direct communication with and information sharing among the MCHB and other affiliated stakeholders. Federal involvement will be specified in the guidance.

Eligibility

42 CFR Part 51a.3 *.

Funding Priorities and/or Preferences

For FY 1999, preference will be given to national membership organizations

representing survivors of traumatic brain injury (TBI), providing emergency medical care for children, and representing State TBI and Emergency Medical Service programs.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$800,000.

Estimated Number of Awards

4.

Estimated Project Period

5 Years.

Application Availability: 01/04/1999

To Obtain This Application Kit

CFDA Number: 93.110G

Contact: 1–888–333–HRSA (4772).
Application Deadline: 02/23/1999.
Project Award Date: 04/1999.
Contact Person: David Heppel, dheppel@hrsa.dhhs.gov 1–301–443–2250.

Maternal and Child Health Research

Authorization

Title V of The Social Security Act, 42 U.S.C. 701.

Purpose

The purpose of this program is to seek new knowledge and support applied research to improve maternal and child health which has the potential for ready transfer of findings to State and community health care delivery programs.

Eligibility

42 CFR Part 51a.3 *.

Funding Priorities and or Preferences

A comprehensive research agenda based upon the needs of children and families is part of the application guidance. Special consideration will be given to projects which emphasize the need for new knowledge for: assuring access to quality care through outreach and removal of barriers to care for low-income, hard-to-reach and at-risk populations particularly in inner-city and rural areas; eliminating racial and ethnic child health status disparities; preventing preterm delivery and low birth weight, and enhancing the content and quality of pre- and postnatal care, including overcoming barriers to prenatal care and factors influencing decision-making and care seeking behavior; the role that fathers play in caring for and nurturing the health, growth, and development of children; the effects of health care reform and managed care on access to, and use of, maternal and child health services.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$866,000.

Estimated Number of Awards

10.

Estimated Project Period

1 Year

Application Availability: 11/01/1998

To Obtain This Application Kit

CFDA Number: 93.110RS

Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/01/1999.
Projected Award Date: 08/1999.
Contact Person: Gontran Lamberty, glamberty@hrsa.dhhs.gov, 1–301–443–2190.

Training—Continuing education/ Collaboration Pediatrics/Child Psychiatry

Authorization

Title V of The Social Security Act, 42 U.S.C. 701.

Purpose

The purpose of this program is to foster joint pediatrics-child psychiatry continuing education in the psychosocial-developmental aspects of child health, utilizing a study group approach that emphasizes the practical challenges confronted by community-based practitioners. This program promotes collaboration in education between pediatricians and child psychiatrists in order to address unmet needs for enhanced attention to psychosocial-developmental aspects of child health. This objective reflects the need for reduction of adolescent suicide, integration of mental health services into health homes and assurance of the health and well being of MCH target populations. These developments should lead to more integration of health/mental health care with concomitant gains, especially in health promotion and primary and secondary prevention of psychosocial problems and disorders.

Eligibility

42 CFR Part 51a.3 *.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition.

$150,000.

Estimated Number of Awards

10–12.

Estimated Project Period

3 Years.

Application Availability: 02/01/1999

To Obtain This Application Kit

CFDA Number: 93.110TN

Contact: 1–888–333–HRSA (4772).
Application Deadline: 04/01/1999.
Projected Award Date: 07/1999.
Contact Person: Shelley Benjamin, sbenjamin@hrsa.dhhs.gov, 1–301–443–2190.

Training—Continuing Education and Development—Training Institute

Authorization

Title V of The Social Security Act, 42 U.S.C. 701.

Purpose

Continuing Education and Development (CED) focuses on increasing leadership skills of MCH professionals; facilitating timely transfer and application of new information, research findings and technology related to MCH; and updating and improving the knowledge and skills of health and related professionals in programs serving mothers and children. The CED program will support conduct of short-term, non-degree related courses, workshops, conferences, symposia, institutes, and distance learning strategies and/or; development of curricula, guidelines, standards of practice, and educational tools/ strategies intended to assure quality health care for the MCH population.

Eligibility

42 CFR Part 51a.3 *.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$275,000.

Estimated Number of Awards

1.

Estimated Project Period

3 Years.

Application Availability: 04/01/1999

To Obtain This Application Kit

CFDA Number: 93.110TO

Contact: 1–888–333–HRSA (4772).
Application Deadline: 06/01/1999.
Projected Award Date: 08/1999.
Contact Person: Diana Rule, drule@hrsa.dhhs.gov 1–301–443–2190.

Children With Special Health Care Needs: Adolescent Transition

Authorization

Title V of The Social Security Act, 42 U.S.C. 701.

Purpose

This program supports ongoing efforts to develop comprehensive, culturally competent, community-based, family-centered, coordinated care systems for adolescents with special health care needs and their families. The funds are intended to establish public/private partnerships to: (1) establish models of coordination and transition between tertiary and specialty care providers and community providers in the pediatric and adult health care field; (2) strengthen the community provider network for adolescents and young adults with special health care needs; (3) establish medical homes, through pediatric/adult stages, for adolescents with special health care needs; and (4) maximize potential for employment with adequate health benefits. These efforts are based, in part, on the work of the Federal SSI/CSHCN workgroup, the Academy of Pediatrics, Shriners Hospitals, and the Healthy and Ready to Work Network, which have identified barriers faced by adolescents with special health care needs.

Eligibility

42 CFR Part 51a.3 *.

Funding Priorities and/or Preferences

Preference will be given to entities with national expertise and established capacity in addressing the goals of this priority. The application must, at a minimum, include State Title V CSHCN programs, community based pediatric and adult health care providers, and tertiary and specialty care networks.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$300,000.

Estimated Number of Awards

1.

Estimated Project Period

4 Years.

Application Availability: 10/30/1998

To Obtain This Application Kit

CFDA Number: 93.110D

Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/01/1999.
Projected Award Date: 07/1999.
Contact Person: Tom Gloss, tgloss.@hrsa.dhhs.gov, 1–301–443–2370.

Children With Special Health Care Needs Institute

Authorization

Title V of The Social Security Act, 42 U.S.C. 701.

Purpose

This program will fund a grant to support a Children with Special Health Care Needs (CSHCN) Institute. The purpose of the Institute is to provide technical assistance and training for the leadership in State Title V CSHCN Programs. The Institute will build on the legislative requirements for Title V CSHCN Programs and will provide 2–3 sessions yearly on new critical issues. The funds will be used to address such issues as: (1) State standardization of definitions of CSHCNs; (2) improved performance measurement using core national indicators; and (3) interpretation and implementation of Title V statutory requirements.

Eligibility

42 CFR Part 51a.3 *.

Funding Priorities and/or Preferences

Preference will be given to entities with clearly demonstrated national expertise and capacity in addressing issues related to children with special health care needs and State Title V CSHCN programs.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$200,000

Estimated Number of Awards

1.

Estimated Project Period

4 Years.

Application Availability: 10/30/1999

To Obtain This Application Kit

CFDA Number: 93.110E

Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/01/1999.
Projected Award Date: 07/1999.
Contact Person: Diana Denboba, ddenboba@hrsa.dhhs.gov, 1–301–443–2370.

Children With Special Health Care Needs: Medical Home Cooperative Agreement

Authorization

Title V of The Social Security Act, 42 U.S.C. 701.

Purpose

This program will fund a cooperative agreement to support the activities of the MCHB CSHCN Integrated Services: Medical Home Initiative. The agreement will: (1) provide a forum for interaction between medical home grantees and other organizations regarding policy initiatives related to the establishment of medical homes for children and adolescents with special health care needs; (2) establish and implement a strategy to enhance timely interactive communication, including telecommunication, among pediatricians, health care providers, community leaders and policy-makers concerned with access, appropriateness, and coordination of primary care with specialty care and the array of other services required for this population of children and families; (3) expand and enhance the capacity to collect, analyze, and use quantitative and qualitative data to promote medical homes for children with special health care needs; and (4) coordinate the activities of a National Medical Home Network. Federal involvement will be specified in the application materials.

Eligibility

42 CFR Part 51a.3 *.

Funding Priorities and/or Preferences

Preference will be given to entities with clearly demonstrated national expertise and capacity in addressing issues related to medical homes and children with special care needs and their families.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$700,000.

Estimated Number of Awards

1.

Estimated Project Period

5 Years.

Application Availability: 10/30/1998

To Obtain This Application Kit

CFDA Number: 93.110F

Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/01/1999.
Projected Award Date: 07/1999.

Contact Person: Irene Forsman, iforsman@hrsa.dhhs.gov, 1–301–443–2370.

Health Care Information and Education For Families of Children With Special Health Care Needs

Authorization

Title V of The Social Security Act, 42 U.S.C. 701.

Purpose

This proposal supports a cooperative agreement for planning, and piloting a strategy for the establishment of a national network to provide health care information and education for families of children with special health care needs. This network will be planned and administered by families, and will provide capacity at policy and program level to insure that children have access to early identification/intervention, medical homes, adequate insurance, and organized and easily accessible network of services.

Eligibility

42 CFR Part 51a.3*.

Funding Priorities and/or Preferences

Preference will be given to nationally recognized family organizations with clearly demonstrated national expertise and capacity in addressing health issues related to children with special health care needs and their families, and to applicants building upon current family/professional partnership, family training and empowerment activities in collaboration with the Title V Block Grant and discretionary grant efforts. Federal involvement will be specified in the application materials.

Review Criteria

Final criteria are included in the application kit

Estimated Amount of this Competition

$500,000.

Estimated Number of Awards

1.

Estimated Project Period

1 Year.

Application Availability: 12/15/1998

To Obtain This Application Kit

CFDA Number: 93.110S

Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/01/1999.
Projected Award Date: 07/1999.
Contact Persons: Bonnie Strickland (bstrickland@hrsa.dhhs.gov), Diana Denboba (ddenboba@hrsa.dhhs.gov), 1–301–443–2370.

Early Discharge (DATA)

Authorization

Title V of The Social Security Act, 42 U.S.C. 701.

Purpose

This program will continue the research on the myriad of issues related to early discharge of neonates and their mothers. As part of the VA–HUD and Independent Agencies Appropriations Act, 1996 (P.L. 104–204), Title VI (Newborns' and Mothers' Health Protection Act of 1996) requires the Department of Health and Human Services to support and conduct studies on the factors affecting newborns and their mothers. Studies must be able to answer the following questions: (1) What are the ''Best Practices'' to be recommended for postnatal and postpartum care?; (2) What postnatal/postpartum services are actually being received by newborns and mothers?; (3) What have been the effects of the Newborns' and Mothers' Health Protection Act?; (4) What are the unmet needs of mothers and newborns who lack both public and private insurance?; (5) What are the essential health services that mothers should receive around the 3rd or 4th postpartum day?; and (6) Development of a practical risk assessment instrument(s).

Eligibility

42 CFR Part 51a.3*.

Funding Priorities and/or Preferences

A funding priority will be given to institutions of higher learning with extensive experience in early discharge research, linkage with the Secretary's Advisory Committee on Infant Mortality, published research and recognition in the relevant field.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$275,000.

Estimated Number of Awards

1.

Estimated Project Period

5 Years.

Application Availability: 02/01/1999

To Obtain This Application Kit

CFDA Number: 93.110U

Contact: 1–888–333–HRSA (4772).
Application Deadline: 04/01/1999.
Projected Award Date: 06/1999.
Contact Person: Michele Kiely, mkiely@hrsa.dhhs.gov, 1–301–443–8041.

Healthy Tomorrows Partnership for Children

Authorization

Title V of The Social Security Act, 42 U.S.C. 701.

Purpose

The purpose of this program is to support projects for mothers and children that improve access to health services and utilize preventive strategies. The initiative encourages additional support from the private sector and from foundations to form community-based partnerships to coordinate health resources for pregnant women, infants and children.

Eligibility

42 CFR Part 51a.3 *.

Matching Requirement

The applicant must demonstrate the capability to meet cost participation goals by securing matching funds for the second through fifth year of the project. The specific requirements are detailed in the application materials.

Funding Priorities and/or Preferences

In the interest of equitable geographic distribution, special consideration for funding will be given to projects from States without a currently funded project in this category. These States are: Arizona, Arkansas, Colorado, Connecticut, Delaware, Georgia, Indiana, Iowa, Louisiana, Massachusetts, Missouri, Mississippi, Montana, Nebraska, Nevada, North Carolina, North Dakota, Pennsylvania, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wyoming.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this competition

$500,000.

Estimated Number of Awards

10.

Estimated Project Period

5 Years.

Application Availability: 01/01/1999

To Obtain This Application Kit

CFDA Number: 93.110V

Contact: 1–888–333–HRSA (4772).
Application Deadline: 04/01/1999.
Projected Award Date: 08/1999.
Contact Person: Latricia C. Robertson, lrobertson@hrsa.dhhs.gov, 1–301–443–8041.

Community and School-Based Sealant Grants

Authorization

Title V of The Social Security Act, 42 U.S.C. 701.

Purpose

The purpose of this program is to implement dental sealant programs which may be community or school-based. At the end of the project period programs should be fully implemented and self sustaining either through fees collected or alternate funding. The intent of these grants are: (a) to increase access to dental sealants which is an MCH Block Grant Performance Measure and a Year 2000 and 2010 Oral Health Objective for the Nation; (b) to serve as a vehicle to assure that follow up oral health services are provided through the public or private sector and (c) to utilize participation in the sealant programs as an entry point for enrollment in Medicaid and Children's Health Insurance Program (CHIP).

Eligibility

42 CFR Part 51a.3 *.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$140,000.

Estimated Number of Awards

4.

Estimated Project Period

1 Year.

Application Availability: 03/01/1999

To Obtain This Application Kit

CFDA Number: 93.110AC

Contact: 1–888–333–HRSA (4772).
Application Deadline: 05/03/1999.
Project Award Date: 06/1999.
Contact Person: John P. Rossetti, jrossetti@hrsa.dhhs.gov, 1–301–443–6600.

Oral Health Integrated Systems Development Grants

Authorization

Title V of the Social Security Act, 42 U.S.C. 701.

Purpose

These are targeted issues grants with the intention of building a service and support system infrastructure at the State and Community levels to increase access to dental services for CHIP and Medicaid eligible children. The grants are to address the findings contained in the Office of Inspector General Report: Children's Dental Service Under Medicaid Access and Utilization. The grants will also serve as follow up to the HRSA/HCFA sponsored conference, Building Partnerships to Improve Access to Medicaid Oral Health Issues, to assist States to develop and implement comprehensive integrated public and private sector services and support systems for dental care to address the unmet oral health needs of this population.

Eligibility

42 CFR Part 51a.3*.

Funding Priorities and/or Preferences

A priority will be given to States or their designee who demonstrate participation in national oral health issues, e.g. HRSA/HCFA Partnership Conference.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$150,000.

Estimated Number of Awards

3.

Estimated Project Period

4 Years.

Application Availability: 03/01/1999

To Obtain This Application Kit

CFDA Number: 93.110AD

Contact: 1–888–333–HRSA (4772).
Application Deadline: 05/03/1999.
Project Award Date: 06/1999.
Contact Person: John P. Rossetti, jrossetti@hrsa.dhhs.gov, 1–301–443–6600.

Child Health Insurance Program Partnership

Authorization

Title V of the Social Security Act, 42 U.S.C. 701.

Purpose

This grant program is built on recommendations from the National Conference on Community Systems Building and Services Integration as well as HRSA's mandate to foster development of systems of quality care in the community in support of the Children's Health Insurance Program (CHIP). The purpose of this program is to enable applicants to use their own unique networks, working in each State, across the nation, to encourage the development of local systems of quality care in the community in support of CHIP.

Eligibility

42 CFR Part 51a.3*.

Funding Priorities and/or Preferences

A funding priority will be given to applicants who propose community integrated systems of care to eliminate barriers to care. A priority will be given to applicants who demonstrate participation on a national level in community systems building and services integration.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$800,000.

Estimated Number of Awards

8.

Estimated Project Period

4 Years.

Application Availability: 12/30/1998

To Obtain This Application Kit

CFDA Number: 93.110AS

Contact: 1–888–333–HRSA (4772).
Application Deadline: 02/22/1999.
Projected Award Date: 05/1999.
Contact Person: Joe Zogby, jzogby@hrsa.dhhs.gov, 1–301–443–4393.

Border Health Initiative

Authorization

Title V of The Social Security Act, 42 U.S.C. 701.

Purpose

The purpose of this effort will be to pilot new, replicate or expand existing programs which more effectively communicate information on eligibility for the State's CHIP with particular emphasis on accurate information concerning citizenship status to immigrant populations. The activity is intended as a partnership among border State governments, local governments, non-governmental organizations, and representatives of the cultural/ethnic/racial groups to be targeted. All applicants must describe a dissemination plan to share, in collaboration with the appropriate HRSA field office, lessons learned and outcomes with other border states CHIP programs.

Eligibility

42 CFR Part 51a.3*.

Funding Priorities and/or Preferences

Funding priority will be given to projects who propose a community integrated systems of care which will eliminate barriers to care.

Special Consideration

Special consideration will be given to applications which demonstrate the involvement of or at least the support of the State's Department of Health. All applicants must agree to work with their HRSA Field Office in sharing lessons learned with other border states.

Review Criteria

Final criteria are included in the application kit

Estimated Amount of This Award

$300,000.

Estimated Number of Awards

1–2.

Estimated Project Period

4 Years.

Application Availability: 02/02/1999

To Obtain This Application Kit

CFDA Number: 93.110L

Contact: 1–888–333–HRSA (4772).
Application Deadline: 05/03/1999.
Projected Award Date: 6/1999.
Contact Person: David Heppel, dheppel@hrsa.dhhs.gov, 1–301–443–2250.

Emergency Medical Services for Children (EMSC), Implementation Grants

Authorization

Section 1910, Public Health Service Act as amended, 42 U.S.C. 300w–9.

Purpose

Implementation grants will improve the capacity of a State's EMS program to address the particular needs of children. Implementation grants are used to assist States in integrating research-based knowledge and state-of-the-art systems development approaches into the existing State EMS, MCH, and CSHCN systems, using the experience and products of previous EMSC grantees. Applicants are encouraged to consider activities that: (1) address identified needs within their State EMS system and that lay the groundwork for permanent changes in that system; (2) develop or monitor pediatric EMS capacity; and (3) will be institutionalized within the State EMS system.

Eligibility

States and Accredited Schools of Medicine are eligible applicants.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$250,000.

Estimated Number of Awards

1.

Estimated Project Period

2 Years.

Application Availability: 01/01/1999

To Obtain This Application Kit

CFDA Number: 93.127A

Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/15/1999.
Projected Award Date: 08/1999.
Contact Person: Maria T. Baldi, mbaldi@hrsa.dhhs.gov, 1–301–443–2250.

Emergency Medical Services For Children (EMSC), Partnership Grants

Authorization

Section 1910, Public Health Service Act as amended, 42 U.S.C. 300w–9.

Purpose

State partnership grants will fund activities that represent the next logical step or steps to take to institutionalize EMSC within EMS and to continue to improve and refine EMSC. Proposed activities should be consistent with documented needs in the State and should reflect a logical progression in enhancing pediatric capabilities. For example, funding might be used to address problems identified in the course of a previous implementation grant; to increase the involvement of families in EMSC; to improve linkages between local, regional, or State agencies; to promulgate standards developed for one region of the State under previous funding to include the entire State; to devise a plan for coordinating and funding poison control centers; or to assure effective field triage of the child in physical or emotional crisis to appropriate facilities and/or other resources.

Eligibility

States and Accredited Schools of Medicine are eligible applicants.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$600,000.

Estimated Number of Awards

6.

Estimated Project Period

2 Years.

Application Availability: 01/01/1999

To Obtain This Application Kit

CFDA Number: 93.127C

Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/15/1999.
Projected Award Date: 08/1999.
Contact Person: Maria T. Baldi, mbaldi@hrsa.dhhs.gov, 1–301–443–2250.

Emergency Medical Services For Children (EMSC), Targeted Issue Grants

Authorization

Section 1910, Public Health Service Act as amended, 42 U.S.C. 300w–9.

Purpose

Targeted issue grants are intended to address specific, focused issues related to the development of EMSC knowledge and capacity, with the intent of advancing the state-of-the-art, and creating tools or knowledge that will be helpful nationally. Proposals must have well-conceived methodology for analysis and evaluation. Targeted issue priorities have been identified based on the EMSC Five Year Plan. The targeted issue priorities are: cost-benefit analysis related to EMSC; implications of managed care for EMSC; evaluations of EMSC components; models for improving the care of culturally distinct populations; evaluation of systems for provision of emergency health care within day care and/or school settings; and evaluation of family-centered care models. Proposals may be submitted on emerging issues that are not included in the identified priorities. However, any such proposals must demonstrate relevance to the Plan and must make a persuasive argument that the issue is particularly critical.

Eligibility

States and Accredited Schools of Medicine are eligible applicants.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$600,000.

Estimated Number of Awards

4.

Estimated Project Period

2 Years.

Application Availability: 01/01/1999

To Obtain This Application Kit

CFDA Number: 93.127D

Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/15/1999.
Projected Award Date: 08/1999.
Contact Person: Maria T. Baldi, mbaldi@hrsa.dhhs.gov, 1–301–443–2250.

Emergency Medical Services for Children (EMSC), Native American Project

Authorization

Section 1910, Public Health Service Act as amended, 42 U.S.C. 300w–9.

Purpose

Projects will stimulate the development and enhancement of EMSC for Native Hawaiians and Alaska Natives. Applicants are encouraged to consider activities that: (a) identify needs of Native Hawaiian and Alaska Native populations; (b) develop or monitor pediatric EMS capability, especially as it relates to provisions of services to isolated populations; and, (c) develop and evaluate special projects designed to address problems related to emergency medical care for Native Hawaiian and Alaska Native populations, including prevention, prehospital care, hospital services, rehabilitation, and linkages with primary care.

Eligibility

State governments and accredited schools of medicine are eligible applicants.

Funding Priorities and/or Preferences

A funding priority will be given to Alaska and Hawaii State governments or accredited schools of medicine.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$500,000.

Estimated Number of Awards

2.

Estimated Project Period

2 Years.

Application Availability: 01/01/1999

To Obtain This Application Kit

CFDA Number: 93.127G

Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/15/1999.
Projected Award Date: 08/1999.
Contact Person: Jean Athey, jathey@hrsa.dhhs.gov, 1–301–443–2250.

Traumatic Brain Injury (TBI) State Implementation Grants

Authorization

Section 1242 of The Public Health Service Act, 42, U.S.C. 300d-42.

Purpose

The purpose of this grant program is to improve health and other services for people who have sustained a traumatic brain injury (TBI). Implementation grants provide funding to assist States in moving toward Statewide systems that assure access to comprehensive and coordinated TBI services.

Eligibility

State governments are eligible applicants.

Funding Priorities and/or Preferences

None.

Matching Requirement

The State is required to contribute, in cash, not less than $1 for each $2 of Federal funds provided under the grant.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,600,000.

Estimated Number of Awards

8.

Estimated Project Period

3 Years.

Application Availability: 01/01/1999

To Obtain This Application Kit

CFDA Number: 93.234A

Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/01/1999.
Projected Award Date: 08/1999.
Contact Person: Mark E. Nehring, mnehring@hrsa.dhhs.gov, 1–301–443–3449.

Traumatic Brain Injury (TBI) State Planning Grants

Authorization

Section 1242 of The Public Health Service Act, 42, U.S.C. 300d–42.

Purpose

The purpose of this grant program is to improve health and other services for people who have sustained a traumatic brain injury (TBI). The State planning grant program provides funds to assist States in establishing infrastructure as a prerequisite to implementation activities which will move States toward Statewide systems that assure access to comprehensive and coordinated TBI services.

Eligibility

State governments are eligible applicants.

Matching Requirement

The State is required to contribute, in cash, not less than $1 for each $2 of Federal funds provided under the grant.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$400,000.

Estimated Number of Awards

6.

Estimated Project Period

2 Years.

Application Availability: 01/01/1999

To Obtain This Application Kit

CFDA Number: 93.234B

Contact: 1–888–333–HRSA (4772).
Application Deadline: 03/01/1999.
Projected Award Date: 08/1999.
Contact Person: Mark E. Nehring, mnehring@hrsa.dhhs.gov, 1–301–443–3449.

Improving Screening for Alcohol Use During Pregnancy

Authority

Section 301, Public Health Service Act, 42 U.S.C. [241].

Purpose

The purpose of this program is to support a three year demonstration program targeting identification of the most effective methods to increase provider screening for alcohol and/or illicit drug use during pregnancy.

Eligibility

Eligible organizations are public or private nonprofit organizations.

Funding Priorities and/or Preferences

Preference will be given to State/Territorial MCH Title V Agencies or tribal health agencies. There may be only one application per State.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$300,000.

Estimated Number of Awards

1–2.

Estimated Project Period

3 Years.

Application Availability: 01/15/1999

To Obtain This Application Kit

CFDA Number: 93.926G

Contact: 1–888–333–HRSA (4772).
Application Deadline: 04/01/1999.
Projected Award Date: 06/1999.
Contact Person: Ellen Hutchins, ehutchins@hrsa.dhhs.gov, 1–301–443–5720.

Healthy Start Initiative: Eliminating Racial/Ethnic Disparities in Perinatal Health

Authorization

Section 301, Public Health Service Act, 42 U.S.C. [241].

Purpose

To enhance a community's service system to address significant disparities in perinatal health indicators. Funding would be made available to up to five community projects which have existing active consortium of stakeholders who can reduce barriers and improve the local perinatal system of care so as to eliminate the existing disparities. These sites must have or plan to implement/adapt the Healthy Start models of consortium, case management, outreach, and enhanced clinical services. In addition, they must demonstrate established linkages with key State and local services and resource systems, such as Title V, Title XIX, Title XXI, WIC, Enterprise Communities/Empowerment Zones, federally funded Community and Migrant Health Centers, and Indian/Tribal Health Services. For this competition, ''Community'' is broadly defined so that a Statewide or multi-county project serving racial/ethnic groups (e.g., Hmongs, Mexican Hispanics, etc.) would be eligible.

Eligibility

Eligible applicants are public or nonprofit organizations.

Funding Priorities and/or Preferences

Preference will be given to public or private nonprofit organizations, or tribal or other organizations applying on behalf of an existing community-based consortium, which have infant mortality reduction initiatives already underway; communities with significant racial/ethnic disparities in perinatal indicators for the past three years for which data is available; border communities; and communities in States with no other Federal Healthy Start projects.

Special Consideration

Current Healthy Start grantees can apply for geographic project areas not covered in their current approved grant/cooperative agreement. Applications for project areas/communities located within currently funded Federal Healthy Start project areas will not be accepted.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$5,000,000.

Estimated Number of Awards

5–7.

Estimated Project Period

2 Years.

Application Availability: 01/15/1999

To Obtain This Application Kit

CFDA Number: 93.926E

Contact: 1–888–333–HRSA (4772).
Application Deadline: 04/01/1999.
Projected Award Date: 06/1999.
Contact Person: Maribeth Badura, mbadura@hrsa.dhhs.gov, 1–301–443–0543.

Healthy Start Initiative: Infrastructure/Capacity Building Projects

Authorization

Section 301, Public Health Service Act, 42 U.S.C. [241].

Purpose

The purpose of this program is to build infrastructure/capacity in targeted communities/areas of the State where racial disparities in perinatal indicators exist, including among Hispanics, American Indians, Alaska Natives, Asian/Pacific Islanders, and immigrant populations, particularly those living in border counties. Funding would be made available to up to 13 communities to support the development of local plans to fill gaps in and/or expansion of data systems to identify and monitor perinatal outcomes, training of personnel and strengthening of local reporting systems, establishment of networks and links to other systems, assistance in needs assessment, consortium/coalition development.

Eligibility

Public or private nonprofit organizations are eligible to apply for this program.

Funding Priorities and/or Preferences

Funding priorities will be given to communities with significant racial/ethnic disparities in perinatal indicators for the past three years for which data is available; communities applying as or on behalf of an existing community-based consortium, which have infant mortality reduction initiatives already underway; and States with (national) border counties.

Special Consideration

Current Healthy Start grantees can apply for geographic project areas not covered in their current approved grant/cooperative agreement. Applications for project areas/communities located within currently funded Federal Healthy Start project areas will not be accepted.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$2,000,000.

Estimated Number of Awards

Up to 13.

Estimated Project Period

1 Year.

Application Availability: 01/15/1999

To Obtain This Application Kit

CFDA Number: 93.926F

Contact: 1–888–333–HRSA (4772).
Application Deadline: 04/01/1999.
Projected Award Date: 06/1999.
Contact Person: Donna Hutten, dhutten@hrsa.dhhs.gov, 1–301–443–0543.

HRSA's Other Program Announcements

Faculty Loan Repayment Program (FLRP)

Authorization

Section 738(a) of The Public Health Service Act, 42 U.S.C. 293b.

Purpose

The FLRP encourages expansion of disadvantaged/minority representation in health professions faculty positions. The program provides loan repayment, in amounts not to exceed $20,000 for each year of service, for individuals from disadvantaged backgrounds who agree to serve as members of the faculties of eligible health professions and nursing schools. Each recipient of loan repayment must agree to serve as a faculty member for at least two years.

Eligibility

An individual is eligible to compete for participation in the FLRP if the individual is from a disadvantaged background and: (1) has a degree in medicine, osteopathic medicine, dentistry, nursing, or another health profession; (2) is enrolled in an approved graduate training program in one of the health professions listed above, or (3) is enrolled as a full-time student in the final year of training, leading to a degree from an eligible school.

Eligible schools include schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, allied health, nursing and graduate programs in behavioral and mental health.

Funding Priorities and/or Preferences

Special consideration will be given, to the extent to which the individual meets the intent of the program, to expand disadvantaged/minority representation in health professions faculty positions.

Review Criteria

The final criteria are included in the application kit.

Estimated Amount of This Competition

$800,000.

Estimated Number of Awards

25.

Estimated Project Period

Not less than 2 Years.

Application Availability: 01/02/1999

To Obtain This Application Kit

CFDA Number: 93.923

Contact: 1–888–333–HRSA (4772).
Application Deadline: 06/30/1999.
Projected Award Date: 09/1999.
Contact Person: Shirley Zimmerman, szimmerman@hrsa.dhhs.gov, 1–301–443–1700.

Scholarships For Disadvantaged Students (SDS)

Authorization

Section 737 of The Public Health Service Act, 42 U.S.C. 293a.

Purpose

The SDS program contributes to the diversity of the health professions student and practitioner populations. The program provides funding to eligible health professions and nursing schools to be used for scholarships to students from disadvantaged backgrounds who have financial need for scholarships and are enrolled, or accepted for enrollment, as full-time students at the eligible schools.

Eligibility

Schools of allopathic medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatric medicine, veterinary medicine, public health, nursing, chiropractic, graduate programs in behavioral and mental health, physician assistants, and allied health are eligible to apply. An applicant must provide assurances that preference in providing scholarships will be given to students for whom the costs of attending the schools would constitute a severe financial hardship, and to former recipients of Exceptional Financial Need and Financial Assistance for Disadvantaged Health Professions Students Scholarships.

Funding Priorities and/or Preferences

A priority will be given to schools based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates going into medically underserved communities.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$37,000,000.

Estimated Number of Awards

1000.

Estimated Project Period

1 Year.

Application Availability: 03/19/1999

To Obtain This Application Kit

CFDA Number: 93.925

Contact: 1–301–443–4776.
Application Deadline: 05/14/1999.
Projected Award Date: 09/1999.
Contact Persons: Angela Lacy (alacy@hrsa.dhhs.gov), Andrea Castle (acastle@hrsa.dhhs.gov), 1–301–443–1700.

Nursing Education Loan Repayment Program

Authorization

Section 846(h) of The Public Health Service Act, 42 U.S.C. 297.

Purpose

Under the Nursing Education Loan Repayment Program (NELRP), registered nurses are offered the opportunity to enter into a contractual agreement with the Secretary, under which the Public Health Service agrees to repay up to 85 percent of the nurse's indebtedness for nursing education loans. In exchange, the nurse agrees to serve for a specified period of time in certain types of health facilities identified in statute.

Eligibility

Applicants must have completed all of their training requirements for registered nursing and be licensed prior to beginning service. Individuals eligible to participate must: a) have received, prior to the start of service, a baccalaureate or associate degree in nursing, a diploma in nursing, or a graduate degree in nursing; b) have unpaid educational loans obtained for nurse training; c) be a citizen or national of the U.S.; d) have a current unrestricted license in the State in which they intend to practice; and e) agree to be employed for not less than two years in a full-time clinical capacity in an Indian Health Service health center; a Native Hawaiian health center, a public hospital (operated by a State, county, or local government); a health center funded under Section 330 of the Public Health Service Act (including migrant, homeless, and public housing health centers), a rural health clinic (Section 1861 (aa)(2) of the Social Security Act); or a public or nonprofit private health facility determined by the Secretary to have a critical shortage of nurses.

Funding Priorities and/or Preferences

In making awards under this Section, preferences will be given to qualified applicants: (1) who have the greatest financial need and (2) who agree to serve in the types of health facilities described above that are located in geographic areas determined by the Secretary to have a shortage of and need for nurses.

Review Criteria

Awards are determined by formula.

Estimated Amount of Competition

$2,251,000.

Estimated Number of Awards

200.

Project Award Date: 09/1999

Contact: (301) 594–4400, (301) 594–4981 (FAX), 1–800–435–6464.
Application Availability: 11/01/98.
Application Deadline: 06/30/1999.
CFDA Number: 93.908.
Contact Person: Sharley Chen, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814, schen@hrsa.dhhs.gov.

The Year 2000 Approaches, Are You Ready?

Are you ready for the new millennium? What about your computer systems—are they ready for the year 2000?

The Health Resources and Services Administration (HRSA) has been working diligently over the past year, and will continue to work through the year 2000, to ensure that our service to you is not affected by computer problems. HRSA's five mission critical computer systems will be fully operational into the year 2000.

You've heard the ''gloom-and-doom'' predictions. Let us assure you—HRSA is prepared.

The year 2000 computer problem is an important concern for all health care providers. As a HRSA grantee, you are not only responsible for the services you provide, but also for the programmatic, administrative and financial functions that support these services. As a result, you must take all steps necessary to ensure your computer systems function properly into the year 2000.

The problem is simple—many computers use two digits to record the date. As a result, they may be unable to recognize the year 2000 when it arrives. These computers may, on January 1, 2000, recognize ''00'' not as 2000 but as 1900. If left uncorrected, this problem may cause computers to stop running or to generate incorrect calculations, comparisons or data sorting. In addition to computer systems, this ''year 2000 problem'' may affect software applications, databases and other equipment such as electronic devices that rely on embedded microchips.

Visit HRSA's World Wide Web site at *www.hrsa.dhhs.gov/* to learn more about the agency's year 2000 activities. Information on other Federal agency activities may be found at the General Services Administration's web site, *www.itpolicy.gsa.gov*, or on the President's Council on Year 2000 Conversion site at *www.y2k.gov*.

Look for HRSA at the Following Meetings/Conferences

Event: Prevention '99 (16th Annual National Preventive Medicine Meeting sponsored by the Association of Teachers of Preventive Medicine and the American College of Preventive Medicine).

Dates: March 18–21, 1999.

Location: Washington, DC.

HRSA POC: Steven Merrill (301) 443–2865.

Event: National Association of County and City Health Officials Annual Meeting.

Dates: July 14–17, 1999.

Location: Dearborn, MI.

HRSA POC: Steven Merrill (301) 443–2865.

Event: National Association of Local Boards of Health.

Dates: July 1999 (dates TBD).

Location: Salt Lake City, UT.

HRSA POC: Steven Merrill (301) 443–2865.

Event: National Conference of State Legislatures 25th Annual Meeting.

Dates: July 24–28, 1999.

Location: Indianapolis, IN.

HRSA POC: Linda Redmond (301) 443–4568.

Event: Association of State and Territorial Health Officials Annual Meeting.

Dates: September 28–October 1, 1999.

Location: Savannah. GA.

HRSA POC: Steven Merrill (301) 443–2865.

Note: Don't forget to check the **Federal Register** for grant announcements that may appear after the HRSA Preview is issued.

[FR Doc. 99–12 Filed 1–5–99; 8:45 am]

BILLING CODE 4160–15–U

Federal Register

Wednesday
January 6, 1999

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 135, and 145

Special Federal Aviation Regulation No. 36, Development of Major Repair Data; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 135, and 145

[Docket No. FAA–1998–4654; Amendment No. SFAR 36–7; Notice No. 98–15]

RIN 2120–AG64

Special Federal Aviation Regulation No. 36, Development of Major Repair Data

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends and extends Special Federal Aviation Regulation (SFAR) No. 36, which provides that holders of authorized repair station or aircraft operating certificates may approve aircraft products or articles for return to service after accomplishing major repairs using self-developed repair data that have not been directly approved by the FAA. Extension of the regulation continues to provide, for those that qualify, an alternative from the requirement to obtain direct FAA approval of major repair data on a case-by-case basis.

EFFECTIVE DATE: January 23, 1999.

FOR FURTHER INFORMATION CONTACT: Carol Martineau, Policy and Procedures Branch, Aircraft Engineering Division, AIR–110, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267–9568.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking and Final Rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.gov.

Background

Notice No. 98–15, Special Federal Aviation Regulation No. 36. Development of Major Repair Data, was published in the **Federal Register** on November 2, 1998. The comment period closed December 2, 1998. No comments were received. The FAA proposed to extend the termination date of and amend Special Federal Aviation Regulation (SFAR) No. 36, which allows authorized certificate holders (domestic repair stations, and carriers, air taxi operators of large aircraft, and commercial operators of large aircraft) to approve aircraft products and articles for return to service after accomplishing major repairs using data developed by the holder that have not been directly approved by the FAA. Currently, more than 25 air carrier and domestic repair station certificate holders have SFAR 36 authorizations that will expire on January 23, 1999.

History

Prior to the adoption of SFAR 36, certificate holders that were qualified to make repairs were required to obtain FAA approval on a case-by-case basis for data they had developed to perform major repairs. The only alternative to the time-consuming, case-by-case approval method was to petition for and obtain an exemption granting relief from the regulation. The number of exemptions being granted indicated that revisions to the regulations were necessary; SFAR 36 was adopted on January 23, 1978, as an interim rulemaking action. Adoption of the SFAR eliminate the requirement for authorized certificate holders to petition for exemption from the regulation, and allowed the FAA additional time to obtain the information necessary to develop a permanent rule change. Most of the affected certificate holders, however, did not use the provisions of SFAR 36 until it was well into its second year an nearing its expiration date of January 23, 1980. Since the FAA did not yet have sufficient data upon which to base a permanent rule change, the termination date for SFAR 36 was extended to January 23, 1982. To date, SFAR 36 has been extended four times.

On October 22, 1998, the Aviation Rulemaking Advisory Committee (ARAC) submitted a proposal for permanent regulatory action to the FAA. The proposal detailed a means of establishing an Organization Designation Authorization program which would expand and further standardize the approval functions of the FAA designee system and proposed that certain functions and procedures, including those covered by SFAR 36, be terminated and that current authorization holders be allowed to apply for an Organization Designation Authorization. SFAR 36 is being extended an additional 5 years to allow time for the ARAC proposal to be fully developed and implemented.

Synopsis of the Rule

Section 1

Aircraft ''product,'' ''article,'' and ''component'' are defined for the purpose of the SFAR. The definitions clarify the scope of an authorization holder's return to service authority.

Section 2

Paragraph (a) of section 2 describes the general provisions of the current SFAR applicable to the individual types of eligible certificate holders. This final rule amends paragraph (a) to reflect changes in the regulations as a result of the Commuter Rule, which became effective on December 20, 1995. Paragraph (b) of section 2 is deleted and reserved to remove references to part 127. Part 127 was removed from the

regulations when the Commuter Rule became effective. Paragraph (c) of section 2 states that an SFAR 36 authorization does not expand the scope of authority of a repair station certificate holder, for example, the authorization does not give a repair station return to service authority for any article for which it is not rated, nor can the authorization change the articles a repair station is rated to repair.

Section 3

Section 3 states that an authorized certificate holder may approve an aircraft product or article for return to service after accomplishing a major repair, using data not approved by the Administrator, only in accordance with the amended SFAR. Section 3 requires that the data used to perform the major repair be developed and ''approved'' in accordance with the holder's authorization and procedures manual. Section 3 also permits an authorization holder to use its developed repair data on a subsequent repair of the same type of product or article. For each subsequent repair, the holder must determine that accomplishment of the repair, using previously developed data, will return the product or article to its original or properly altered condition and will confirm to all applicable airworthiness requirements. In addition, each subsequent use of the data must be recorded in the authorization holder's SFAR records.

Section 4

Section 4 describes the procedures for applying for an SFAR 36 authorization.

Section 5

Section 5 identifies the requirements a certificate holder must meet to be eligible for an SFAR 36 authorization. This final rule amends Paragraph (a)(1) to delete the reference to part 127 and section 135.2, which were removed from the regulations when the Commuter Rule became effective on December 20, 1995. Paragraphs (a)(2), (a)(3), and (b) define the personnel required. Paragraph (c) contains the reporting requirement of the current SFAR that pertains to changes that could affect the holder's continuing ability to meet the SFAR requirements.

Section 6

Section 6 describes the requirement for an approved procedures manual and what information the procedures manual must contain. Paragraph (c) of section 6 requires that an authorization holder that experiences a change in procedures or staff obtain and record FAA approval of the change in order to continue to approve products or articles for return to service under the SFAR.

Section 7

Section 7 sets forth the duration of the authorization. All authorizations issued under this SFAR will terminate upon expiration of the SFAR unless earlier surrendered, suspended, revoked, or otherwise terminated. The final rule extends the duration until January 23, 2004.

Section 8

Section 8 prohibits the transfer of an SFAR 36 authorization.

Section 9

Section 9 retains the current inspection provisions. It also emphasizes that the FAA must be able to determine whether an applicant has, or a holder maintains, personnel adequate to comply with the provisions of the SFAR and any additional limitations contained in the authorization.

Section 10

Section 10 states that an SFAR 36 authorization does not expand the scope of products or articles that an aircraft operator or repair station is authorized to approve for return to service.

Section 11

Section 11 contains the provision that each SFAR 36 authorization holder must comply with an additional limitations prescribed by the Administrator and made a part of the authorization.

Sections 12 and 13

Sections 12 and 13 address data review and service experience requirements and record keeping requirements. Section 12 states the circumstances under which an authorization holder will be required to submit the information necessary for corrective action on a repair. Section 13 describes what information an authorization holder's records must contain.

As noted above, the expiration date for SFAR 36 is January 23, 2004. The 5-year extension would allow time for the FAA to act upon the proposal submitted by the ARAC for establishment of an Organization Designation Authorization.

The extension of SFAR 36 would allow uninterrupted major repair activity by the current authorization holders that qualify under the amended SFAR; those authorizations would be extended without the holders reapplying for authorization. The extension would also allow a new, qualified applicant to obtain an authorization.

Paperwork Reduction Act

Information collection requirements in SFAR 36–7 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 and have been assigned the OMB Control Number 2120–0507. The primary purpose of this final rule is to extend SFAR 36. No additional paperwork burden would be created as a result.

International Compatibility

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because there is no comparable rule under ICAO standards.

Regulatory Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that the extension of Special Federal Aviation Regulation No. 36 (SFAR 36): (1) would generate benefits that justify its costs; (2) is not a significant regulatory action under section 3(f) of the Executive Order and is not subject to review by the Office of Management and Budget; (3) is not significant as defined in DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979); (4) would not have a significant impact on a substantial number of small entities; (5) would not affect international trade; and (6) does not contain a significant intergovernmental or private sector mandate. These analyses, available in the docket, are summarized below.

Regulatory Evaluation Summary

This final rule extends the provisions of the existing SFAR 36 for a five-year period. Therefore, there are no costs associated with this final rule to either the industry or to the FAA.

The benefit of the final rule is that it allows the firms currently operating under the provisions of SFAR 36 to continue to do so, thereby avoiding the costs that would be incurred if SFAR 36 were to expire before an extension of the existing SDFAR 36 was implemented.

Because the final rule has positive, although not quantifiable, benefits and no costs the FAA has determined that the benefits exceed the costs of the final rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an Agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

There are no costs associated with the final rule. Consequently, the FAA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

Consistent with the Administration's belief in the general superiority, desirability, and efficacy of free trade, it is the policy of the Administrator to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and those affecting the import of foreign goods and services into the United States.

In accordance with that policy, the FAA is committed to develop as much as possible its aviation standards and practices in harmony with its trading partners.

This final rule affects only domestic firms. Therefore, there will be no impact on international trade.

Federalism Implications

The regulations herein would 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 rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The FAA determines that this rule does not contain a significant intergovernmental or private sector mandate as defined by the Act.

List of Subjects

14 CFR Part 121

Air carriers, Airworthiness directives and standards, Aviation safety, Safety.

14 CFR Part 135

Air carriers, Air taxis, Air transportation, Aircraft, Airmen, Airplanes, Airworthiness, Aviation safety, Helicopters, Safety.

14 CFR Part 145

Air carriers, Air transportation, Aircraft, Aviation safety, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Title 14 of the Code of Federal Regulations parts 121, 135, and 145 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

2. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

PART 145—REPAIR STATIONS

3. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44717.

4. Special Federal Aviation Regulation No. 36 in part 121 and referenced in parts 135 and 145 is amended by revising paragraphs 2(a), 3(a)(1), 5(a)(1), and 7 introductory text; by reserving paragraph 2(b) and by revising the termination date to read as follows:

SFAR No. 36

* * * * *

2. *General.* (a) Contrary provisions of § 121.379(b) and § 135.437(b) of this chapter notwithstanding, the holder of

an air carrier certificate or operating certificate, that operates large aircraft, and that has been issued operations specifications for operations required to be conducted in accordance with 14 CFR part 121 or 135, may perform a major repair on a product as described in § 121.379(b) or § 135.437(a), using technical data that have not been approved by the Administrator, and approve that product for return to service, if authorized in accordance with this Special Federal Aviation Regulation.

(b) Reserved.

* * * * *

3. *Major Repair Data and Return to Service.* (a) * * *

(1) Has been issued an authorization under, and a procedures manual that complies with, Special Federal Aviation Regulation No. 36–7, effective on January 23, 1999;

* * * * *

5. *Eligibility.* (a) * * *

(1) Hold an air carrier certificate or operating certificate, operate large aircraft, and have been issued operations specifications for operations required to be conducted in accordance with 14 CFR part 121 or 135, or hold a domestic repair station certificate under 14 CFR part 145;

* * * * *

7. *Duration of Authorization.* Each authorization issued under this Special Federal Aviation Regulation is effective from the date of issuance until January 23, 2004, unless it is earlier surrendered, suspended, revoked, or otherwise terminated. Upon termination of such authorization, the terminated authorization holder must:

* * * * *

This Special Federal Aviation Regulation terminates January 23, 2004.

Jane F. Garvey,

Administrator.

[FR Doc. 99–128 Filed 1–5–99; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Wednesday
January 6, 1999

Part IV

Environmental Protection Agency

40 CFR Part 68

Accidental Release Prevention Requirements; Risk Management Programs Under Clean Air Act Section 112(r)(7), Amendments; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL–6214–9]

RIN 2050–AE46

Accidental Release Prevention Requirements; Risk Management Programs Under Clean Air Act Section 112(r)(7); Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action modifies the chemical accident prevention rule codified in 40 CFR Part 68. The chemical accident prevention rule requires owners and operators of stationary sources subject to the rule to submit a risk management plan (RMP) by June 21, 1999, to a central location specified by EPA. In this action, EPA is amending the rule to: add four mandatory and five optional RMP data elements, establish specific procedures for protecting confidential business information when submitting RMPs, adopt the government's use of a new industry classification system, and make technical corrections and clarifications to Part 68. However, as stated in the proposed rule for these amendments, this action does not address issues concerning public access to offsite consequence analysis data in the RMP.

DATES: The rule is effective February 5, 1999.

ADDRESSES: Supporting material used in developing the proposed rule and final rule is contained in Docket A–98–08. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except government holidays) at Room 1500, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob or John Ferris, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency (5104), 401 M Street SW, Washington, DC 20460, (202) 260–7249 or (202) 260–4043, respectively; or the Emergency Planning and Community Right-to-Know Hotline at 800–424–9346 (in the Washington, DC metropolitan area, (703) 412–9810). You may wish to visit the Chemical Emergency Preparedness and Prevention Office (CEPPO) Internet site, at www.epa.gov/ceppo.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those stationary sources that have more than a threshold quantity of a regulated substance in a process. Regulated categories and entities include:

Category	Examples of regulated entities
Chemical Manufacturers	Basic chemical manufacturing, petrochemicals, resins, agricultural chemicals, pharmaceuticals, paints, cleaning compounds.
Petroleum	Refineries.
Other Manufacturing	Paper, electronics, semiconductors, fabricated metals, industrial machinery, food processors.
Agriculture	Agricultural retailers.
Public Sources	Drinking water and waste water treatment systems.
Utilities	Electric utilities.
Other	Propane retailers and users, cold storage, warehousing, and wholesalers.
Federal Sources	Military and energy installations.

This table is not meant to be exhaustive, but rather provides a guide for readers to indicate those entities likely to be regulated by this action. The table lists entities EPA is aware of that could potentially be regulated by this action. Other entities not listed in the table could also be regulated. To determine whether a stationary source is regulated by this action, carefully examine the provisions associated with the list of substances and thresholds under § 68.130 and the applicability criteria under § 68.10. If you have questions regarding applicability of this action to a particular entity, consult the hotline or persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Table of Contents

I. Introduction and Background

A. Statutory Authority

These amendments are being promulgated under sections 112(r) and 301(a)(1) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412(r), 7601(a)(1)).

B. Background

The 1990 CAA Amendments added section 112(r) to provide for the prevention and mitigation of accidental chemical releases. Section 112(r) mandates that EPA promulgate a list of ''regulated substances,'' with threshold quantities. Processes at stationary sources that contain a threshold quantity of a regulated substance are subject to accidental release prevention regulations promulgated under CAA section 112(r)(7). EPA promulgated the list of regulated substances on January 31, 1994 (59 FR 4478) (the ''List Rule'') and the accidental release prevention regulations creating the risk management program requirements on June 20, 1996 (61 FR 31668) (the ''RMP Rule''). Together, these two rules are codified as 40 CFR Part 68. EPA amended the List Rule on August 25, 1997 (62 FR 45132), to change the listed concentration of hydrochloric acid. On January 6, 1998 (63 FR 640), EPA amended the List Rule to delist Division 1.1 explosives (classified by DOT), to clarify certain provisions related to regulated flammable substances and to clarify the transportation exemption.

Part 68 requires that sources with more than a threshold quantity of a regulated substance in a process develop and implement a risk management program that includes a five-year accident history, offsite consequence analyses, a prevention

program, and an emergency response program. In Part 68, processes are divided into three categories (Programs 1 through 3). Processes that have no potential impact on the public in the case of accidental releases have minimal requirements (Program 1). Processes in Programs 2 and 3 have additional requirements based on the potential for offsite consequences associated with the worst-case accidental release and their accident history. Program 3 is also triggered if the processes are subject to OSHA's Process Safety Management (PSM) Standard. By June 21, 1999, sources must submit to a location designated by EPA, a risk management plan (RMP) that summarizes their implementation of the risk management program.

When EPA promulgated the risk management program regulations, it stated that it intended to work toward electronic submission of RMPs. The Accident Prevention Subcommittee of the CAA Advisory Committee convened an Electronic Submission Workgroup to examine technical and practical issues associated with creating a national electronic repository for RMPs. Based on workgroup recommendations, EPA is in the process of developing two systems, a user-friendly PC-based submission system (RMP*Submit) and a database of RMPs (RMP*Info).

The Electronic Submission Workgroup also recommended that EPA add some mandatory and optional data elements to the RMP and asked EPA to clarify how confidential business information (CBI) submitted in the RMP would be handled. Based on these recommendations and requests for clarifications, EPA proposed amendments to Part 68 on April 17, 1998 (63 FR 19216). These amendments proposed to replace the use of Standard Industrial Classification (SIC) codes with the North American Industry Classification System (NAICS) codes, add four mandatory data elements to the RMP, add five optional data elements to the RMP, establish specific requirements for submission of information claimed CBI, and make technical corrections and clarifications to the rule. EPA received 47 written comments on the proposed rule. Today's rule reflects EPA's consideration of all comments; major issues raised by commenters and EPA's responses are discussed in Section III of this preamble. A summary of all comments submitted and EPA's responses can be found in a document entitled, Accidental Release Prevention Requirements; Risk Management Programs Under Clean Air Act Section 112(r)(7); Amendments: Summary and Response to Comments, in the Docket (see **ADDRESSES**).

II. Summary of the Final Rule

NAICS Codes

On January 1, 1997, the U.S. Government, in cooperation with the governments of Canada and Mexico, adopted a new industry classification system, the North American Industry Classification System (NAICS), to replace the Standard Industrial Classification (SIC) codes (April 9, 1997, 62 FR 17288). The applicability of some Part 68 requirements (i.e., Program 3 prevention requirements) is determined, in part, by SIC codes, and Part 68 also requires the reporting of SIC codes in the RMP. Therefore, EPA is revising Part 68 to replace all references to ''SIC code'' with ''NAICS code.'' In addition, EPA is replacing, as proposed, the nine SIC codes subject to Program 3 prevention program requirements with ten NAICS codes, as follows:

NAICS	Sector
32211	Pulp mills
32411	Petroleum refineries
32511	Petrochemical manufacturing
325181	Alkalies and chlorine
325188	All other inorganic chemical manufacturing
325192	Other cyclic crude and intermediate manufacturing
325199	All other basic organic chemical manufacturing
325211	Plastics and resins
325311	Nitrogen fertilizer
32532	Pesticide and other agricultural chemicals

NAICS codes are either five or six digits, depending on the degree to which the sector is subdivided.

RMP Data Elements

As proposed, EPA is adding four new data elements to the RMP: latitude/longitude method and description, CAA Title V permit number, percentage weight of a toxic substance in a liquid mixture, and NAICS code for each process that had an accidental release reported in the five-year accident history. EPA is also adding five optional data elements: local emergency planning committee (LEPC) name, source or parent company e-mail address, source homepage address, phone number at the source for public inquiries, and status under OSHA's Voluntary Protection Program (VPP).

Prevention Program Reporting

EPA is not revising Sections 68.170 and 68.175 as proposed. Prevention program reporting, therefore, will not be changed to require a prevention program for each portion of a process for which a Process Hazard Analysis (PHA) or hazard review was conducted. Instead, EPA plans to create functions within RMP*Submit to provide stationary sources with a flexible way of explaining the scope and content of each prevention program they implement at their facility.

Confidential Business Information

EPA is clarifying how confidential business information (CBI) submitted in the RMP will be handled. EPA has determined that the information required by certain RMP data elements does not meet the criteria for CBI and therefore may not be claimed as such. The Agency is also requiring submission of substantiation at the time a CBI claim is filed.

Finally, EPA is promulgating several of the technical corrections and clarifications, as proposed in the **Federal Register**, April 17, 1998 (63 FR 19216).

III. Discussion of Issues

EPA received 47 comments on the proposed rule. The commenters included chemical manufacturers, petroleum refineries, environmental groups, trade associations, a state agency, and members of the public. The major issues raised by commenters are addressed briefly below. The Agency's complete response to comments received on this rulemaking is available in the docket (see **ADDRESSES**). The document is titled Accidental Release Prevention Requirements; Risk Management Programs Under Clean Air Act Section 112(r)(7); Amendments: Summary and Response to Comments.

A. NAICS Codes

Two commenters asked that sources be given the option to use either SIC codes or NAICS codes, or both, in their initial RMP because the NAICS system is new and may not be familiar to sources. EPA disagrees with this suggestion. EPA intends to provide several outreach mechanisms to assist sources in identifying their new NAICS code. RMP*Submit will provide a ''pick list'' that will make it easier for sources to find the appropriate code. Also, selected NAICS codes are included in the General Guidance for Risk Management Programs (July 1998) and in the industry-specific guidance documents that EPA is developing. EPA will also utilize the Emergency Planning and Community Right-to-Know Hotline at 800–424–9346 (or 703–412–9810) and its web site at www.epa.gov/ceppo/, to assist sources in determining the source's NAICS codes. EPA also notes that the Internal Revenue Service is planning to require businesses to

provide NAICS-based activity codes on their 1998 tax returns, so many sources will have become familiar with their NAICS codes by the June 1999 RMP deadline.

EPA believes it is necessary and appropriate to change from SIC codes to NAICS codes at this time. EPA recognizes that NAICS codes were developed for statistical purposes by the Office of Management and Budget (OMB). In the notice of April 9, 1997 (62 FR 17288) OMB stated that the ''[u]se of NAICS for nonstatistical purposes (e.g., administrative, regulatory, or taxation) will be determined by the agency or agencies that have chosen to use the SIC for nonstatistical purposes.'' EPA has determined that NAICS is appropriate in this rule for several reasons. First, the reason the SIC codes were replaced by NAICS codes is because the SIC codes no longer accurately represent today's industries. The SIC codes will become more obsolete over time because OMB will no longer be supporting the SIC codes; therefore, no new or modified SIC codes will be developed to reflect future changes in industries. Second, as the SIC codes become obsolete, most users of SIC codes will likely change to NAICS codes over time, so future data sharing and consistency will be enhanced by use of NAICS codes in the RMP program. Third, through this rulemaking process, EPA has analyzed specific conversions of SIC codes to NAICS codes for the RMP program and was able to identify NAICS codes that were applicable to fulfilling the purposes of this rule. Finally, because the RMP reporting requirement is new, it is reasonable to begin the program with NAICS codes now rather than converting to them later.

Three commenters expressed support for the ten NAICS codes that EPA proposed to use in place of the nine SIC codes referenced in section 68.10(d)(1) of Part 68 and one commenter partially objected. Section 68.10(d)(1) provides that processes in the referenced codes are subject to Program 3 requirements (if not eligible for Program 1). One commenter objected to EPA's proposal to replace the SIC code for pulp and paper mills with only the NAICS code for pulp mills that do not also produce paper or paperboard. The commenter asked EPA to reexamine the accident history of paper and paperboard mills. As discussed in the preamble of the proposed rule, EPA reviewed the accident history data prior to proposing the new NAICS codes. Neither facilities that classify themselves as paper mills (NAICS Code 322121) nor paperboard mills (NAICS code 32213) met the accident history criteria that EPA used to select industrial sectors for Program 3.

EPA notes that a pulp process at a paper or a paperboard mill may still be subject to Program 3 as long as the process contains more than a threshold quantity of a regulated substance and is not eligible for Program 1. Section 68.10(d)(1) uses industrial codes to classify processes, not facilities as a whole. Since section 68.10(d)(1) will continue to list the code for pulp mills, pulpmaking processes will continue to be subject to Program 3. In addition, under section 68.10(d)(2), paper processes will be in Program 3 (unless eligible for Program 1) if they are subject to OSHA's Process Safety Management (PSM) standard. Most pulp and paper processes are, in fact, subject to this standard.

One commenter objected to assigning NAICS codes to a process rather than the source as a whole. EPA first notes that the requirement to assign a SIC code to a process was adopted in the original RMP rulemaking two years ago. Today's rule does not change that requirement except to substitute NAICS for SIC codes. In any event, EPA is today modifying Part 68 to clarify that sources provide the NAICS code that ''most closely corresponds to the process.'' EPA believes that assigning an industry code to a process will help implementing agencies and the public understand what the covered process does; using the code makes it possible to provide this information without requiring a detailed explanation from the source. In addition, the primary NAICS code for a source as a whole may not reflect the activity of the covered process.

B. RMP Data Elements

EPA proposed to add, as optional RMP data elements: local emergency planning committee (LEPC), source (or parent company) E-mail address, source homepage address, phone number at the source for public inquiries, and OSHA Voluntary Protection Program (VPP) status. EPA also proposed to add, as mandatory data elements: method and description of latitude/longitude, Title V permit number, percent weight of a toxic substance in a liquid mixture, and NAICS code (only in the five-year accident history section).

Commenters generally supported the new optional data elements. One commenter requested that the optional elements be made mandatory. EPA disagrees with this comment. While the elements are useful, many sources covered by this rule will not have e-mail addresses or home pages. The RMP will provide both addresses and phone numbers so that the public will have methods to reach the source. EPA has learned that in some areas there are no functioning LEPCs, therefore, at this time, EPA will not add this as a mandatory data element. However, in most cases, the LEPC for an area can be determined by contacting the local government or the State Emergency Response Commission (SERC) for which the area is located. Therefore, reporting these data elements will remain optional at this time.

One commenter supported adding the listing of local emergency planning committee in the RMP data elements as an optional data element. The commenter stated that, although it is an optional data element, this listing will enhance the ability of local responders and emergency planners to adequately prepare and train for emergency events.

Of the data elements that were proposed to be mandatory, one commenter objected to the addition of latitude/longitude method and description. The commenter stated that it was not clear in the proposal why the method and description information is needed. EPA is seeking latitude/longitude method and description in accordance with its Locational Data Policy. Several EPA regulations require sources to provide their latitude and longitude, so that EPA can more readily locate facilities and communicate data between Agency offices. Sharing of data between EPA offices reduces duplication of information. Latitude/longitude method and description provides information needed by EPA offices, and other users of the data, to rectify discrepancies that may appear in the latitude and longitude information provided by the source under various EPA requirements. Documentation of the method by which the latitude and longitude are determined and a description of the location point referenced by the latitude and longitude (e.g., administration building) will permit data users to evaluate the accuracy of those coordinates, thus addressing EPA data sharing and integration objectives.

EPA believes this information will also facilitate EPA-State coordination of environmental programs, including the chemical accident prevention rule. The State/EPA Data Management Program is a successful multi-year initiative linking State environmental regulatory agencies and EPA in cooperative action. The Program's goals include improvements in data quality and data integration based on location identification. Therefore, as proposed, the latitude/longitude method and description will be added to the existing RMP data

elements. RMP*Submit will provide a list of methods and descriptions from which sources may choose.

EPA also proposed to require that sources report the percentage weight (weight percent) of a toxic substance in a mixture in the offsite consequence analysis (OCA) and the accident history sections of the RMP. This information is necessary for users of RMP data to understand how worst case and alternative release scenarios have been modeled. EPA has decided to require reporting of the weight percent of toxic substance in a liquid mixture because this information is necessary to understand the volatilization rate, which determines the downwind dispersion distance of the substance. The volatilization rate is affected by the vapor pressure of the substance in the mixture. For example, a spill of 70 percent hydrofluoric acid (HF) will volatilize more quickly than a spill of the same quantity of HF in a 50 percent solution; consequently, over a 10-minute period, the 70 percent solution will travel further. Reviewers of the RMP data, including local emergency planning committees, need to know the weight percent to be able to evaluate the results reported in the offsite consequence analysis and the impacts reported in the accident history. Without knowing the weight percent of the substance in the mixture, users of the data may compare scenarios or incidents that appear to involve the same chemical in the same physical state, but in fact involve the same chemical held in a different physical state.

One commenter stated that for gas mixtures, percentage by volume (or volume percent) should be required to be reported rather than weight percent. In this final rule, EPA does not require reporting of the weight percent (or volume percent) of a regulated substance in a gas mixture. If a source handles regulated substances in a gaseous mixture (e.g., chlorine with hydrogen chloride), the quantity of a particular regulated substance in the mixture is what is reported in the RMP, since that is what would be released into the air. Its percentage weight in the mixture is irrelevant.

Another commenter objected to this data element, claiming that it could result in reverse engineering and create a competitive disadvantage. EPA does not believe that this requirement would create a competitive disadvantage, since similar information is available to the public under Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986. Even so, if it were to have such an effect, sources can claim this element as CBI if it can meet the criteria for CBI claims in 40 CFR Part 2. Another commenter stated that the public would be concerned if the percentages did not add to 100, in the event that the source handles both regulated and non-regulated substances. EPA believes that because a source must model only one substance in a release scenario, the source need not report the percentages of the other substances in the mixture. Therefore, it is expected that the weight percent for mixtures would not always add up to 100, because the mixture could contain non-regulated substances.

A third commenter suggested that requiring sources to report percentage weight of a toxic substance in a liquid mixture would create confusion with the reporting of mixtures containing flammable regulated substances.

In the January 6, 1998 rule (63 FR 640), EPA clarified that flammable regulated substances in mixtures are only covered by the RMP rule if the entire mixture meets the National Fire Protection Association (NFPA) criteria of 4, thus the entire mixture becomes the regulated substance. As a result, the percentage of flammables in a mixture is not relevant under the rule and the requirement to report the percentage weight will only apply to toxic substances in a liquid mixture.

Finally, in the **Federal Register** notice of June 20, 1996 (61 FR 31688), EPA clarified the relationship between the risk management program and the air permit program under Title V of the CAA for sources subject to both requirements. Under section 502(b)(5)(A), permitting authorities must have the authority to assure compliance by all covered sources with each applicable CAA standard, regulation or requirement, including the regulations implementing section 112(r)(7). Requiring sources covered by Title V and section 112(r) to provide their Title V permit number will help Title V permitting authorities assure that each source is complying with the RMP rule.

In summary, with the exception of adding the phrase ''that most closely corresponds to the process'' in sections 68.42(b)(4), 68.160(b)(7), 68.170(b), and 68.175(b), EPA has decided to finalize the optional and mandatory data elements as they were proposed.

C. Prevention Program Reporting

The final RMP rule, issued June 20, 1996 (61 FR 31668), requires sources to report their prevention program for each ''process.'' Because the applicable definition of ''process'' is broad, multiple production and storage units might be a single, complex ''process.'' However, the Agency realizes that some elements of a source's prevention program for a process may not be applicable to every portion of the process. In such a situation, reporting prevention program information for the process as a whole could be misleading without an explanation of which prevention program element applies to which part of the process. In order to get more specific information on which prevention program practices apply to different production and storage units within a process, EPA proposed to revise the rule to require prevention program reporting for each part of the process for which a separate process hazard analysis (PHA) or hazard review was conducted. EPA further proposed deleting the second sentence from both sections 68.170(a) and 68.175(a), which presently states that, ''[i]f the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which process the information applies.''

A number of industry commenters objected to the proposed revisions as wrongly assuming that a one-to-one relationship exists between a prevention program and a PHA. The commenters asserted that EPA's proposed revision did not reflect how facilities conduct PHAs or implement prevention measures and would cause significant duplicate reporting, creating unnecessary extra work for facility personnel. One commenter explained that depending on a source's circumstances, it might conduct a PHA for each production line, including all of its different units, or it might conduct a PHA for each common element of its different production lines. Accordingly, the commenters claimed that EPA's proposal to require the owner/operator to submit separate prevention program information for every portion of a process covered by a PHA would result in multiple submissions of much of the same material, and would add no value to process safety or accidental release prevention. Commenters also opposed the deletion of the second sentence in sections 68.170(a) and 68.175(a). One commenter noted that many of the elements of the prevention program will not only be common to a process, but will be common to an entire stationary source. Thus commenters argued that EPA's proposals would result in redundant submittals and place an unjustified burden on the regulated community.

EPA acknowledges that PHAs do not necessarily determine the scope of prevention program measures. Moreover, EPA agrees that duplicative

reporting should be reduced as much as possible. At the same time, EPA, implementing agencies, and other users of RMP data need to have information that is detailed enough to understand the hazards posed by, and the safety practices used for, particular parts of processes and equipment. EPA recognizes that some aspects of prevention programs are likely to be implemented facility-wide, rather than on a process or unit basis, whereas other aspects may apply to a particular process or only to particular units within a process. For example, most sources are likely to develop an employee participation plan and a system for hot work permits facility-wide, rather than on a process or unit basis. For sources having processes that include several units (e.g., multiple reactors or purification systems), the hazards, process controls, and mitigation systems may vary among the individual units. For example, one may have a deluge fire control system while another may have a runaway reaction quench system.

EPA has concluded that its proposed changes to prevention program reporting would not lead sources to prepare RMPs that accurately and efficiently communicate the hazards posed by different aspects of covered processes and the safety practices used to address those hazards. The Agency now believes that no rule changes are necessary to ensure that RMPs convey that information. The current rule already requires prevention program reporting, and the issue has been how to efficiently convey that information in sufficient detail. EPA believes that its electronic program for submitting RMPs can be designed to provide for sufficient specificity in prevention program reporting without requiring duplicative reporting. In particular, the Agency plans to create a comment/text field in RMP*Submit for specifying which parts of a prevention program apply to which portions of a particular process. For example, if a deluge system only applies to a certain part of the overall process, the source would indicate in the comment/text screen the portions of the process to which the deluge system applies.

To reduce the burden of reporting, EPA also plans to create a function in RMP*Submit which will allow a source to automatically copy prevention program data previously entered for one process to fill blank fields in another process's prevention program. The source could then edit any of the data elements that are different. For example, where the prevention programs for two processes are identical (e.g., two identical storage tanks that are considered separate processes), the source could copy the data entered for one to fill in the blank field for the other. If some of the data elements vary between the prevention programs, the source will be able to autofill and change only those items that vary among processes or units.

Although the autofill option will minimize the burden of reporting common data elements for those sources filing electronically, EPA has decided not to delete the sentence, in both sections 68.170(a) and 68.175(a), which states, ''[i]f the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies '', as proposed.

D. Confidential Business Information (CBI)

1. Background

A central element of the chemical accident prevention program as established by the Clean Air Act and implemented by Part 68 is providing state and local governments and the public with information about the risk of chemical accidents in their communities and what stationary sources are doing to prevent such accidents. As explained in the preamble to the final RMP rule (61 FR 31668, June 20, 1996), every covered stationary source is required to develop and implement a risk management program and provide information about that program in its RMP. Under CAA section 112(r)(7)(B)(iii), a source's RMP must be registered with EPA and also submitted to the Federal Chemical Safety and Hazard Investigation Board (''the Board''), the state in which the source is located, and any local entity responsible for emergency response or planning. That section also provides that RMPs ''shall be available to the public under section 114(c)'' of the CAA. Section 114(c) gives the public access to information obtained under the Clean Air Act except for information (other than emission data) that would divulge trade secrets.

As noted previously, in the final RMP rule EPA announced its plan to develop a centralized system for submitting electronic versions of RMPs that would reduce the paperwork burden on both industry and receiving agencies and provide ready public access to RMP data. Under the system, a covered source would submit its RMP on computer diskette, which would be entered into a central database that all interested parties could access electronically. The system would thus make it possible for a single RMP submission to reach all interested parties, including those identified in section 112(r)(7)(B)(iii).[1]

An important assumption underlying the Agency's central submission plan was that RMPs would rarely, if ever, contain confidential business information (CBI). Following publication of the final rule, concerns were raised that at least some of the information required to be reported in RMPs could be CBI in the case of particular sources. While the June 20, 1996 rule provided for protection of CBI under section 114(c) (see section 68.210(a)), EPA was asked to address how CBI would be protected in the context of the electronic programs being developed for RMP submission and public access.

In the April 17, 1998 proposal to revise the RMP rule, EPA made several proposals concerning protection of CBI. It first reviewed the information requirements for RMPs (sections 68.155–185) and proposed to find that certain required data elements would not entail divulging information that could meet the test for CBI set forth in the Agency's comprehensive CBI regulations at 40 CFR Part 2.[2] Information provided in response to those requirements could not be claimed CBI. EPA also requested comment on whether some information that might be claimed as CBI (e.g., worst-case release rate or duration) would be ''emission data'' and thus publicly available under section 114(c) even if CBI.

EPA administers a variety of statutes pertaining to the protection of the environment, each with its own data collection requirements and requirements for disclosure of information to the public. In the implementation of these statutes, the Agency collects emission, chemical, process, waste stream, financial, and other data from facilities in many, if not most, sectors of American business. Companies may consider some of this information vital to their competitive

[1] It is important to note that, as discussed in Section III. E of this preamble, this rule does not address issues concerning public access to offsite consequence analysis data in the RMP.

[2] Information is CBI if (1) the business has asserted a claim which has not expired, been waived, or been withdrawn; (2) the business has shown that it has taken and will continue to take reasonable steps to protect the information from disclosure; (3) the information is not and has not been reasonably obtainable by the public (other than governmental bodies) by use of legitimate means; (4) no statute requires disclosure of the information; and (5) disclosure of the information is likely to cause substantial harm to the business' competitive position. 40 CFR section 2.208.

position, and claim it as confidential business information (CBI).

In the course of implementing statutes, the Agency may have a need to communicate some or all of the information it collects to the public as the basis for a rulemaking, to its contractors, or in response to requests pursuant to the Freedom of Information Act (FOIA). Information found to be CBI is exempt from disclosure under FOIA. To manage both CBI claims and FOIA requests, EPA has promulgated in 40 CFR Part 2, Subpart B a set of procedures for reviewing CBI claims, releasing information found not to be CBI, and where authorized, disclosing CBI. Subpart B lists the criteria that information must meet in order to be considered CBI, as well as the special handling requirements the Agency must follow when disclosing CBI to authorized representatives.

For RMP requirements that might entail divulging CBI, EPA proposed that a source be required to substantiate a CBI claim to EPA at the time that it makes the claim. Under EPA's Part 2 regulations, a source claiming CBI generally is required to substantiate the claim only when EPA needs to make the information public as part of some proceeding (e.g., a rulemaking) or EPA receives a request from the public (e.g., under the Freedom of Information Act (FOIA)) for the information. In view of the public information function of RMPs and the interest already expressed by members of the public in them, EPA proposed ''up-front substantiation'' of CBI claims to ensure that information not meeting CBI criteria would be made available to the public as soon as possible. This approach of requiring up-front substantiation is the same as that used for trade secret claims filed under the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986.[3]

In addition, EPA proposed that any source claiming CBI submit two versions of its RMP: (1) a redacted (''sanitized''), electronic version, which would become part of RMP*Info, and (2) an unsanitized (unredacted) paper copy of the RMP (see proposed section 68.151(c)). The electronic database of RMPs would contain only the redacted version unless and until EPA ruled against all or part of the source's CBI claim, in keeping with the Part 2 procedures. In this way, the public would have access only to the non-CBI elements of sources' RMPs. EPA further stated that state and local agencies could receive the unredacted RMPs by requesting them from EPA under the Part 2 regulations. Those regulations authorize EPA to provide CBI to an agency having implementation responsibilities under the CAA if the agency either demonstrates that it has the authority under state or local law to compel such information directly from the source or that it will ''provide adequate protection to the interests of affected businesses'' (40 CFR 2.301(h)(3)).

The following sections of this preamble summarize and respond to the comments EPA received on the CBI-related aspects of its proposal. At the outset, however, EPA wants to emphasize that it does not anticipate many CBI claims being made in connection with RMPs. The Agency developed the RMP data elements with the issue of CBI in mind. It sought to define data elements that would provide basic information about a source's risk management program without requiring it to reveal CBI. To have done otherwise would have risked creating RMPs that were largely unavailable to the public. EPA continues to believe that the required RMP data elements will rarely require that a business divulge CBI. The Agency will carefully monitor the CBI claims made. If it appears that the number of claims being made is jeopardizing the public information objective of the chemical accident prevention program, EPA will consider ways of revising RMPs, including further rulemakings or revising the underlying program, to ensure that important health and safety information is available to the public.

2. RMP Data Elements Found Not CBI

Fifteen commenters representing environmental groups and members of the public opposed allowing some or all RMP data to be claimed as CBI in light of the public's interest in the information RMPs will provide. A number of commenters urged EPA not to allow the following RMP data elements (and supporting documents) to be claimed as CBI:

- Mitigation measures considered by the firm in its offsite consequence analysis,
- Major process hazards identified by the firm,
- Process controls in use,
- Mitigation systems in use,
- Monitoring and detection systems in use, and
- Changes since the last hazard review.

In addition, one commenter contended that even chemical identity and quantity should be ineligible for CBI protection, since the requirement to submit an RMP only applies to facilities using a few well-known, extremely hazardous chemicals, and the public's right to know should always outweigh a company's claim to CBI.

Along the same lines, a number of commenters urged EPA to develop a ''corporate sunshine rule'' that would allow confidentiality concerns to be overridden if the protected information is needed by the public and experts to understand and assess safety issues. Another commenter recommended that a business claiming a chemical's identity as CBI should be required to provide the generic name of the chemical and information about its adverse health effects so the public can determine the potential risks.

One commenter argued that some of the RMP data that EPA suggested could reveal CBI, (e.g., release rate), were not ''emission data,'' because the worst case scenario data are theoretical estimates, and do not represent any real emissions, past or present.

Representatives of the chemical and petroleum industries disagreed with EPA's proposal to list the data elements that EPA believed could not reveal CBI in any case. These commenters asserted that EPA could not anticipate all the ways in which information required by a data element might reveal CBI, and accordingly urged the Agency to make

[3] Section 302 of EPCRA (codified in 40 CFR Part 355) requires any facility having more than a threshold planning quantity of an extremely hazardous substance (EHS) to notify its state emergency response commission (SERC) and local emergency planning committee (LEPC) that the facility is subject to emergency planning. The vast majority of toxic substances listed in 40 CFR Section 68.130 were taken from the EHS list. Section 303 of EPCRA requires LEPCs to prepare an emergency response plan for the community that is under their jurisdiction. Section 303 of EPCRA also requires that facilities subject to section 302 shall provide any information required by their LEPC necessary for developing and implementing the emergency plan. Section 304 of EPCRA requires an immediate notification of a release of an EHS or Hazardous Substances listed in 40 CFR Section 302.4 above a reportable quantity to state and local entities. Section 304 also requires a written follow-up which includes among other things, the chemical name, quantity released and any known or anticipated health risks associated with the release. Sections 311 and 312 of EPCRA (codified in 40 CFR Part 370) require facilities that are subject to OSHA Hazard Communication Standard (HCS), to provide information to its SERC, LEPC and local fire department. This information includes the hazards posed by its chemicals, and inventory information, including average daily amount, maximum quantity and general location. Section 313 of EPCRA (codified in 40 CFR Part 372) requires certain facilities that are in specific industries (including chemical manufacturers) and that manufacture, process, or otherwise use a toxic chemical above specified threshold amounts to report, among other things, the annual quantity of the toxic chemical entering each environmental medium. Most facilities covered by CAA 112(r) are covered by one or more of these sections of EPCRA. Section 322 of EPCRA (codified in Part 350) allows facilities to claim only the chemical identity as trade secret.

case-by-case determinations on CBI claims. They also contended that ''emission data'' under section 114(c) does not extend to data on possible, as opposed to actual, emissions, and thus that RMP information concerning potential accidental releases would not qualify as ''emission data,'' which must be made available to the public.

As pointed out above, an important purpose of the chemical accident prevention program required by section 112(r) is to inform the public of the risk of accidents in their communities and the methods sources are employing to reduce such risks. EPA therefore believes that as much RMP data as possible should be available to the public as soon as possible. However, section 112(r)(7)(B)(iii) requires that RMPs be made ''available to the public under section 114(c),'' which provides for protection of trade secret information (other than emission data). Given the statute's direction to protect whatever trade secret information is contained in an RMP, EPA is not authorized to release such information even when the public's need for such information arguably outweighs a business' interest in its confidentiality. The Agency also cannot issue a ''corporate sunshine rule'' that conflicts with existing law requiring EPA (and other agencies) to protect trade secret information.

As explained above (and in more detail in the proposed rule), EPA examined each RMP data element to determine which would require information that might, depending on a business' circumstances, meet the CBI criteria set forth in EPA's regulations implementing section 114(c) and other information-related legal requirements. The point of this exercise was to both protect potential trade secret information and promote the public information purpose of RMPs by identifying which RMP information might reveal CBI in a particular case and by precluding CBI claims for information that could not reveal CBI in any case. EPA presented the results of its analysis and an explanation of why certain data elements could entail the reporting of CBI depending on a business' circumstances and why others could not. No commenter provided any specific examples or explanations that contradicted the Agency's rationale for its determinations of which data elements could or could not result in reporting of CBI.

However, EPA is deleting from the list of 40 CFR Part 68.151(b)(1) the reference to 40 CFR Part 68.160(b)(9), to allow for the possibility of the number of full-time employees at the stationary source to be claimed as CBI. Upon further review, EPA was unable to determine that providing the number of employees at the stationary source could never entail divulging information that could meet the test for CBI set forth in the Agency's comprehensive CBI regulations at 40 CFR Part 2. Therefore, EPA has removed this element from the list of data elements that can not be claimed CBI in Part 68. With this exception, EPA is promulgating the list of RMP data elements for which CBI claims are precluded, as proposed (Section 68.151(b)).

EPA's justifications for its specific CBI findings appear in an appendix to this preamble. A more detailed analysis of all RMP data elements and CBI determinations is available in the docket (see **ADDRESSES**). The Agency continues to find no reasonable basis for anticipating that the listed elements will in any case require a business to reveal CBI that is not ''emission data.'' The information required by each of the listed data elements either fails to meet the criteria for CBI set forth in EPA's CBI regulations at Part 2 or meets the Part 2 definition of ''emission data.'' In many cases, the information is available to the public through other reports filed with EPA, states, or local agencies (e.g., reports required by Emergency Planning and Community Right-to-Know Act (EPCRA) sections 312 and 313 provide general facility identification information and reports of most accidental releases are available through several Federal databases including EPA's Emergency Release Notification System and Accidental Release Information Program databases).

In order to preclude CBI claims for other data elements, the Agency would have to show that the information required by a data element either was ''emission data'' under section 114(c) or could not, under any circumstances, reveal CBI. As explained below, EPA does not believe such a showing can be made for any of the data elements not on the list. Therefore, CBI claims made for information required by data elements not on the list will be evaluated on a case-by-case basis according to the procedures contained in 40 CFR Part 2 (except that substantiation will have to accompany the claims, as discussed below).

The Agency agrees with the commenters who argued that information about potential accidental releases is not ''emission data'' under section 114(c). EPA's existing policy statement (see 56 FR 7042, Feb. 21, 1991) on what information may be considered ''emission data'' was developed to implement sections 110 and 114(a) of the CAA, which the Agency generally invokes when it seeks to gather technical data from a source about its actual emissions to the air. While the policy is not explicitly limited in its scope, EPA believes it would be inappropriate to apply it to RMP data elements concerning hypothetical, as opposed to actual, releases to the air. Under the definition of ''emission data'' contained in Part 2, information is ''emission data'' if it is (1) ''necessary to determine the identity, amount, frequency, concentration, or other characteristics * * * of any emission *which has been emitted* by the source,'' (2) ''necessary to determine the identity, amount, frequency, concentration, or other characteristics * * * of the emissions which, under an applicable standard or limitation, the source *was authorized to emit*;'' or (3) general facility identification information regarding the source which distinguishes it from other sources (40 CFR section 2.301(a)(2)(i) (emphasis added)). Under these criteria, EPA has concluded that only the RMP data elements relating to source-level registration information (sections 68.160(b)(1)–(6), (8)–(13)) and the five-year accident history (section 68.168) are ''emission data.'' Of the RMP data elements, only the five-year accident history involves actual, past emissions to the environment; the other data elements would not, therefore, qualify as ''emission data'' under the first prong of the Part 2 definition. Moreover, the data elements relating to a source's offsite consequence analysis, prevention program and emergency response program do not attempt to identify or otherwise reflect ''authorized'' emissions; the data elements instead reflect the source's *potential* for accidental releases. Accordingly, these data elements would not be ''emission data'' under the second prong of the definition. As for the third prong, some of the source-level data are ''emission data'' because they help identify a source. Most other RMP data elements are reported on a process level and are not generally used to distinguish one source from another.

The Agency believes it is unable to show that the remaining data elements could not, under any circumstances, reveal CBI. EPA continues to believe that it is theoretically possible for the remaining data elements (the elements not listed in section 68.151(b)) to reveal CBI either directly or through reverse engineering, depending on the circumstances of a particular case. At the same time, EPA believes that, in practice, the remaining data elements will rarely reveal CBI. The purpose of

the data in the RMP is for a source to articulate its hazards, and the steps it takes to prevent accidental releases. In general, the kinds of information specifying the source's hazards and risk management program are not likely to be competitively sensitive.

In particular, covered processes at the vast majority of stationary sources subject to the RMP rule are too common and well-known to support a CBI claim for information related to such processes. For example, covered public drinking water and wastewater treatment plants generally use common regulated substances in standard processes (i.e., chlorine used for disinfection). Also, covered processes at many sources involve the storage of regulated substances that the sources sell (e.g., propane, ammonia), so the processes are already public knowledge. Other covered processes involve the use of well-known combinations of regulated substances such as refrigerants. RMP information regarding these types of processes should not include CBI.

Even in the case of unusual or unique processes, it is generally unlikely that RMP information could be used to reveal CBI through reverse engineering. To begin with, required RMP information is general enough that it is unlikely to provide a basis for reverse engineering a process. For example, a source must report in its RMP whether overpressurization is a hazard and whether relief valves are used to control pressure, but it is not required to report information on actual pressures used, flow rates, chemical composition, or the configuration of equipment. Moreover, while RMP information may provide some data that could be used in an attempt to discover CBI information through reverse engineering, it typically will not provide enough data for such an attempt to succeed, because the source is not required to provide a detailed description of the chemistry or production volume of the process. Businesses claiming CBI based on the threat of reverse engineering will be required to show how reverse engineering could in fact succeed with the information that the RMP would otherwise make public, together with other publicly available information. A business unable to do so will have its claim denied.

While EPA is requiring that a source claiming a chemical's identity as CBI provide the generic category or class name of the chemical, the RMP does not require sources to provide information about the adverse health effects of the chemical. Chemicals were included in the section 112(r) program because they are acutely toxic or flammable; health effects related to chronic exposure were not considered because they are addressed by other rules (see List Rule at 59 FR 4481). EPA believes that generic names are sufficient to indicate the general health concerns from short-term exposures. Should a member of the public desire more information, EPA encourages the use of EPCRA section 322(h), which provides a means for the public to obtain information about the adverse health effects of a chemical covered by that statute, where the chemical's identity has been claimed a trade secret. The public will find this provision of EPCRA useful because most sources subject to the RMP rule are also subject to EPCRA.

3. Up-front Substantiation of CBI Claims

One commenter supported the proposal to require CBI claims to be substantiated at the time they are made. Another commenter stated that there is no compelling need to require up-front substantiation. The commenter stated that up-front substantiation would place a sizable burden on both industry and EPA and would be in direct conflict with the Paperwork Reduction Act. The commenter claimed that, with the exception of EPCRA, where a submitter is allowed to claim only one data element—chemical identity—as CBI, it is EPA's standard procedure not to require submitters to provide written substantiation unless a record has been requested. Further, the commenter stated that the Agency has not shown any reason for departing from that procedure in this rule.

EPA believes that requiring up-front substantiation of CBI claims made for RMP data has ample precedent, is fully consistent with the Agency's CBI regulations and the Paperwork Reduction Act, and is critical to achieving the public information purposes of the accident prevention program. EPCRA is not the only example of an up-front substantiation requirement. The Agency has also required up-front substantiation in several other regulatory contexts, including those where, like here, providing the public with health and safety information is an important objective [see e.g., 40 CFR section 725.94, 40 CFR section 710.38, and 40 CFR section 720.85 (regulations promulgated under Toxic Substances Control Act)].

Even under its general CBI regulations, the Agency need not wait for a request to release data to require businesses to substantiate their CBI claims. When EPA expects to get a request to release data claimed confidential, the Agency is to initiate ''at the earliest practicable time'' the regulations'' procedures for making CBI determinations (40 CFR section 2.204(a)(3)). Those procedures include calling on affected businesses to substantiate their claims (see 40 CFR section 2.204(e)). Since state and local agencies, environmental groups, academics and others have already indicated their interest in obtaining complete RMP data (see comments received on this rulemaking, available in the DOCKET), EPA fully expects to get requests for RMP data claimed CBI. Consequently, even if EPA did not establish an up-front substantiation requirement in this rule, under the Agency's general CBI regulations it could require businesses claiming CBI for RMP data to substantiate their claims without first receiving a request to release the data. Establishing an up-front requirement in this rule will simply allow EPA to obtain substantiation of CBI claims without having to request it in every instance.

Requiring up-front substantiation for RMP CBI claims is consistent with the Paperwork Reduction Act. Any burden posed by this requirement has already been evaluated as part of the Information Collection Request (ICR) associated with this rulemaking. EPA disagrees that up-front substantiation will impose a substantial or undue burden. As noted above, under EPA's current CBI regulations, a source claiming CBI could and probably would be required to provide substantiation for its claim, in view of the public interest in RMP information. A requirement to submit substantiation with the claim should thus make little difference to the source. Moreover, a source presumably does not make any claim of CBI lightly. Before filing a CBI claim, the source must first determine whether the claim meets the criteria specified in 40 CFR section 2.208. Up-front substantiation only requires that the source document that determination at the time it files its claim. Since it would be sensible for a source to document the basis of its CBI claim for its own purposes (e.g., in the case of a request for substantiation), EPA expects that many sources already prepare documentation for their CBI claims by the time they file them. Also, submitting substantiation at the time of claim reduces any additional burden later, such as reviewing the Agency's request, retrieving the relevant information, etc. Therefore, providing documentation at the time of filing should impose no additional burden.

In view of the public information function of RMPs, EPA believes that up-front substantiation is clearly warranted

for CBI claims made for RMP data. Up-front substantiation will ensure that sources filing claims have carefully considered whether the data they seek to protect in fact meets the criteria for protection. Given the public interest already expressed in RMP data, EPA expects that CBI claims for RMP data will have to be substantiated at some point. Up-front substantiation will save EPA and the public time and resources that would otherwise be required to respond to each CBI claim with a request for substantiation. EPA is therefore promulgating the up-front substantiation requirement as proposed.

4. State and Local Agency Access to Unredacted RMPs

One commenter objected to EPA's statement in the proposal that it would provide unredacted (unsanitized) versions of the RMPs to a state and local agency only upon meeting the criteria required by the EPA's CBI rules at 40 CFR Part 2.[4] The commenter, an association of fire fighters, argued that the Agency's position was inconsistent with CAA section 112(r)(7)(B)(iii), which provides that RMPs ''shall . . . be submitted to the Chemical Safety and Hazard Investigation Board [a federal agency], to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source . . . .'' The commenter claimed that this provision entitles the specified entities, including local fire departments, to receive unredacted RMPs without having to make the showings required by EPA's CBI regulations.

EPA is not resolving this issue today. The Agency has reviewed the relevant statutory text and legislative history, as well as analogous provisions of EPCRA, and believes that arguments can be made on both sides of this issue. While section 112(r)(7)(B)(iii) calls for RMPs to be submitted to states, local entities and the Board, it is not clear that Congress intended CBI contained in RMPs to be provided to those entities without ensuring appropriate protection of CBI. At stake in resolving this issue are two important interests—local responders' interest in unrestricted access to information that may be critical to their safety and effectiveness in responding to emergencies and businesses' interest in protecting sensitive information from their competitors. Before making a final decision on this issue, EPA believes it would benefit from further public input. Because EPA stated that it would not provide unredacted RMPs to states and local agencies, those interested in protecting CBI may not have considered it necessary to lay out the legal and policy arguments supporting their views. State and local agencies, many of which in the past have expressed concern about the potential administrative burden of receiving RMPs directly from sources, also did not comment on the issue. EPA has therefore decided to accept additional comments on this issue alone. (Additional comments on any other issues addressed in this rulemaking will not be considered or addressed, since the Agency is taking final action on them here.) Comments should be mailed to the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. In the meantime, unredacted RMPs will be available to states, local agencies and the Board under the terms of the Agency's existing CBI regulations at 40 CFR section 2.301(h)(3) (for state and local agencies) and 40 CFR section 2.209(c) (for the Board).

Section 112(r)(7)(B)(iii) states in relevant part:

> [RMPs] shall also be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source, and shall be available to the public under section 114(c) of [the Act].

Section 114(c) provides for the public availability of any information obtained by EPA under the Clean Air Act, except for information (other than emissions data) that would divulge trade secrets.

From a public policy perspective, there are some obvious advantages to reading section 112(r)(7)(B)(iii) in the way the commenter suggests. Local fire departments and other local responders are typically the first to arrive at the scene of chemical accidents in their jurisdictions. RMP information that first responders could find helpful include chemical identity, chemical quantity, and potential source of an accident. Under EPA's regulations, however, any or all of this information could be claimed CBI. In addition, state and local authorities are often in the best position to assess the adequacy of a source's risk management program and to initiate a dialogue with the facility should its RMP indicate a need for improvement. However, state and local authorities' ability to provide this contribution to community safety would be impeded to the extent a source claimed key information as CBI. While states and local agencies may obtain information claimed CBI under EPA's CBI regulations (assuming they can make the requisite showing), the time required to obtain the necessary authority or findings from state or local and EPA officials could be substantial.

At the same time, there are also public policy reasons for ensuring protection of CBI contained in RMPs. Congress has in many statutes, including the CAA and EPCRA, provided for the protection of trade secrets to safeguard the competitive position of private businesses. Businesses' ability to maintain the confidentiality of trade secrets helps ensure competition in the U.S. economy and U.S. businesses' competitive position in the world economy. Protection of trade secrets also encourages innovation, which is an important contributor to economic growth.

A reading of section 112(r)(7)(B)(iii) that demands submission of unredacted RMPs to states, local entities, and the Board may lead to widespread public access to information claimed CBI. For purposes of section 112(r)(7)(B)(iii), ''any local agency or entity having responsibility for planning for or responding to accidental releases'' includes local emergency planning committees (LEPCs) established under EPCRA. Section 301(c) of EPCRA provides that LEPCs must include representatives from both the public and private sectors, including the media and facilities subject to EPCRA requirements. Submission of an unredacted RMP to an LEPC would thus entail release of CBI to some members of the public and potentially even competitors.[5] More generally, local agencies may not be subject to any legal requirement to protect CBI and may lack the knowledge and resources to address CBI claims. Arguably, it would be

[4] Section 2.301(h)(3) provides that a State or local government may obtain CBI from EPA under two circumstances: (1) it provides EPA a written opinion from its chief legal officer or counsel stating that the State or local agency has the authority under applicable State or local law to compel the business to disclose the information directly; or (2) the businesses whose information is disclosed are informed and the State or local government has shown to a EPA legal office's satisfaction that its disclosure of the information will be governed by State or local law and by ''procedures which will provide adequate protection to the interests of affected businesses.''

[5] EPA does not believe that submission of an RMP containing CBI to the statutorily specified entities would defeat a source's ability to claim information as CBI for purposes of section 114(c) and EPA's CBI regulations. Under those regulations, information that has been released to the public cannot be claimed CBI. Release of a RMP containing CBI to the entities specified by section 112(r)(7)(B)(iii), including LEPCs, would not constitute such a release. EPCRA similarly provides that disclosure of trade secret information to an LEPC does not prevent a facility from claiming the information confidential (see EPCRA section 322(b)(1)).

anomalous for Congress to require EPA to protect trade secrets contained in RMPs against release to the public only to risk divulging the same information by requiring submission of unredacted RMPs to a broad range of entities that may not have the need or capacity to protect CBI themselves. It would also appear inconsistent with the approach Congress took to protecting trade secrets in EPCRA, where Congress did not provide for release of trade secret chemical identity information to local agencies.

Relatedly, many state and local agencies objected to EPA's original proposal in the RMP proposed rulemaking (58 FR 54190, October 20, 1993) that sources submit RMPs directly to States, local agencies, and the Board, as well as EPA. They noted that managing the information contained in RMPs would be difficult without a significant expenditure of typically scarce resources. Many states and local agencies thus supported EPA's final decision to develop an electronic submission and distribution system that would allow covered sources to submit their RMPs to EPA, which would make them available to states, local agencies, and the Board, as well as the general public. If the statute is read to require submission of RMP information to state and local agencies, and the Board, to the extent it is claimed as CBI, the resource concerns raised by State and local agencies commenters likely would be raised to that extent again.

EPA also questions the extent to which states, local entities and the Board would be disadvantaged if they did not receive unredacted RMPs without making the showings required by EPA's CBI regulations. As noted earlier, EPA expects that relatively little RMP information will be CBI. RMP data will only rarely contain CBI, and the up-front substantiation will minimize the number of CBI claims it receives by ensuring that sources carefully examine the basis for any claims before submitting them. Consequently, the Agency believes that a state or local agency will rarely confront a redacted RMP.

Moreover, EPCRA provides state and local entities, including fire departments, with access to much of the pertinent data already. EPA's regulations under EPCRA cover a universe of sources and chemicals that includes most, if not all, the sources and substances covered by the RMP rule. The EPCRA regulations require reporting of some of the same information required by the RMP rule, including chemical identity. EPCRA withholds from public release only chemical identities that are trade secrets and the location of specific chemicals where a facility so requests. In practice, relatively few facilities have requested trade secret protection for a chemical's identity.

Additionally, EPCRA section 312(f) empowers local fire departments to conduct on-site inspections at facilities subject to EPCRA section 312(a) and obtain information on chemical location. Most facilities subject to EPCRA section 312(a) are also subject to the RMP rule. On-site inspections could also provide information on hazards and mitigation measures. In addition, EPCRA section 303(d)(3) authorizes LEPCs, which include representatives of fire departments, to request from facilities covered by EPCRA section 302(b) such information as may be necessary to prepare an emergency response plan and to include such information in the plan as appropriate. Some sources subject to the RMP rule are also covered by EPCRA section 302(b).

In light of the points made above, EPA questions whether section 112(r)(7)(B)(iii) should be interpreted to require submission of unredacted RMPs containing CBI to the statutorily specified entities without provision being made for protecting CBI. EPA invites the public to provide any additional comment or information relevant to interpreting the submission requirement of section 112(r)(7)(B)(iii).

5. Other CBI Issues

Two commenters disagreed with EPA's statement that a source cannot make a CBI claim for information available to the public under EPCRA or another statute. They claimed that a request for information under EPCRA cannot supersede the CBI provisions applicable to data collected under the authorities of the CAA or Toxic Substances Control Act or any other regulatory program.

EPA does not agree with this comment. Claims of CBI may not be upheld if the information is properly obtainable or made public under other statutes or authorities. For example, chemical quantity on site is available to the public under EPCRA Tier II reporting. In addition, under EPCRA section 303(d)(3), LEPCs have the authority to request any information they need to develop and implement community emergency response plans. If information obtained through such a request is included in the community plan, it will become available to the public under EPCRA section 324. Information obtainable or made public under EPCRA would not be eligible for CBI protection under 40 CFR section 2.208, which specifically excludes from CBI protection information already available to the public. Filing a CBI claim under the CAA or another statute does not protect information if it is legitimately requested and made public under other federal, state, or local law. Information obtainable or made public (through proper means) under existing statutes cannot be CBI under EPA's CBI regulations.

6. Actions Taken

In summary, the Agency is adding two sections (68.151 and 68.152) to Part 68. Section 68.151 sets forth the procedures for a source to follow when asserting a CBI claim and lists data elements that can not be claimed as CBI. This section also requires sources filing CBI claims to provide the information claimed confidential, in a format to be specified by EPA, instead of the unsanitized paper copy of the RMP as discussed in the proposal. Section 68.152 sets forth the procedures for substantiating CBI claims. Sources claiming CBI are required to submit their substantiation of their claims at the same time they submit their RMPs.

E. Other Issues

Two commenters asked why EPA had proposed to drop the phrase ''if used'' in section 68.165(b)(3) where the rule asks for the basis of the offsite consequence analysis results. EPA has decided to retain the language, since sources will have a choice of using either EPA's RMP guidance documents or a model. Where a model is used, the source will have to provide the name of the model. These commenters also asked why EPA proposed to drop (alternative releases only) from section 68.165(b)(13). EPA has also decided to retain the parenthetical language.

One commenter stated that EPA should allow sources to submit RMPs either electronically or in hard copy. The commenter stated that not allowing hard copy submissions will be burdensome on many sources who have never filed an electronic report to the government before. As stated in the April proposal, EPA is allowing sources to submit RMPs on paper. Paper submitters are asked to fill out a simple paper form to tell EPA why they are unable to file electronically.

Two commenters objected to placing offsite consequence analysis (OCA) data, particularly worst-case release scenarios, on the Internet, for security reasons. Issues related to public access to OCA data are beyond the scope of this rulemaking, as this action is limited to the issues discussed above. It does

not include decisions regarding how the public will access the OCA data elements of the RMPs. Statements in the preamble about EPA providing public access to RMP data are not intended to address which portions of the RMP data will be electronically available.

A number of commenters were concerned about a statement EPA made in the preamble to the proposed rule regarding the definition of ''process'', and stated that EPA's interpretation of ''process'' is not consistent with the interpretation the Occupational Safety and Health Administration (OSHA) uses in its process safety management (PSM) standard (29 CFR 1910.119). In this rulemaking, EPA did not propose any changes to the definition of process nor is it adopting any changes to the definition. As EPA stated in the preamble to the final RMP rule, it will interpret ''process'' consistently with OSHA's interpretation of that term (29 CFR 1910.119). Therefore, if a source is subject to the PSM rule, the limits of its process(es) for purposes of OSHA PSM will be the limits of its process(es) for purposes of RMP (except in cases involving atmospheric storage tanks containing flammable regulated substances, which are exempt from PSM but not RMP). If a source is not covered by OSHA PSM and is complicated from an engineering perspective, it should consider contacting its implementing agency for advice on determining process boundaries. EPA and OSHA are coordinating the agencies' approach to common issues, such as the interpretation of ''process''.

F. Technical Corrections

When Part 68 was promulgated, the text of section 68.79(a), was drawn from the OSHA PSM standard, but it was not revised to reflect the different structure of EPA's rule. The OSHA PSM standard is contained in a single section; EPA's Program 3 prevention program is contained in a subpart. Rather than referencing ''this section,'' the paragraph should have referenced the ''subpart.'' Therefore, as proposed, EPA is changing ''section'' to ''subpart'' in section 68.79(a).

Under section 68.180(b), EPA intended that all covered sources report the name and telephone number of the agency with which they coordinate emergency response activities, even if the source is not required to have an emergency response plan. However, the rule refers only to coordinating the emergency plan. In this action, EPA is revising this section to refer to the local agency with which emergency response activities and the emergency response plan is coordinated.

IV. Section-by-Section Discussion of the Final Rule

In Section 68.3, Definitions, the definition of SIC is removed and replaced by the definition of NAICS.

Section 68.10, Applicability, is revised to replace the SIC codes with NAICS codes, as discussed above.

Section 68.42, Five-Year Accident History, is revised to require the percentage concentration by weight of regulated toxic substances released in a liquid mixture and the five- or six-digit NAICS code that most closely corresponds to the process that had the release. The phrase ''five- or six-digit'' has been added before the NAICS code to clarify the level of detail required for NAICS code reporting.

Section 68.79, Compliance Audits, the word ''section'' in paragraph (a) is replaced by ''subpart.''

Section 68.150, Submission, is revised by adding a paragraph to state that procedures for asserting CBI claims and determining the sufficiency of such claims are provided in new Sections 68.151 and 68.152.

Section 68.151 is added to set forth the procedures to assert a CBI claim and list data elements that may not be claimed as CBI, as discussed above.

Section 68.152 is added to set forth procedures for substantiating CBI claims, as proposed.

Section 68.160, Registration, is revised by adding the requirements to report the method and description of latitude and longitude, replacing SIC codes with five- or six-digit NAICS codes, and adding the requirement to report Title V permit number, when applicable. This section is also revised to include optional data elements. The phrase ''five- or six-digit'' has been added before NAICS code to clarify the level of detail required for NAICS code reporting.

Section 68.165, Offsite Consequence Analysis, is revised by adding the requirement that the percentage weight of a regulated toxic substance in a liquid mixture be reported.

Section 68.170, Prevention Program/Program 2, is revised to replace SIC codes with five- or six-digit NAICS codes, as is Section 68.175.

Section 68.180, Emergency Response Program, is revised to clarify that paragraph (b) covers both the coordination of response activities and plans, as proposed.

V. Judicial Review

The proposed rule amending the accidental release prevention requirements; under section 112(r)(7) was proposed in the **Federal Register** on April 17, 1998. This **Federal Register** action announces EPA's final decision on the amendments. Under section 307(b)(1) of the CAA, judicial review of this action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before March 8, 1999. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

VI. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, because it allows members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.)

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under Docket No. A–98–08 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document.

B. Executive Order 12866

Under Executive Order (E.O.) 12866, [58 FR 51,735 (October 4, 1993)], the Agency must determine whether the regulatory action is ''significant'', and therefore subject to OMB review and the requirements of the E.O. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

C. 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 to the development of regulatory proposals containing significant unfunded mandates.''

EPA has concluded that this rule may create a nominal mandate on State, local or tribal governments and that the Federal government will not provide the funds necessary to pay the direct costs incurred by these governments in complying with the mandate. Specifically, some public entities may be covered sources and will have to add the new data elements to their RMP. In developing this rule, EPA consulted with state, local and tribal governments to enable them to provide meaningful and timely input in the development of this rule. Even though this rule revises Part 68 in a way that does not significantly change the burden imposed by the underlying rule, EPA has taken efforts to involve state and local entities in this regulatory effort. Specifically, much of the rule responds to issues raised by the Electronic Submission Workgroup discussed above, which includes State and local government stakeholders. In addition, EPA has recently conducted seminars with tribal governments; however, there were no concerns raised on any issues that are covered in this rule. EPA discussed the need for issuing this regulation in sections II and III in this preamble. Also, EPA provided OMB with copies of the comments to the proposed rule.

D. Executive Order 13045

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 final rule is not subject to the E.O. 13045 because it is not ''economically significant'' as defined in E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

E. 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 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. Two of the amendments made by this rule, the addition of RMP data elements and the conversion of SIC codes to NAICS codes, impose only minimal burden on any sources that may be owned or operated by tribal governments, such as drinking water and waste water treatment systems. The third amendment made by this rule addresses the procedures for submission of confidential business information in the RMP. The sources that are mentioned above handle chemicals that are known to public (e.g., chlorine for use of disinfection, propane used for fuel, etc.). EPA does not, therefore, expect RMP information on these types of processes to include CBI, so any costs related to CBI will not fall on Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

Notwithstanding the non-applicability of E. O. 13084, EPA has recently conducted seminars with the tribal governments. However, there were no concerns raised on any issues that are covered in this rule.

F. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this action will not have a significant economic impact on a substantial number of small entities. Two of the amendments made by this rule, the addition of RMP data elements and the conversion of SIC codes to NAICS codes, impose only minimal burden on small entities. Moreover, those small businesses that claim CBI when submitting the RMP will not face any costs beyond those imposed by the existing CBI regulations. Even considering the costs of CBI substantiation, however, there is no significant economic impact on a substantial number of small entities. EPA estimates that very few small entities (approximately 500) will claim CBI and that these few entities represent a small fraction of the small entities (less than 5 percent) affected by the RMP rule. Finally, EPA estimates that those small businesses filing CBI will experience a cost which is significantly less than one percent of their annual sales. For a more detailed analysis of the

small entity impacts of CBI submission, see Document Number, IV-B–02, available in the docket for this rulemaking (see **ADDRESSES** section).

G. Paperwork Reduction

1. General

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1656.05) and a copy may be obtained from Sandy Farmer, by mail at Office of Policy, Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St, SW, Washington, DC 20460, by e-mail at farmer.sandy@epamail.epa.gov or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The submission of the RMP is mandated by section 112(r)(7) of the CAA and demonstrates compliance with Part 68 consistent with section 114(c) of the CAA. The information collected also will be made available to state and local governments and the public to enhance their preparedness, response, and prevention activities. Certain information in the RMP may be claimed as confidential business information under 40 CFR Part 2 and Part 68.

This rule will impose very little burden on affected sources. First, EPA estimates that the new data elements will require only a nominal burden, .25 hours for a typical source, because latitude and longitude method and description will be selected from a list of options, the Title V permit number is available to any source to which Title V applies, and the percentage weight of a toxic substance in a liquid mixture is usually provided by the supplier of the mixture. Second, the NAICS code provision is simply a change from one code to another.[6] Third, as discussed above in the preamble, EPA believes that the CBI provisions of this rule will add no additional burden beyond what sources otherwise would face in complying with the CBI rules in 40 CFR Part 2. The Agency has calculated the burden of substantiations made for purposes of this rule below.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and system for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

2. CBI Burden

In the Notice of Proposed Rulemaking for these amendments, EPA proposed to amend existing 40 CFR Part 68 to add two sections which would clarify the procedures for submitting RMPs that contain confidential business information (CBI). As proposed, CBI would be handled in much the same way as it presently is under other EPA programs, except that EPA would require sources claiming CBI to submit documentation substantiating their CBI claims at the time such claims were made and EPA also would not permit CBI claims for certain data elements which clearly are not CBI. Aside from these procedural changes, however, the proposed rule was substantively identical to the existing rules governing the substantiation of CBI claims, presently codified in 40 CFR Part 2.

At the time it proposed these amendments, EPA estimated the public reporting burden for CBI claims to be 15 hours for chemical manufacturers with Program 3 processes, the only kinds of facilities that EPA expects to be able to claim CBI for any RMP data elements. This estimate was premised upon EPA's assessment that it would require 8.5 hours per claim to develop and submit the CBI substantiation and 6.5 hours to complete an unsanitized version of the RMP, for a total of 15 hours. EPA also estimated that approximately 20 percent of the 4000 chemical manufacturers (out of 64,200 stationary sources estimated to be covered by the RMP rule) may file CBI claims (800 sources). The 800 sources represent a conservative projection based on the Agency's experience under EPCRA program. Consequently, the total annual public reporting burden for filing CBI claims was estimated to be approximately 12,000 hours over three years (800 facilities multiplied by an average burden of 15 hours), or an annual burden of 4,000 hours (Information Collection Request No. 1656.04).

a. Comment received. EPA received one comment on the ICR developed for the proposed rule, opposing up-front substantiation of any CBI claims. The commenter stated that ''[t]his is a major departure from standard EPA procedure, and would impose a substantial and unjustified burden for several years.'' The commenter further added that up-front substantiation would significantly increase the burden of this rule, and that up-front substantiation unnecessarily increases the volume and potential loss of CBI documents. The commenter also stated that the estimate of 15 hours for chemical manufacturers ''seems unreasonably low,'' and cited the EPA burden estimate of 27.7 to 33.2 hours per claim (with an average of 28.8) under the trade secret provisions of EPCRA.

In the preamble to the proposed rule, EPA estimated that 20 percent of the 4,000 chemical manufacturers will file a CBI claim. The commenter contends that ''[t]he EPA analysis * * * excludes facilities in other industries that will need to file CBI claims.''

Finally, the commenter stated that claiming multiple data elements as CBI will increase reporting burden.

b. EPA response. Burden Estimates: EPA disagrees with these comments. As pointed out above, the requirement to submit up-front substantiation of CBI claims imposes no additional burden. In addition, the total burden of the CBI provisions of this rule are not understated. EPA has re-examined its analysis in light of the commenter's concerns and has determined—contrary to the commenter's claim—that its initial estimate of the total burden associated with preparing and claiming CBI was likely too conservative. As explained below, the Agency's best available information indicates that the process of documenting and submitting a claim of CBI should impose a burden of approximately 9.5 hours per CBI claimant.

First, EPA believes that the requirement to submit, at the time a source claims information as CBI,

[6] EPA intends to provide several outreach mechanisms to assist sources in identifying their new NAICS code. RMP*Submit will provide a ''pick list'' that will make it easier for sources to find the appropriate code. Also, selected NAICS codes are included in the General Guidance for Risk Management Programs (July 1998) and in the industry-specific guidance documents that EPA is developing. EPA will also utilize the Emergency Planning and Community Right-to-Know Hotline at 800–424–9346 (or 703–412–9810) to assist sources in determining the source's NAICS codes.

substantiation demonstrating that the material truly is CBI imposes no burden on sources beyond that which presently exists under EPA's CBI regulations in Part 2. In order to decide whether they might properly claim CBI for a given piece of information, a source must determine if the criteria stated in section 2.208 of 40 CFR Part 2 are satisfied. Naturally, a source goes through this process before a CBI claim is made. EPA agrees that most programs do not require the information that forms the basis for the substantiation to be submitted at the time of the claim; however, a facility must still determine whether or not a claim can be substantiated. Because existing rules require sources to formulate a legitimate basis for claiming CBI, even if those rules do not require immediate documentation, and because the Agency fully expects requests for RMP information which will necessitate sources' submitting such documentation, EPA believes that up-front submission will not increase the burden of the regulation.

Second, in response to the commenter's claim that the Agency had underestimated the total burden associated with CBI claims, EPA undertook a review of recent information collection requests (ICRs) covering data similar to that required to be submitted in an RMP. Initially, EPA examined the ICR prepared for Part 2 itself (ICR No. 1665.02, OMB Control No. 2020–0003). Under an analysis contained in the Statement of Support for the ICR, the Agency estimated that it takes approximately 9.4 hours to substantiate claims of CBI, prepare documentation, and submit such documentation to EPA. Next, the Agency reviewed a survey conducted by the Agency (under Office of Management and Budget clearance #2070–0034), to present the average burden associated with indicating confidential business information claims for certain data elements under the proposed inventory update rule (IUR) amendment under TSCA section 8. This survey specifically asked affected industry how long it would take to prepare CBI claims for two data elements—chemical identity and production volume range information. Part 68 also requires similar information (e.g., chemical identity and maximum quantity in a process) to be included in a source's RMP and, indeed, EPA anticipates that they will be the data elements most likely to be claimed CBI. The average burden estimates for chemical identity were between 1.82 and 3.13 hours, and the average burden estimates for production volume in ranges were between 0.87 and 2.08 hours. Thus, assuming that the average source claims both chemical identity and the maximum quantity in a process as CBI, a conservative estimate for the reporting burden would be 5.21 hours. Finally, EPA examined the burden estimate upon which it relied at proposal. That estimate predicted that the average CBI claim would take 15 hours, of which 8.5 would be developing and submitting the CBI claim, and 6.5 would be completing an unsanitized version of the RMP. In view of EPA's current plan not to require a source claiming CBI to submit a full, unsanitized RMP, but instead to submit only the particular elements claimed as CBI, the Agency expects the latter burden to decrease to 1 hour, for a total burden of 9.5 hours.

In light of its extensive research of the burden hours involved in preparing and submitting CBI claims, EPA believes that the total burden estimate was not understated in the April proposal. Rather, other ICRs and the ICR proposal, combined with the changes to the method of documenting CBI claims, indicate that a burden estimate between 5.21 and 9.5 hours is appropriate for this final rule. EPA has selected the most conservative of these, 9.5 hours, in its ICR for this final rule.

EPA rejected one ICR's burden estimate as being inapplicable to the present rulemaking. Although the commenter urged the Agency to adopt the estimate associated with trade secret claims under EPCRA (28 hours), EPA believes that the estimates discussed above are more accurate for several reasons. First, the EPCRA figures are based upon a survey with a very small sample size, as compared to the TSCA survey cited previously. Second, most (if not all) of the facilities submitting RMPs are likely to already be reporting under sections 311 and 312 or section 313 of EPCRA, and many of the manufacturers submitting an RMP are subject to TSCA reporting requirements; thus, most sources likely to claim CBI for an RMP data element will have already done some analysis of whether or not such information would reveal legitimately confidential matter.

Other Facilities Can Claim CBI: The Agency does not agree with the commenter's claim that facilities other than chemical manufacturers might be expected to claim CBI for information contained in their RMPs. The other industries affected by the RMP rule (e.g., propane retailers, publicly owned treatment works) will not be disclosing in the RMP information that is likely to cause substantial harm to the business's competitive position. For example, covered public drinking water and wastewater treatment plants generally use common regulated substances in standard processes (i.e., chlorine used for disinfection). Also, covered processes at many sources involve the storage of regulated substances that the sources sell (e.g., propane, ammonia), so the processes are already public knowledge. Other covered processes involve the use of well-known combinations of regulated substances such as refrigerants. Therefore, it is not likely that these businesses would claim information as CBI.

As a point of comparison, EPA notes that of the 869,000 facilities that are estimated to be required to report under sections 311 and 312 of EPCRA, approximately 58 facilities have submitted trade secret claims for under those sections. For this reason, EPA believes the estimate of 800 sources may, in fact, be an overestimate of the number of sources claiming CBI.

Reporting Multiple Data Elements: The Agency disagrees with the commenters assertion that it has underestimated the reporting burden on sources' claiming multiple data elements as CBI. The burden figures stated above are based on the Agency's estimates of the average number of data elements that a typical source will likely claim CBI.

Public reporting of the new RMP data elements is estimated to require an average of .25 hours for all sources (64,200 sources) and substantiating CBI claims is estimated to take approximately 9.5 hours for certain chemical manufacturing sources (800 sources). The aggregate increase in burden over that estimated in the previous Information Collection Request (ICR) for part 68 is estimated to be about 23,650 hours over three years, or an annual burden of 7,883 hours for the three years covered by the ICR.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205

of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA has determined that the total nationwide capital cost for these rule amendments is zero and the annual nationwide cost for these amendments is less than $1 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Act.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are unlikely to claim information confidential, because sources owned or operated by these entities (e.g., drinking water and waste water treatment systems), handle chemicals that are known to public. The new data elements and the conversion of SIC codes to NAICS codes impose only minimal burden on these entities.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub L. 104–113, section 12(d)(15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 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 action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective February 5, 1999.

APPENDIX TO PREAMBLE—DATA ELEMENTS THAT MAY NOT BE CLAIMED AS CBI

Rule element	Comment
68.160(b)(1) Stationary source name, street, city, county, state, zip code, latitude, and longitude, method for obtaining latitude and longitude, and description of location that latitude and longitude represent.	This information is filed with EPA and other agencies under other regulations and is made available to the public and, therefore, does not meet the criteria for CBI claims. It is also available in business and other directories.
68.160(b)(2) Stationary source Dun and Bradstreet number.	
68.160(b)(3) Name and Dun and Bradstreet number of the corporate parent company.	
68.160(b)(4) The name, telephone number, and mailing address of the owner/operator.	
68.160(b)(5) The name and title of the person or position with overall responsibility for RMP elements and implementation.	This information provides no information that would affect a source's competitive position.
68.160(b)(6) The name, title, telephone number, and 24-hour telephone number of the emergency contact.	This information is filed with state and local agencies under EPCRA and is made available to the public and, therefore, does not meet the criteria for CBI claims.
68.160(b)(7) Program level and NAICS code of the process.	This information provides no information that would affect a source's competitive position.
68.160(b)(8) The stationary source EPA identifier.	This information provides no information that would affect a source's competitive position.
68.160(b)(10) Whether the stationary source is subject to 29 CFR 1910.119.	This information provides no information that would affect a source's competitive position.
68.160(b)(11) Whether the stationary source is subject to 40 CFR Part 355.	Sources are required to notify the state and local agencies if they are subject to this rule; this information is available to the public and, therefore, does not meet the criteria for CBI claims.
68.160(b)(12) If the stationary source has a CAA Title V operating permit, the permit number.	This information will be known to state and federal air agencies and is available to the public and, therefore, does not meet the criteria for CBI claims.

APPENDIX TO PREAMBLE—DATA ELEMENTS THAT MAY NOT BE CLAIMED AS CBI—Continued

Rule element	Comment
68.160(b)(13) The date of the last safety inspection and the identity of the inspecting entity.	This information provides no information that would affect a source's competitive position.
68.165(b)(4) Basis of the results (give model name if used).	Without the chemical name and quantity, this reveals no business information.
68.165(b)(9) Wind speed and atmospheric stability class (toxics only).	This information provides no information that would affect a source's competitive position.
68.165(b)(10) Topography (toxics only)	Without the chemical name and quantity, this reveals no business information.
68.165(b)(11) Distance to an endpoint	By itself, this information provides no confidential information. Other elements that would reveal chemical identity or quantity may be claimed as CBI.
68.165(b)(12) Public and environmental receptors within the distance.	By itself, this information provides no confidential information. Other elements that would reveal chemical identity or quantity may be claimed as CBI.
68.168 Five-year accident history	Sources are required to report most of these releases and information (chemical released, quantity, impacts) to the federal, state, and local agencies under CERCLA and EPCRA; these data are available to the public and, therefore, do not meet the criteria for CBI claims. Much of this information is also available from the public media.
68.170(b), (d), (e)(1), and (f)–(k) 68.175(b), (d), (e)(1), and (f)–(p) NAICS code, prevention program compliance dates and information.	NAICS codes and the prevention program compliance dates and information provide no information that would affect a source's competitive position.
68.180 Emergency response program	This information provides no information that would affect a source's competitive position.

List of Subjects in 40 CFR Part 68

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 29, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, subchapter C, part 68 of the Code of Federal Regulations is amended to read as follows:

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

1. The authority citation for Part 68 continues to read as follows:

Authority: 42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f.

2. Section 68.3 is amended by removing the definition of SIC and by adding in alphabetical order the definition for NAICS to read as follows:

§ 68.3 Definitions.

* * * * *

NAICS means North American Industry Classification System.

* * * * *

3. Section 68.10 is amended by revising paragraph (d)(1) to read as follows:

§ 68.10 Applicability.

* * * * *

(d) * * *

(1) The process is in NAICS code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or

* * * * *

4. Section 68.42 is amended by revising paragraph (b)(3), redesignating paragraphs (b)(4) through (b)(10) as paragraphs (b)(5) through (b)(11) and by adding a new paragraph (b)(4) to read as follows:

§ 68.42 Five-year accident history.

* * * * *

(b) * * *

(3) Estimated quantity released in pounds and, for mixtures containing regulated toxic substances, percentage concentration by weight of the released regulated toxic substance in the liquid mixture;

(4) Five- or six-digit NAICS code that most closely corresponds to the process;

* * * * *

5. Section 68.79 is amended by revising paragraph (a) to read as follows:

§ . 68.79 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.

* * * * *

6. Section 68.150 is amended by adding paragraph (e) to read as follows:

§ 68.150 Submission.

* * * * *

(e) Procedures for asserting that information submitted in the RMP is entitled to protection as confidential business information are set forth in §§ 68.151 and 68.152.

7. Section 68.151 is added to read as follows:

§ 68.151 Assertion of claims of confidential business information.

(a) Except as provided in paragraph (b) of this section, an owner or operator of a stationary source required to report or otherwise provide information under this part may make a claim of confidential business information for any such information that meets the criteria set forth in 40 CFR 2.301.

(b) Notwithstanding the provisions of 40 CFR part 2, an owner or operator of a stationary source subject to this part may not claim as confidential business information the following information:

(1) Registration data required by § 68.160(b)(1) through (b)(6) and (b)(8), (b)(10) through (b)(13) and NAICS code and Program level of the process set forth in § 68.160(b)(7);

(2) Offsite consequence analysis data required by § 68.165(b)(4), (b)(9), (b)(10), (b)(11), and (b)(12).

(3) Accident history data required by § 68.168;

(4) Prevention program data required by § 68.170(b), (d), (e)(1), (f) through (k);

(5) Prevention program data required by § 68.175(b), (d), (e)(1), (f) through (p); and

(6) Emergency response program data required by § 68.180.

(c) Notwithstanding the procedures specified in 40 CFR part 2, an owner or operator asserting a claim of CBI with respect to information contained in its RMP, shall submit to EPA at the time it submits the RMP the following:

(1) The information claimed confidential, provided in a format to be specified by EPA;

(2) A sanitized (redacted) copy of the RMP, with the notation ''CBI'' substituted for the information claimed confidential, except that a generic category or class name shall be substituted for any chemical name or identity claimed confidential; and

(3) The document or documents substantiating each claim of confidential business information, as described in § 68.152.

8. Section 68.152 is added to read as follows:

§ 68.152 Substantiating claims of confidential business information.

(a) An owner or operator claiming that information is confidential business information must substantiate that claim by providing documentation that demonstrates that the claim meets the substantive criteria set forth in 40 CFR 2.301.

(b) Information that is submitted as part of the substantiation may be claimed confidential by marking it as confidential business information. Information not so marked will be treated as public and may be disclosed without notice to the submitter. If information that is submitted as part of the substantiation is claimed confidential, the owner or operator must provide a sanitized and unsanitized version of the substantiation.

(c) The owner, operator, or senior official with management responsibility of the stationary source shall sign a certification that the signer has personally examined the information submitted and that based on inquiry of the persons who compiled the information, the information is true, accurate, and complete, and that those portions of the substantiation claimed as confidential business information would, if disclosed, reveal trade secrets or other confidential business information.

9. Section 68.160 is amended by revising paragraphs (b)(1), (b)(7), and (b)(12) and adding paragraphs (b)(14) through (b)(18) to read as follows:

§ 68.160 Registration.

* * * * *

(b) * * *

(1) Stationary source name, street, city, county, state, zip code, latitude and longitude, method for obtaining latitude and longitude, and description of location that latitude and longitude represent;

* * * * *

(7) For each covered process, the name and CAS number of each regulated substance held above the threshold quantity in the process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits, the five- or six-digit NAICS code that most closely corresponds to the process, and the Program level of the process;

* * * * *

(12) If the stationary source has a CAA Title V operating permit, the permit number; and

* * * * *

(14) Source or Parent Company E-Mail Address (Optional);

(15) Source Homepage address (Optional)

(16) Phone number at the source for public inquiries (Optional);

(17) Local Emergency Planning Committee (Optional);

(18) OSHA Voluntary Protection Program status (Optional);

10. Section 68.165 is amended by revising paragraph (b) to read as follows:

§ 68.165 Offsite consequence analysis.

* * * * *

(b) The owner or operator shall submit the following data:

(1) Chemical name;

(2) Percentage weight of the chemical in a liquid mixture (toxics only);

(3) Physical state (toxics only);

(4) Basis of results (give model name if used);

(5) Scenario (explosion, fire, toxic gas release, or liquid spill and evaporation);

(6) Quantity released in pounds;

(7) Release rate;

(8) Release duration;

(9) Wind speed and atmospheric stability class (toxics only);

(10) Topography (toxics only);

(11) Distance to endpoint;

(12) Public and environmental receptors within the distance;

(13) Passive mitigation considered; and

(14) Active mitigation considered (alternative releases only);

11. Section 68.170 is amended by revising paragraph (b) to read as follows:

§ 68.170 Prevention program/Program 2.

* * * * *

(b) The five- or six-digit NAICS code that most closely corresponds to the process.

* * * * *

12. Section 68.175 is amended by revising paragraph (b) to read as follows:

§ 68.175 Prevention program/Program 3.

* * * * *

(b) The five- or six-digit NAICS code that most closely corresponds to the process.

* * * * *

13. Section 68.180 is amended by revising paragraph (b) to read as follows:

§ 68.180 Emergency response program.

* * * * *

(b) The owner or operator shall provide the name and telephone number of the local agency with which emergency response activities and the emergency response plan is coordinated.

* * * * *

[FR Doc. 99–231 Filed 1–5–99; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday
January 6, 1999

Part V

The President

Presidential Determination No. 99–9 of December 24, 1998—Use of $12 Million in Economic Support Funds for a U.S. Contribution to the Korean Peninsula Development Organization (KEDO)

Federal Register
Vol. 64, No. 3
Wednesday, January 6, 1999

Presidential Documents

Title 3—

The President

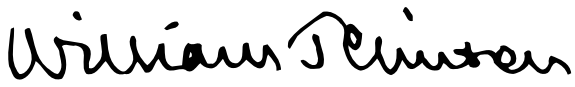
Presidential Determination No. 99–9 of December 24, 1998

Use of $12 Million in Economic Support Funds for a U.S. Contribution to the Korean Peninsula Development Organization (KEDO)

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(1) (the ''Act''), I hereby determine that it is important to the security interests of the United States to furnish up to $12 million in funds made available under Chapter 4 of Part II of the Act for assistance for KEDO without regard to any provision of law within the scope of section 614(a)(1). I hereby authorize furnishing of this assistance.

You are hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, December 24, 1998.

[FR Doc. 99–333
Filed 1–5–99; 8:45 am]
Billing code 4710–10–M

Reader Aids

Federal Register

Vol. 64, No. 3

Wednesday, January 6, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids — **202–523–5227**

Laws — **523–5227**

Presidential Documents

Executive orders and proclamations — **523–5227**

The United States Government Manual — **523–5227**

Other Services

Electronic and on-line services (voice) — **523–4534**

Privacy Act Compilation — **523–3187**

Public Laws Update Service (numbers, dates, etc.) — **523–6641**

TTY for the deaf-and-hard-of-hearing — **523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, JANUARY

1–384 4
385–730 5
731–984 6

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12543 (See Notice of Dec. 30, 1998) 383
12544 (See Notice of Dec. 30, 1998) 383

Administrative Orders:

Presidential Determinations:
No. 99–9 of December 25, 1998 983

Notices
December 30, 1998 383

7 CFR

301 385
801 731
930 387
1788 1
1951 392

Proposed Rules:
981 430

9 CFR

78 ..... 5, 394
301 732
317 732
318 732
320 732
381 732

10 CFR

Proposed Rules:
50 ..... 57, 432

12 CFR

Proposed Rules:
701 ..... 58, 776
713 58
715 776
741 ..... 58, 776

14 CFR

39 ..... 5, 395, 749, 751
71 ..... 8, 9, 10, 11, 12, 13
121 958
135 958
145 958

Proposed Rules:
39 ..... 435, 438, 441, 443, 445, 785, 787
71 ..... 60, 447

15 CFR

902 13

16 CFR

305 926

Proposed Rules:
308 61

17 CFR

1 16
145 24
147 24

18 CFR

Proposed Rules:
161 789
250 789
284 789

19 CFR

123 27
142 27
178 27

20 CFR

Proposed Rules:
655 628
656 628

21 CFR

2 396
3 396
5 396
10 396
12 396
16 396
20 396
25 396
50 396
54 396
56 396
58 396
60 396
70 396
71 396
178 34
184 404
200 396
201 396
202 396
206 396
207 396
210 396
211 396
299 396
300 396
310 396
312 396
314 396
316 396
320 396
333 396
369 396
510 396
514 396
520 396
522 396
524 396
529 396
800 396
801 396
807 396
809 396

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 6, 1999

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cherries (tart) grown in—
- Michigan et al.; published 1-5-99

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- California; published 1-6-99
- New Hampshire; published 12-7-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Dicamba (3,6-dichloro-o-anisic acid); published 1-6-99

FEDERAL COMMUNICATIONS COMMISSION

Practice and procedure:
- Satellite communications—
  - Video programming; over-the-air reception devices; restrictions preemption; reconsideration petition; published 12-7-98

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered Species Convention:
- River otters taken in Missouri in 1998-1999 and subsequent seasons; exportation; published 1-6-99

POSTAL SERVICE

Personnel:
- Postal Service and Postal Rate Commission employee salaries; garnishment; published 12-7-98

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
- Florida; published 12-7-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- British Aerospace; published 10-8-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Kiwifruit research, promotion, and consumer information order; comments due by 1-11-99; published 11-10-98

Oranges, grapefruit, tangerines, and tangelos grown in Florida and imported grapefruit; comments due by 1-11-99; published 11-10-98

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Asian longhorned beetle; comments due by 1-11-99; published 11-13-98

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:
- Women, infants, and children; special supplemental nutrition program—
  - Food and nutrition services and administration funding formulas rule; comments due by 1-11-99; published 10-13-98

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
- Consumer protection standards—
  - Washing and chilling processes; retained water in raw meat and poultry products; poultry chilling performance standards; comments due by 1-13-99; published 12-14-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pacific halibut and sablefish; individual fishing quota program; modified hired skipper requirements; comments due by 1-15-99; published 12-16-98

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Brand name items; use of purchase descriptions; comments due by 1-15-99; published 11-16-98

Vocational rehabilitation and education:
- Veterans education—
  - Montgomery GI Bill-Active Duty; eligibility criteria, etc.; comments due by 1-11-99; published 11-12-98

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Generic maximum achievable control technology; comments due by 1-12-99; published 10-14-98

Air pollutants; hazardous; national emission standards:
- Publicly owned treatment works; 188 HAP; list; comments due by 1-15-99; published 12-1-98

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Maine; comments due by 1-11-99; published 12-11-98

Air programs; State authority delegations:
- California; comments due by 1-15-99; published 12-16-98

Air quality implementation plans; approval and promulgation; various States:
- Nevada; comments due by 1-11-99; published 12-11-98

Consolidated Federal air rule:
- Synthetic organic chemical manufacturing industry; comments due by 1-11-99; published 10-28-98

Superfund program:
- CERCLA hazardous substances list; additions and removals—
  - Caprolactam; comments due by 1-14-99; published 12-15-98
  - Caprolactam; comments due by 1-14-99; published 12-15-98
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 1-13-99; published 12-14-98
  - National priorities list update; comments due by 1-14-99; published 12-15-98

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Incumbent local exchange carriers; biennial regulatory review; comments due by 1-11-99; published 12-11-98
- Universal service—
  - Wireless telecommunications providers; local usage requirements; comments due by 1-11-99; published 12-10-98

Radio stations; table of assignments:
- Texas; comments due by 1-11-99; published 12-4-98

FEDERAL EMERGENCY MANAGEMENT AGENCY

Flood insurance program:
- Write-your-own program—
  - Expense allowance percentage; comments due by 1-12-99; published 11-13-98
  - Expense allowance; marketing incentives, performance measures, agent compensation, and compensation for unallocated loss expenses; comments due by 1-12-99; published 11-13-98

FEDERAL MARITIME COMMISSION

Tariffs and service contracts:
- Shipping Act of 1984; agreements by ocean carriers and marine terminal operators; comments due by 1-14-99; published 12-15-98

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Brand name items; use of purchase descriptions; comments due by 1-15-99; published 11-16-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:
- Adjuvants, production aids, and sanitizers—
  - Sodium 2,2'-methylenebis(4,6-di-tert-butylphenyl)phosphate;