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federal register

Wednesday
January 20, 1999

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Presidential Documents

Title 3—

The President

Proclamation 7162 of January 14, 1999

Religious Freedom Day, 1999

By the President of the United States of America

A Proclamation

On Religious Freedom Day we commemorate a landmark achievement in the history of our Nation: the adoption in 1786 by the Virginia legislature of a religious freedom statute. This historic legislation, drafted by Thomas Jefferson and co-sponsored by James Madison, was designed to prevent religious discrimination and to protect Virginians from pressure to join or support any church. It served as the model for the First Amendment of our Constitution, the guarantee of freedom of religion that has beckoned so many people fleeing persecution to seek sanctuary in this land.

Americans are a deeply religious people, and our right to worship as we choose, to follow our own personal beliefs, is the source of much of our Nation's strength. Our churches, synagogues, mosques, temples, and other houses of worship are centers of community service and community life. They preserve and promote the values and religious traditions that have infused our efforts to build a civil society based on mutual respect, compassion, and generosity. They provide our children with the moral compass to make wise choices.

America's reverence for religious freedom and religious tolerance has saved us from much of the hatred and violence that have plagued so many other peoples around the world. We have always been vigilant in protecting this freedom, but our efforts cannot stop at our own shores. We cannot ignore the suffering of men and women across the globe today who are harassed, imprisoned, tortured, and executed simply for seeking to live by their own beliefs. Freedom of religion is a fundamental human right that must be upheld by every nation and guaranteed by every government. The promotion of religious freedom for all peoples must continue to serve as a central element of our foreign policy.

Reflecting our steadfast commitment to this goal, last fall the Congress passed, and I was proud to sign into law, the International Religious Freedom Act of 1998. This legislation enhances our ability to advance freedom of religion for men and women of all faiths throughout the world. It also establishes a new position at the Department of State—the Ambassador at Large for International Religious Freedom—to ensure that religious liberty concerns receive consistent and appropriate attention at the highest policy-making levels.

On Religious Freedom Day, let us give thanks for this precious right that has so profoundly shaped and sustained our Nation, and let us strengthen our efforts to share its blessings with oppressed peoples everywhere.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 16, 1999, as Religious Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremonies, activities, and programs, and I urge all Americans to reaffirm their devotion to the fundamental principles of religious freedom and religious tolerance.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of January, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 99–1373
Filed 1–19–99; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7163 of January 15, 1999

Martin Luther King, Jr., Federal Holiday, 1999

By the President of the United States of America

A Proclamation

January 15 would have marked the 70th birthday of Dr. Martin Luther King, Jr., a man of great vision and moral purpose whose dream for our Nation set into motion such powerful, sweeping changes that their impact is still being felt today. While he was taken from us too soon, we still have with us the gifts of his vision, convictions, eloquence, and example. We still hear the echo of his voice telling us that ''Life's most persistent and urgent question is, 'What are you doing for others?'''

We know what Dr. King did for others. He energized and mobilized a generation of Americans, black and white, to join in the struggle for civil rights, to respond to violence, hatred, and unjust incarceration with the spirit of peace, love, and righteousness. He taught us that we could not claim America as the land of justice, freedom, and equality as long as millions of our citizens continually and systematically faced discriminatory and oppressive treatment. He challenged us to recognize that the fundamental rights of all Americans are forever interconnected, for ''we are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.''

Martin Luther King, Jr., awakened America's conscience to the immorality of racism. He was the driving force behind the passage of the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968. For African Americans, this landmark legislation meant that the opportunity for a quality education would no longer be impossible, the levers of the voting booth would no longer be out of reach, and the purchase of a dream home would no longer be unattainable. Millions of Americans—of every race and background and culture—live brighter lives today because of Martin Luther King, Jr.

Dr. King's dream of unity for America did not die with him. Today, as our Nation becomes increasingly multiracial and multiethnic, his compelling vision is more important than ever, and the means for realizing it are now within our reach. This past year, as part of my Initiative on Race, Americans across the country participated in thousands of honest and open conversations about race in a sincere effort to heal our divisions and move toward genuine reconciliation. We learned much about the roots of prejudice; but more important, we learned much about how to overcome it. In community after community, in every field of endeavor from sports and education to business and religion, we discovered organizations and programs that have succeeded in bridging gaps between people of different races and cultures. These promising practices offer us both realistic guidelines for everyday action and genuine hope that we can respect one another's differences and embrace the values that unite us.

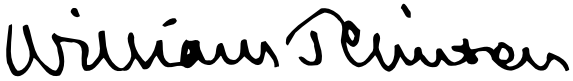
Now it is our turn to answer the question, ''What are you doing for others?'' As part of our response, each year since 1994 we have made the Martin Luther King, Jr., Federal Holiday a national day of service, a day on which to honor Dr. King's legacy through service projects across our country. Instead of taking a day off, millions of our fellow Americans respond to the needs of their communities, through activities like tutoring children,

sheltering the homeless, making schoolyards safer, or making public parks more inviting.

Let us make this year's observance the beginning of a broader effort to improve our communities and the lives of our fellow Americans, to make the personal choices and take the personal actions that will bridge the gaps—racial and otherwise—that keep us from becoming the people we were meant to be. Working together, joining our hearts and our hands, we will succeed in building One America for the 21st century and in fulfilling the dream of Martin Luther King, Jr.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, January 18, 1999, as the Martin Luther King, Jr., Federal Holiday. I call upon all Americans to observe this occasion and to honor Dr. King's legacy with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of January, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.



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Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 97–107–3]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to declare certain areas in the Mexican States of Baja California Sur, Chihuahua, and Sonora as fruit-fly-free areas. We are taking this action based on our determination that these areas meet our criteria for pest-free areas with regard to fruit flies. This action relieves restrictions on the importation of certain fruits from those areas while continuing to prevent the introduction of plant pests into the United States.

EFFECTIVE DATE: January 20, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Campbell, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799; or E-mail: Ronald.C.Campbell@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of fruit flies and other injurious plant pests that are new to or not widely distributed within and throughout the United States.

The regulations at § 319.56–2 (e)(4) provide for the importation of certain fruits and vegetables from foreign areas that are determined to be free of certain injurious plant pests under the criteria in § 319.56–2(f). Paragraph (h) of § 319.56–2 lists areas in Mexico that meet the pest-free criteria of § 319.56–2(e) and (f) with regard to certain fruit flies and includes a list of fruits that may be imported from those areas without treatment for those fruit flies.

On June 5, 1998, we published in the **Federal Register** (63 FR 30646–30655, Docket No. 97–107–1) a proposal to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States and to amend § 319.56–2(h) of the regulations to declare additional areas in Mexico as free of certain fruit flies. We proposed these actions at the request of various importers and foreign ministries of agriculture and after conducting pest risk analyses that indicated that these actions could be taken without significant risk of introducing plant pests into the United States.

We solicited comments concerning our proposal for 60 days ending August 4, 1998. We received six comments by that date. They were from representatives of industry and a State government. Four commenters supported the proposed rule in its entirety; one commenter pointed out an inadvertent omission from the proposed rule; and one commenter had reservations about specific provisions of the proposed rule. One of the concerns expressed by the commenter having reservations pertained to the proposed amendment of § 319.56–2(h) to declare additional areas in Mexico as free of fruit flies. Because we believed that this issue warranted further review and consideration, we published a final rule on November 30, 1998 (63 FR 65650–65657, Docket No. 97–107–2), concerning all portions of our June 5, 1998, proposed rule except the portion concerning additional fruit-fly-free areas in Mexico.

We have now completed our review of the data concerning the proposed fruit-fly-free areas in Mexico and are proceeding with a final rule on that issue. Our discussion of the two comments received pertaining to this issue follows:

Comment: The expansion of the fruit-fly-free zone in Mexico is premature. Since May of this year, 30 Mexican fruit flies have been trapped in Tijuana, and, once again, a Mediterranean fruit fly population is building in the States of Chiapas and Tabasco. Mexico has not provided any information on its plans to combat these populations. Further, Mexican authorities have put the sterile Mexican fruit fly release program on hold for lack of an appropriate release site.

In addition, as of July 1997, the Animal and Plant Health Inspection Service (APHIS) did not consider Chihuahua free of fruit flies, and agency officials said that they would not do so until a pest risk assessment was performed for each export commodity under consideration. Have these assessments been submitted to and reviewed by APHIS staff?

Response: The three locations—Tijuana, Chiapas, and Tabasco—mentioned by the commenter as being associated with fruit flies are separated by long distances or natural boundaries, such as mountains and rivers, from the municipalities listed in the proposed rule for recognition as being free of fruit flies. Further, Mexico's sterile Mexican fruit fly release program applies to the Tijuana area only and, therefore, is not a relevant issue for consideration in relation to the fruit-fly-free areas in Baja California Sur, Chihuahua, and Sonora that were proposed.

Pest risk assessments have been performed for each export commodity (i.e., apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines) affected by declaring the municipalities of Bachiniva, Casas Grandes, Cuahutemec, Guerrero, Namiquipa, and Nuevo Casas Grandes in the State of Chihuahua as fruit-fly-free areas. In addition, all of the municipalities declared in the proposed rule to be fruit-fly-free areas in Mexico, including those municipalities in the State of Chihuahua, provided APHIS with trapping data and information on measures employed to prevent the establishment of fruit flies. This information demonstrates that these areas meet the criteria in § 319.56–2 (e) and (f).[1]

Comment: The municipality of Plutarco Elías Calles should have been

[1] Information on these pest risk assessments and the other data referenced above may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT** or by calling the Plant Protection and Quarantine fax vault at (301) 734–3560.

included in the list of municipalities in the State of Sonora proposed as fruit-fly-free areas.

Response: We agree. In the proposed rule, we neglected to correct an out-of-date reference to the municipality of Puerto Penasco in Sonora, Mexico. Puerto Penasco has been divided into two sections: Puerto Penasco and Plutarco Elías Calles. Accordingly, we are adding Plutarco Elías Calles to the list in § 319.56–2(h).

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

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the impact of this rule on small entities. In our proposed rule, we invited comments on the potential effects of the proposed actions. In particular, we requested information on the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. No comments were submitted. Based on the information we have, there is no basis to conclude that adoption of this rule will result in any significant economic impact on a substantial number of small entities.

Under the Federal Plant Pest Act (7 U.S.C. 150aa–150jj) and the Plant Quarantine Act (7 U.S.C. 151–165 and 167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests. We are amending the fruits and vegetables regulations to declare additional areas in Mexico as fruit-fly-free areas. With the addition of new fruit-fly-free areas in the Mexican States of Baja California Sur, Chihuahua, and Sonora, the importation into the United States of four types of fruit will be affected. These fruits are apple, orange, peach, and tangerine. We project that increases in exports to the United States of those fruits would be as follows: Apples, 4,000 metric tons; oranges, 28,144 metric tons; peaches, 2,000 metric tons; and tangerines, 280 metric tons. Import levels of apricots, grapefruits, persimmons, and pomegranates—the other fruits eligible for importation into the United States from Mexico under § 319.56–2(h)—are not expected to be affected by this rule.

U.S. apple production in 1996 totaled 4,732,860 metric tons and was worth $1.84 billion. Projected additional imports from Mexico of 4,000 metric tons represent less than 0.1 percent of U.S. production. Further, the United States is a net exporter of apples, exporting more than three times as many apples as it imports.

U.S. orange production in 1996 totaled 10,634,920 metric tons and was worth $1.895 billion. Projected additional imports from Mexico of 28,144 metric tons represent less than 0.3 percent of U.S. production. In 1996, the quantity of oranges exported by the United States was 22 times greater than the quantity imported.

U.S. peach production in 1996 totaled 938,940 metric tons and was worth $378 million. Projected additional imports from Mexico of 2,000 metric tons represent about 0.2 percent of U.S. production. Further, the United States is a net exporter of peaches, exporting 1.7 times as many peaches as it imports.

U.S. tangerine production in 1996 totaled 315,700 metric tons and was worth $112 million. Projected additional imports from Mexico of 280 metric tons represent less than 0.1 percent of U.S. production. Further, the United States is a net exporter of tangerines, exporting six times as many tangerines as it imports.

In the case of each of these four fruits, the amount of projected additional exports to the United States due to the newly recognized fruit-fly-free areas is extremely small compared to U.S. production. Also, in each case, the United States is a net exporter of the fruit, reflecting excess supply. Impacts on costs or prices for U.S. producers and consumers are expected to be negligible. APHIS does not anticipate any adverse effects on small entities or the ability of U.S. entities to compete in domestic and export markets as a result of this rule.

Executive Order 12988

This rule reduces restrictions on the importation into the United States of apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines from specified fruit-fly-free areas of Mexico. State and local laws and regulations regarding the importation of those fruits imported under this rule are preempted while the fruits are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number or, if approval is denied, providing notice of what action we plan to take.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 319.56–2, paragraph (h) is revised to read as follows:

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(h) The Administrator has determined that the following municipalities in Mexico meet the criteria of paragraphs (e) and (f) of this section with regard to the plant pests *Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus:* Comondú,

Loreto, and Mulegé in the State of Baja California Sur; Bachiniva, Casas Grandes, Cuahutemoc, Guerrero, Namiquipa, and Nuevo Casas Grandes in the State of Chihuahua; and Altar, Atil, Bacum, Benito Juarez, Caborca, Cajeme, Carbo, Empalme, Etchojoa, Guaymas, Hermosillo, Huatabampo, Navajoa, Pitiquito, Plutarco Elías Calles, Puerto Penasco, San Luis Rio Colorado, San Miguel, and San Rio Muerto in the State of Sonora. Apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines may be imported from these areas without treatment for the pests named in this paragraph.

* * * * *

Done in Washington, DC, this 13th day of January 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–1225 Filed 1–19–99; 8:45 am]

BILLING CODE 3410–34–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300770; FRL–6049–8]

RIN 2070–AB78

Propiconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid in or on blueberries and raspberries. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on blueberries and raspberries. This regulation establishes a maximum permissible level for residues of propiconazole in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on December 31, 1999.

DATES: This regulation is effective January 20, 1999. Objections and requests for hearings must be received by EPA on or before March 22, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300770], 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–300770], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300770]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9362, e-mail: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408 and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for combined residues of the fungicide propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole, and its metabolite determined as 2,4-dichlorobenzoic acid, in or on blueberries and raspberries at 1.0 part per million (ppm). These tolerances will expire and are revoked on December 31, 1999. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Findings

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

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

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

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will

result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

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

II. Emergency Exemptions for Propiconazole on Blueberries and Raspberries and FFDCA Tolerances

Mummy berry (*Monilinia vaccinii-corymbosi*) is a fungal disease which causes damage to the fruit, flower and leaf of blueberries. The principal cause of significant yield reductions to wild blueberries is the destruction of flowers/flower clusters in the spring by the primary inoculum, though severe defoliation may also result in reduced berry size. Triflorine was the preferred fungicide for controlling this disease, but the use was voluntarily canceled by the registrant and only a limited amount of existing stock is available. Sulfur, ziram, neem oil, certain copper compounds, potassium salts of fatty acids, and chlorothalonil are all alternative fungicides registered for use on blueberries, but these are generally considered to provide unsuitable or unknown levels of performance. The only non-chemical control measure is the burning of fields to prune back vegetative growth; this practice is no longer considered environmentally acceptable and has been replaced by mowing, which does not reduce the fungal inoculum on the mummified berries. The Agency concluded that while it was unclear whether growers are expected to suffer ''significant'' economic losses in 1998 from this disease, they may incur significant economic losses in the 1999 growing season if the mummy berry disease intensifies without adequate control.

Yellow rust of raspberry is caused by a fungal pathogen, *Phragmidium rubi-idaei*. The pathogen is widespread in red raspberry fields in Oregon and Washington States, particularly in years when spring rains continue late. Historically, yellow rust has not been a problem. Under normal winter weather conditions of the Pacific Northwestern United States, teliospores of the pathogen are the sole survivor and they do not infect raspberry plants directly; urediniospores cause most damage to raspberry plants. However, last winter urediniospores also overwintered due to mild winter weather conditions. Urediniospores infected raspberry plants and disease symptoms were seen during early spring season. Urediniospores are the most damaging stage of yellow rust because they are normally produced in repeating cycles during summer months, but this spring they provided an immediate means to cause a rapid buildup of the pathogen, resulting in damage that caused this emergency. In addition, during the 1998 spring season the climatic conditions were very conducive for the disease development. The warm weather accompanied by rain caused the plants to break bud about 2–3 weeks earlier than normal. The moisture from dew and fog were sufficient to allow both spore germination and infection. All of these conditions contributed to the current emergency situation. EPA has authorized under FIFRA section 18 the use of propiconazole on blueberries for control of mummy berry disease (*Monilinia vacinii-corymbosi*) in Georgia, Maine and South Carolina and the use on raspberries for control of yellow rust (*Phragmidium rubi-idaei*) in Oregon and Washington. After having reviewed the submissions, EPA concurs that emergency conditions exist for these states.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of propiconazole in or on blueberries and raspberries. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on blueberries or raspberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether propiconazole meets EPA's registration requirements for use on blueberries or raspberries or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of propiconazole by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Georgia, Maine, Oregon, South Carolina and Washington to use this pesticide on these crops under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for propiconazole, contact the Agency's Registration Division at the address provided under the ''ADDRESSES'' section.

III. Aggregate Risk Assessment and Determination of Safety

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

A. Toxicity

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

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOAEL from the study with the lowest NOAEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor

(sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOAEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

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

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

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

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

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

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

B. Aggregate Exposure

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

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

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of propiconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for

time-limited tolerances for combined residues of propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid on blueberries and raspberries at 1.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances 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 propiconazole are discussed below.

1. *Acute toxicity*. For acute dietary risk assessment, EPA used the developmental NOAEL of 30 mg/kg/day from a developmental toxicity study in rats. The lowest observed adversed effect level (LOAEL) of 90 mg/kg/day was based on the increased incidence of unossified sternebrae, rudimentary ribs, and shortened or absent renal papillae. This risk assessment evaluates acute dietary risk to the population of concern, females 13 years and older.

2. *Short- and intermediate-term toxicity*. For short- and intermediate-term dermal MOE calculations, EPA used the developmental NOAEL of 30 mg/kg/day from the developmental toxicity study in rats. For short- and intermediate-term inhalation MOE calculations, EPA used the NOAEL of 92.8 mg/kg/day, the highest dose tested (HDT) from the 5-day inhalation toxicity study in rats. This risk assessment evaluates short- and intermediate-term risk to the population of concern, females 13 years and older.

3. *Chronic toxicity*. EPA has established the RfD for propiconazole at 0.013 milligrams/kilogram/day (mg/kg/day). This RfD is based on a NOAEL of 1.25 mg/kg/day taken from a one year feeding study in dogs. The effect seen at the LOAEL of 6.25 mg/kg/day is mild irritation of the gastric mucosa. An uncertainty factor of 100 was added to take into account interspecies and intraspecies variation.

4. *Carcinogenicity*. Propiconazole has been classified as a Group C, ''possible human carcinogen'', chemical by the Agency. EPA has determined that the RfD approach for quantitation of human risk is appropriate. Therefore, the RfD noted above is deemed protective of all chronic human health effects, including cancer.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.434) for the combined residues of propiconazole and its metabolite determined as 2,4-dichlorobenzoic acid, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from propiconazole as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute dietary (food only) risk assessment assumed tolerance level residues and one hundred percent crop treated. The resulting high-end exposure estimate of 0.01 mg/kg/day, which results in a dietary (food only) MOE of 3,000 for females 13+ years old, should be viewed as conservative; refinement using anticipated residue values and percent crop-treated data would result in a lower acute dietary exposure estimate.

ii. *Chronic exposure and risk.* For the purpose of assessing chronic dietary exposure from propiconazole, EPA assumed anticipated residues and percent of crop treated refinements for many of the existing uses to estimate the Anticipated Residue Contribution (ARC) from existing and proposed uses. While more refined than TMRC exposure estimates, the assumptions of tolerance level residues and one hundred percent of crop treated for the proposed use and numerous existing uses still result in overestimation of exposure. Based on the above assumptions, chronic dietary exposure to the U.S. population represents 7% of the RfD. Dietary exposure to the subgroup most highly exposed, non-nursing infants less than one year, utilizes 20% of the RfD.

2. *From drinking water.* Available data suggest propiconazole is moderately persistent and moderately mobile to immobile in soil and aqueous environments. It has the potential to be transported with water, particularly in coarse-textured soils low in organic matter. Propiconazole's persistence indicates the potential to reach surface water with run-off or adsorbed to soil particles. There is no established Maximum Contaminant Level (MCL) for residues of propiconazole in drinking water. No health advisory levels for propiconazole in drinking water have been established.

The Agency has calculated drinking water levels of comparison (DWLOCs) for acute and chronic exposure to propiconazole in surface and groundwater. The DWLOCs are calculated by subtracting from the toxicity endpoint (acute or chronic) the respective acute or chronic dietary exposure attributable to food to obtain the acceptable exposure to propiconazole in drinking water. Default body weights (70 kg for males, 60 kg for females, and 10 kg for non-nursing infants < 1 year old) and default drinking water consumption estimates (2 L/day for adults, 1 L/day for non-nursing infants) are then used to calculate the actual DWLOCs. The DWLOC represents the concentration level in surface water or groundwater at which aggregate exposure to the chemical is not of concern.

Using Generic Expected Environmental Concentration (GENEEC) (surface water) and Screening Concentration in Ground Water (SCI-GROW) (groundwater) models, the Agency has calculated acute and chronic Tier I Estimated Environmental Concentrations (EECs) for propiconazole for use in human health risk assessments. These values represent the upper bound estimates of the concentrations of propiconazole that might be found in surface and ground water assuming the maximum application rate allowed on the label of the highest use pattern. The EECs from these models are compared to the DWLOCs to make the safety determination.

i. *Acute exposure and risk.* The subpopulation of concern for acute risk is females 13 years and older. Using the GENEEC model, the acute peak concentration in surface water was determined to be 110 parts per trillion (ppt). The Tier I SCI-GROW model predicted that groundwater concentrations of propiconazole are not likely to exceed 1.42 ppt. Assuming an adult female body weight of 60 kg and a drinking water consumption estimate of 2 L/day, the Agency calculated an acute DWLOC of 8,700 parts per billion (ppb). As even the upper bound concentrations of propiconazole are not expected to exceed 110 ppt in surface water or 1.42 ppt in groundwater, and this value is well below the acute DWLOC, the Agency concludes with reasonable certainty that acute exposure to propiconazole in drinking water is not of concern.

ii. *Chronic exposure and risk.* Using the GENEEC model, the Agency calculated a chronic concentration of propiconazole residues in surface water of 90 ppt. As described above, groundwater concentrations of propiconazole are not likely to exceed 1.42 ppt. Using the same body weight and drinking water consumption

estimates as those in the acute risk assessment, the DWLOCs for chronic exposure were calculated to be 420 ppb for the U.S. population, 430 ppb for males 13 years and older, 360 ppb for nursing females 13 years and older, and 100 ppb for infants and children. The estimated long-term concentrations of propiconazole in surface water and groundwater are well below any of these values, and the Agency concludes that chronic exposure to propiconazole in drinking water is not of concern. Since the RfD approach is recommended for quantification of cancer risk, the cancer and chronic DWLOCs are identical. Therefore the Agency also concludes that exposure is below the Agency's level of concern for cancer effects arising from chronic exposure to propiconazole in drinking water.

3. *From non-dietary exposure.* — i. Propiconazole is currently registered for residential use as a wood preservative and for residential lawn and turf uses as well as on ornamental plants. Under current OPP guidelines, these uses do not represent a chronic exposure scenario, but may constitute a short- and/or intermediate-term exposure scenario.

According to the acres-treated information available to the Agency on lawn and turf use, between 0.004% and 0.007% of all households nationally are treated with lawn products containing propiconazole as an active ingredient. Of those households which are treated, applications are mostly made by lawn care operators and landscapers instead of homeowners. It is therefore the Agency's best scientific judgement that potential residential exposure to propiconazole through the registered lawn and turf uses and use on ornamental plants is minimal. Based on this conclusion, risk assessments for these residential uses were not performed.

ii. *Short- and intermediate-term exposure and risk.* The Agency calculated exposure and risk from wood treatment use using recently developed methodologies for residential exposure assessment. These methodologies rely on high-end scenarios and the resulting exposure assessments should be considered conservative. If initial assessments using the assumptions in these methodologies indicate a potential concern, a more detailed exposure assessment, possibly incorporating chemical-specific or site-specific data, would be pursued. Because one of the variables used for assessing residential handlers exposure comes from the Pesticide Handlers Exposure Database (PHED), and is considered to be a central tendency value, resulting exposure and risk estimates are considered to be central tendency to high-end estimates. Using these assumptions, short-term dermal and inhalation MOEs from the wood treatment use were calculated to be 200 and 20,000, respectively. The Agency is generally not concerned with MOEs which exceed 100.

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 propiconazole has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, propiconazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that propiconazole has a common mechanism of toxicity with other substances.

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

1. *Acute risk.* Using TMRC exposure assumptions, the Agency estimated the high-end exposure to females 13+ years, the population subgroup of concern, to be 0.01 mg/kg/day , which results in a dietary (food only) MOE of 3,000. Based on an adult female body weight of 60 kg and 2L consumption of water per day, the acute DWLOC for females 13 years and older is 8,700 ppb. The estimated peak concentration (acute) values of 110 ppt in surface water and 1.42 ppt in groundwater are lower than the acute DWLOC for females 13 years and older; therefore, the Agency concludes with reasonable certainty that the aggregate acute exposure to propiconazole residues in food and drinking water is not likely to exceed the Agency's level of concern for acute dietary exposure.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to propiconazole from food will utilize 7% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants less than one year old (discussed below). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Based on body weight and drinking water consumption estimates discussed earlier, the chronic DWLOC for the U.S. population is 424 ppb, 430 ppb for males 13 years and older, and 360 ppb for females 13 years and older. The estimated chronic concentrations of 90 ppt in surface water and 1.42 ppt in groundwater are lower than these chronic DWLOCs. EPA concludes that there is a reasonable certainty that no

harm will result from aggregate exposure to propiconazole residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Short- and intermediate-term endpoints were identified for females 13 years and older, the subpopulation of concern. The aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus short- and intermediate-term residential uses.

When endpoints from multiple studies are selected from risk assessment, risks should only be aggregated if the endpoints (toxic effects) are the same or if the multiple residential exposure scenarios have a reasonable chance of occurring together. In this case the dermal and inhalation endpoints do not have the same toxic effects. Therefore the MOE dermal and MOE inhalation cannot be aggregated together. Furthermore, because exposure from residential wood preservative uses occurs mainly by the dermal route (dermal exposure = 0.15 mg/kg/day; inhalation exposure = 0.00047 mg/kg/day), exposure via inhalation was not considered in the calculation for risk from short- and intermediate-term aggregate exposure.

Using the Agency's interim guidance, short- and intermediate-term aggregate risk was calculated by considering short- and intermediate-term dermal exposure from residential uses, and chronic dietary exposure from food uses and drinking water. Because estimates for chronic exposure from drinking water are not available (only conservative estimates of environmental concentrations), the Agency calculated a short- and intermediate-term DWLOC by estimating the exposure level for drinking water which would result in an aggregate MOE of 100, given the known MOEs for food uses and residential exposure, and then deriving the DWLOC from this exposure value using the consumption and body weight assumptions discussed earlier. The short- and intermediate-term drinking water exposure was calculated to be 0.15 mg/kg/day. Using this value, the short- and intermediate-term DWLOC was calculated to be 4,500 ppb. Since chronic EECs are below this value, it is concluded that short- and intermediate-term aggregate risk does not exceed the Agency's level of concern.

D. Aggregate Cancer Risk for U.S. Population

Propiconazole has been classified as a Group C, ''possible human carcinogen'', chemical by the Agency. EPA used the RfD approach for quantitation of human risk. Therefore, the RfD is deemed protective of all chronic human health effects, including cancer; as aggregate chronic risk (discussed above) does not exceed the Agency's level of concern, there is a reasonable certainty that no harm will result from cancer effects arising from chronic aggregate exposure to propiconazole 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 propiconazole, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Developmental toxicity studies.* In the developmental toxicity study in rats, the maternal (systemic) NOAEL was 30 mg/kg/day. The maternal lowest observed adverse effect level (LOAEL) of 90 mg/kg/day was based on reduced body weight gain and rales in females. The developmental NOAEL was also 30 mg/kg/day. The developmental LOAEL of 90 mg/kg/day was based on the increased incidence of unossified sternebrae, rudimentary ribs, and shortened or absent renal papillae. In the rabbit developmental toxicity study, the maternal (systemic) NOAEL was 100 mg/kg/day. The maternal LOAEL of 250 mg/kg/day was based on decreased food consumption and body weight gain. There was also an increased incidence of abortion at 400 mg/kg/day. The developmental NOAEL was 400 mg/kg/day (HDT), based upon the lack of developmental delays or alterations.

iii. *Reproductive toxicity study.* In the 2-generation reproductive toxicity study in rats, the parental (systemic) LOAEL of 5 mg/kg/day (lowest dose tested) was based on the increased incidence of hepatic ''clear-cell change'' at all dose levels; additionally, at 25 and 125 mg/kg/day, decreased body weights, decreased food consumption, and/or an increased incidence of hepatic cellular swelling were observed. A NOAEL for parental toxicity was not determined. The reproductive/developmental NOAEL was 25 mg/kg/day. The reproductive LOAEL of 125 mg/kg/day was based on decreased offspring survival of second generation (F_2) pups, and on decreased body weight throughout lactation, and an increase in the incidence of hepatic cellular swelling for both generations of offspring (F_1 and F_2 pups).

iv. *Pre- and post-natal sensitivity.* The pre- and post-natal toxicology data base for propiconazole is complete with respect to current toxicological data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive study. Propiconazole is not developmentally toxic in the rabbit. There is evidence in the 2-generation study that propiconazole is developmentally toxic in rats; however, toxicity in offspring occurred at doses toxic to the parents. Based on the developmental and reproductive toxicity studies discussed above, for propiconazole there does not appear to be an extra sensitivity for pre- or post-natal effects.

v. *Conclusion.* Based on the above information, the Agency has concluded that a 100-fold safety factor is adequately protective of infants and children and that the 10-fold safety factor required by FQPA should be removed.

2. *Acute risk.* Toxicological effects applicable to the children/infants that

could be attributed to a single exposure (dose) were not observed in oral toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment for this population subgroup.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to propiconazole from food will utilize 20% of the RfD for infants and 13% of the RfD for children aged 1 through 6. 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. Based on body weight and drinking water consumption estimates discussed earlier, the chronic DWLOC for infants and children is 100 ppb. The estimated chronic concentrations of 90 ppt in surface water and 1.42 ppt in groundwater are lower than this chronic DWLOC. Under current Agency criteria, the registered, non-dietary uses of propiconazole do not constitute a chronic exposure scenario. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from chronic aggregate exposure to propiconazole residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is understood for the purposes of these section 18 emergency exemptions. The residues of concern are propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound (as specified in 40 CFR 180.434). As no animal feed items are associated with these requests, the nature of the residue in animals is not of concern.

B. Analytical Enforcement Methodology

Adequate methodology (Ciba-Geigy's Analytical Method AG-454) is available to enforce the established tolerances. This enforcement method for plants is a single moiety analytical method which detects residues as 2,4-dichlorobenzoic acid methyl ester and reports them as propiconazole equivalents. Separation and detection are performed by gas chromatography with electron capture detection. This analytical method has been validated by EPA's Analytical Chemistry Laboratory. Pending publication in PAM II, the analytical method is available from the Agency (IRSD/PIRIB)].

C. Magnitude of Residues

Residues of propiconazole and its regulated metabolites are not expected to exceed 1.0 ppm in/on blueberries and raspberries. Time-limited tolerances should be established at this level.

D. International Residue Limits

There are no CODEX, Canadian or Mexican Maximum Residue Limits (MRL) for propiconazole on blueberries or raspberries. Thus, harmonization of tolerances is not an issue for these tolerances.

E. Rotational Crop Restrictions

As blueberries and raspberries are not routinely rotated to other crops, rotational crop restrictions are not applicable.

VI. Conclusion

Therefore, tolerances are established for combined residues of propiconazole and its metabolite determined as 2,4-dichlorobenzoic acid in blueberries and raspberries at 1.0 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation 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 22, 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 regulation. 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). EPA is authorized to waive any fee requirement ''when in the judgment of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Request for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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

VIII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300770] (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 Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C) Office of Pesticide Programs, Environmental Protection Agency, CM

#2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

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

The official record for this regulation, 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 record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerances under section 408 of the FFDCA. 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(l)(6), 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.

X. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: December 30, 1998.

Robert A. Forrest,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

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

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

2. In § 180.434, by alphabetically adding the following commodities to the table in paragraph (b) to read as follows:

§ 180.434 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ Revocation Date
* * * * *		
Blueberries	1.0	12/31/99
* * * * *		
Raspberries	1.0	12/31/99
* * * * *		

* * * * *

[FR Doc. 99–1255 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300763; FRL 6047–3]

RIN 2070–AB78

Fenpropathrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of fenpropathrin in or on soybeans. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on soybeans. This regulation establishes a maximum permissible level for residues of fenpropathrin in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996. The tolerance will expire and is revoked on June 30, 2000.

DATES: This regulation is effective January 20, 1999. Objections and requests for hearings must be received by EPA on or before March 22, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300763], 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–300763], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300763]. 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: Jacqueline Gwaltney, 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) 305–6792, e-mail: gwaltney.jackie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(e) and (l)(6) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for combined residues insecticide/fungicide/herbicide fenpropathrin, in or on soybeans at 0.1 part per million (ppm). This tolerance will expire and is revoked on June 30, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

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

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

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

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

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

II. Emergency Exemption for Fenpropathrin on Soybeans and FFDCA Tolerances

The Applicant stated that the two-spotted spider mite is a serious pest of soybeans in Delaware, and Maryland.

Delaware. During the 1997 field season in Delaware, fields were sprayed 3–5 times with dimethoate, Lorsban and Parathion. While dimethoate provided systemic activity, it has been ineffective in recent years due to reduced systemic activity when fields are drought stressed resulting in poor absorption and translocation of the chemical into the leaf tissue. The two-spotted spider mite may also be developing resistance to dimethoate. Since July 17, 1998, the mite population in Delaware has begun to explode in soybean fields and dimethoate applications have not provided control.

Maryland. Maryland's Emergency situation is very similar to Delaware. They too used dimethoate and Lorsban with control ranging from 0 to less than 30%. Maryland growers have experienced increasing problems with spider mites in soybean fields. In 1997, the mite population reached record high levels on more than 50% of the soybean acreage and caused significant losses in yield and increased production costs. Dimethoate has been the chemical of choice in Maryland because of its systemic and longer residual action. However, numerous control failures with dimethoate have been reported in 1997. Dimethoate has been ineffective in recent years due to reduced systemic activity when fields are drought stressed resulting in poor absorption and translocation of the chemical into the leaf tissue. In the Eastern Shore the problem is more intense, control failures are also believed to be the result of dimethoate-tolerant populations caused by repeated use of this product over the years. EPA has authorized under FIFRA section 18 the use of fenpropathrin on soybeans for control of two-spotted spider mite *Tetranychus urticae* in Delaware and Maryland. EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of fenpropathrin in or on soybeans. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on June 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on soybeans after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

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

III. Aggregate Risk Assessment and Determination of Safety

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).

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 fenpropathrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues or residues of fenpropathrin on soybeans at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity*. EPA has established the Reference dose (RfD) for fenpropathrin at 0.06 milligram/kilogram/day (mg/kg/day). This RfD is based on the risk assessment that was done for synthetic pyrethoids since fenpropathrin is a member of the synthetic pyrethroids class of pesticides.

2. *Chronic toxicity*. EPA has established the RfD for fenpropathrin at 0.025 mg/kg/day. Since fenpropathrin is a member of the synthetic pyrethroids class of pesticides, the RfD is based on the risk assessment that was done for synthetic pyrethoids.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.180) for the combined residues fenpropathrin, in or on a variety of raw agricultural commodities at levels ranging from 0.05 ppm in eggs to 20 ppm in peanut hay. In addition, time-limited tolerances have been established (40 CFR 190.466(b)) at 15 ppm in currants in conjunction with previous section 18 requests. Risk assessments were conducted by EPA to assess dietary exposures and risks from fenpropathrin as follows.

2. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute dietary (food only) risk assessment used the Monte Carlo analysis and provides fenpropathrin levels on soybeans at 0.05 ppm and assumes that 1% of the total U.S. soybean acreage was treated. Although this level is half of the soybean tolerance, it is a reasonable estimate of anticipated residues based on tolerances for other synthetic pyrethroids. This should be viewed as a highly refined risk estimate. The risk assessment was applied to all groups. The exposure estimates for the U.S. population and certain subgroups are shown in Table 1.

TABLE 1. ACUTE DIETARY EXPOSURE SUMMARY

Population Subgroup[1]	Theoretical Maximum Residue Contribution,[2] mg/kg/day	% of RfD
U.S. Population (48 States).	0.010	17
All Infants (< 1 yr)	0.025	42
Nursing Infants (< 1 yr) ..	0.044	73
Children (1–6 yr)	0.020	33
Children (7–12 yr)	0.012	20
Females (13+)	0.007	12

[1] The subgroups listed above are: (1) the U.S. population (48 states), (2) infants and children, (3) females (13+ years of age), and (4) other subgroups (in this case, none) for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

[2] The theoretical maximum residue contribution is at the 99.9th percentile.

3. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, EPA made a conservative assumption that 100% of soybeans and all other commodities having fenpropathrin tolerances will contain fenpropathrin residues. The existing fenpropathrin tolerances result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the percentages of the RfD shown in Table 2.

TABLE 2. CHRONIC DIETARY EXPOSURE SUMMARY

Population Subgroup[1]	Theoretical Maximum Residue Contribution, mg/kg/day	% of RfD
U.S. Population (48 States) All Seasons.	0.0026	10
U.S. Population (48 States) Autumn Season.	0.0028	11
Northeast Region	0.0027	11
Midwest Region	0.0027	11
Pacific Region	0.0027	11
Non-hispanic Other Than Black or White.	0.0030	12
All Infants (<1 yr)	0.0066	27
Non-nursing Infants (<1 yr).	0.0084	34
Children (1–6 yr)	0.0065	26
Children (7–12 yr)	0.0044	17
Females (13+ yr, Nursing)	0.0027	11

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

4. *From drinking water.* Fenpropathrin is relatively persistent and not mobile. There are no established Maximum Contaminant Levels or health advisory levels for fenpropathrin . Acute and chronic exposure to fenpropathrin residues in drinking water do not exceed EPA's level of concern.

5. *Acute exposure and risk.* Based on the acute dietary (food) exposure estimates, acute drinking water levels of concern (DWLOCs) for fenpropathrin were calculated and are summarized in Table 3. The acute exposure to fenpropathrin residues in drinking water do not exceed EPA's level of concern.

TABLE 3. DRINKING WATER LEVELS OF CONCERN FOR ACUTE DIETARY EXPOSURE

Population[1]	RfD, mg/kg/day	TMRC (Food Exposure), mg/kg/day	Max. Water Exposure[2], mg/kg/day	DWLOC,[3,4,5] µg/L
U.S. Population (48 States)	0.06	0.0102	0.0498	1,700
Females, 13+	0.06	0.0067	0.0533	1,600
Nursing Infants (< 1 yr)	0.06	0.0440	0.0160	160

[1] Populations listed are the U.S. population (48 states), females 13+ years, infants/children, and any subpopulations whose exposure exceeds that of the U.S. population (48 states). Within each subpopulation, the group with the highest exposure is listed.
[2] Maximum Water Exposure (mg/kg/day) = RfD (mg/kg/day) - TMRC from DEEM (mg/kg/day).
[3] DWLOC(µg/L) = Max water exposure (mg/kg/day) * body wt (kg) / (10–3 mg/µg) * water consumed daily (L/day).
[4] HED Default body wts for males, females, and children are 70 kg, 60 kg, and 10 kg, respectively.
[5] HED Default Daily Drinking Rates are 2 L/Day for Adults and 1 L/Day for children.

6. *Chronic exposure and risk.* Based on the chronic dietary (food) exposure estimates, chronic DWLOCs for fenpropathrin were calculated and are summarized in Table 4. The chronic exposure to fenpropathrin residues in drinking water do not exceed EPA's level of concern.

TABLE 4. DRINKING WATER LEVELS OF CONCERN FOR CHRONIC DIETARY EXPOSURE

Population[1]	RfD, mg/kg/day	TMRC (Food Exposure), mg/kg/day	Max. Water Exposure[2], mg/kg/day	DWLOC,[3,4,5] µg/L
U.S. Population (48 States) Autumn Season	0.025	0.0028	0.022	780
Females (13+ yr, Nursing)	0.025	0.0027	0.022	670

TABLE 4. DRINKING WATER LEVELS OF CONCERN FOR CHRONIC DIETARY EXPOSURE—Continued

Population[1]	RfD, mg/kg/day	TMRC (Food Exposure), mg/kg/day	Max. Water Exposure[2], mg/kg/day	DWLOC,[3,4,5] μg/L
Non-nursing Infants (<1 yr)	0.025	0.0084	0.017	170
Non-hispanic Other Than Black or White	0.025	0.0030	0.022	770

[1] Populations listed are the U.S. population (48 states), females 13+ years, infants/children, and any subpopulations whose exposure exceeds that of the U.S. population (48 states). Within each subpopulation, the group with the highest exposure is listed.
[2] Maximum Water Exposure (mg/kg/day) = RfD (mg/kg/day) - TMRC from DEEM (mg/kg/day).
[3] DWLOC(μg/L) = Max water exposure (mg/kg/day) * body wt (kg) / (10_{-3} mg/μg) * water consumed daily (L/day).
[4]HED Default body wts for males, females, and children are 70 kg, 60 kg, and 10 kg, respectively.
[5] HED Default Daily Drinking Rates are 2 L/Day for Adults and 1 L/Day for children.

7. *From non-dietary exposure.* Fenpropathrin has no registered residential uses. There are registered uses for non-food sites, however, exposures are expected for workers only (i.e., greenhouse use).

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

EPA does not have, at this time, available data to determine whether fenpropathrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fenpropathrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenpropathrin has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* Using the food exposure assumptions, and taking into account the completeness and reliability of the toxicity data, EPA concludes that dietary (food only) exposure to fenpropathrin will utilize 17% of the acute RfD for the U.S. population. In the absence of additional safety factors, EPA generally has no concern for exposures below 100% of the RfD because the acute RfD represents the level at or below which an acute exposure will not pose an appreciable risk to human health. Despite the potential for exposure to fenpropathrin in drinking water and through occupational (e.g., commercial greenhouse) use, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

2. *Chronic risk.* Using the food exposure assumptions, and taking into account the completeness and reliability of the toxicity data, EPA concludes that dietary (food only) exposure to fenpropathrin will utilize 10% of the chronic RfD for the U.S. population. In the absence of additional safety factors, EPA generally has no concern for exposures below 100% of the RfD because the chronic 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 fenpropathrin in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. The non-food sites (e.g., greenhouse uses) for which fenpropathrin is registered would not fall under a chronic scenario. There is a reasonable certainty that no harm will result to the U.S. population from chronic aggregate exposure to fenpropathrin residues.

Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. No endpoint was selected for short-and intermediate-term dermal or inhalation exposures. This risk assessment is not required.

3. *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 fenpropathrin residues.

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

1. *Safety factor for infants and children—In general.* In assessing the potential for additional sensitivity of infants and children to residues of fenpropathrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to pre- and post-natal 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 MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

2. *Developmental toxicity studies*—i. *Rats*. In the developmental study in rats, the maternal (systemic) no observed adverse effect level (NOAEL) was 6 mg/kg/day. The maternal lowest adverse effect level (LOAEL) of 10 mg/kg/day was based on death, moribundity, ataxia, hypersensitivity, spastic jumping, tremors, prostration, convulsions, hunched posture, squinting eyes, chromodacryorrhea, and lacrimation. The developmental (fetal) NOAEL was >10 mg/kg/day, the highest dose tested (HDT).

ii. *Rabbits*. In the developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 4 mg/kg/day. The maternal LOAEL of 12 mg/kg/day was based on anorexia, grooming, and flicking of the forepaws. The developmental (fetal) NOAEL was >36 mg/kg/day at the HDT.

3. *Reproductive toxicity study— Rats*. In the 3-generation reproductive toxicity study in rats, the parental (systemic) NOAEL was 3 mg/kg/day. The parental (systemic) LOAEL of 8.9 mg/kg/day was based on body tremors with spasmodic muscle twitches, increased sensitivity and maternal lethality. The developmental NOAEL was 3.0 mg/kg/day. The developmental LOAEL of 8.9 mg/kg/day was based on body tremors and increased pup mortality. The reproductive NOAEL was 8.9 mg/kg/day. The reproductive LOAEL of 26.9 mg/kg/day was based on decreased F^1B pup weight and increased pup loss in the F^2B generation.

4. *Conclusion*. There is a complete toxicity database for fenpropathrin and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

5. *Acute risk*. Using the food exposure assumptions described above (Acute Dietary Risk), and taking into account the completeness and reliability of the toxicity data, EPA concludes that dietary (food only) exposure to fenpropathrin will utilize 73% of the acute RfD for the U.S. population subgroup nursing infants (< 1 yr). This is the maximally exposed subgroup in the infants and children categories. In the absence of additional safety factors, EPA generally has no concern for exposures below 100% of the RfD because the acute RfD represents the level at or below which an acute exposure will not pose an appreciable risk to human health. Despite the potential for exposure to fenpropathrin in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

6. *Chronic risk*. Using the food exposure assumptions described above (Chronic Dietary Risk), and taking into account the completeness and reliability of the toxicity data, EPA concludes that the percentage of the RfD that will be utilized by dietary (food only) exposure to residues of fenpropathrin ranges from 9.6% for nursing infants (<1 yr) up to 34% for non-nursing infants (< 1 yr). In the absence of additional safety factors, 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 fenpropathrin in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. The non-food sites (e.g., greenhouse use) for which fenpropathrin is registered would not fall under a chronic scenario.

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

IV. Other Considerations

Adequate enforcement methodology (example - gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229).

A. Magnitude of Residues

Crop residue studies of fenpropathrin in/on soybeans were not available for review. In lieu of soybean residue data, EPA considered residue data from grapes and peanuts. Pyrethroid insecticides are non-systemic; therefore, residues of fenpropathrin in soybean seed are not expected to be as high as those on ''exposed'' crop commodities (e.g., grapes). Because of this, EPA also used data from other pyrethroid insecticides (fenvalerate, lambda-cyhalothrin, permethrin, tralomethrin) that are registered for use on soybeans to determine the appropriate tolerance for soybean seed. Residue data from the above-ground parts of peanut commodities were used to determine appropriate tolerances for soybean forage and hay. Because a soybean processing study was not available for review, the maximum theoretical concentration factors were used to derive tolerances for the soybean processed commodities aspirated grain fractions, meal, hulls, and refined oil from the soybean seed tolerance.

Residues of fenpropathrin are not expected to exceed the following values for soybean:

- Aspirated grain fractions——20 ppm
- Soybean, forage——15 ppm
- Soybean, hay——20 ppm
- Soybean, seed——0.1 ppm

or the following values for processed soybean commodities:

- Soybean, hulls——1.0 ppm
- Soybean, meal——0.2 ppm
- Soybean, oil, refined——1.5 ppm

Existing tolerances for fenpropathrin in animal commodities are listed in 40 CFR 180.466. Secondary residues in animal commodities are not expected to exceed existing tolerances.

V. Conclusion

Therefore, the tolerance is established for combined residues or residues of fenpropathrin in soybeans at 0.1 ppm.

VI. 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 22, 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 CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300763] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C) Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

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

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

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

In addition, since tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency 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 acations 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.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and 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: January 6, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

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

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

2. In §180.466, by alphabetically adding the following commodities to the table in paragraph (b) to read as follows:

§180.466 Fenpropathrin; tolerances for residues.

* * * * *

(b)* * *

Commodity	Parts per million	Expiration/ Revocation Date
* *	* *	*
Soybean, forage ...	15	6/30/00
Soybean, hay	20	6/30/00
Soybean, hulls	1.0	6/30/00
Soybean, meal	0.2	6/30/00
Soybean, oil, refined.	1.5	6/30/00
Soybean, seed	0.1	6/30/00

* * * * *

[FR Doc. 99–1254 Filed 1–19–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–51]

Amendment to Class E Airspace; Belle Plaine, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Belle Plaine Municipal Airport, Belle Plaine, IA. The FAA has developed Global Positioning System (GPS) Runway (RWY) 17 and GPS RWY 35 Standard Instrument Approach Procedures (SIAPs) to serve Belle Plaine Municipal Airport, IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 17 and GPS RWY 35 SIAPs in controlled airspace.

In addition, the Class E airspace area is revised to indicate a minor revision to the Airport Reference Point (ARP) coordinates, and is included in this document. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 17 and GPS RWY 35 SIAPs, revise the ARP coordinates, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, May 20, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 4, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–51, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 17 and GPS RWY 35 SIAPs to serve the Belle Plaine Municipal Airport, Belle Plaine, IA. The amendment to Class E airspace at Belle Plaine, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules.

In addition, the Class E airspace area is amended to indicate the revised ARP coordinates. The amendment at Belle Plaine Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR, and revise the ARP coordinates. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written abverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment

period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action 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–ACE–51.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Belle Plane, IA [Revised]

Belle Plaine Municipal Airport, IA
(lat. 41°52′44″ N., long. 92°17′04″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Belle Plaine Municipal Airport, excluding that portion which overlies the Cedar Rapids, IA, Class E airspace area.

* * * * *

Issued in Kansas City, MO, on December 7, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–1231 Filed 1–19–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–50]

Amendment to Class E Airspace; Maquoketa, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Maquoketa Municipal Airport, Maquoketa, IA. The FAA has developed Global Positioning System (GPS) Runway (RWY) 15 and GPS RWY 33 Standard Instrument Approach Procedures (SIAPs) to serve Maquoketa Municipal Airport, IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 15 and GPS RWY 33 SIAPs in controlled airspace. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 15 and GPS RWY 33 SIAPs, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, May 20, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 4, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–50, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 15 and GPS

RWY 33 SIAPs to serve the Maquoketa Municipal Airport, Maquoketa, IA. The amendment to Class E airspace at Maquoketa, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action 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–ACE–50.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Maquoketa, IA [Revised]

Maquoketa Municipal Airport, IA
(lat. 42°03′00″N., long. 90°44′20″W.)
Maquoketa NDB
(lat. 42°03′05″N., long. 90°44′28″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Maquoketa Municipal Airport and within 2.6 miles each side of the 343° bearing from the Maquoketa NDB extending from the 6.3-mile radius to 7.4 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on December 7, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–1230 Filed 1–19–99; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 4

Freedom of Information Act, Miscellaneous Rules

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: This document amends the Commission's Rules of Practice to incorporate procedures for the expedited processing and aggregation of requests received by the Commission under the Freedom of Information Act and to revise the Commission's

schedule of fees charged to members of the public for access to agency records.

EFFECTIVE DATE: January 20, 1999.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, (202) 326–2447, Office of General Counsel, FTC, 600 Pennsylvania Ave., NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On August 26, 1998, the Commission published a proposal to amend its Rules of Practice to incorporate certain procedures for the expedited processing and aggregation of requests under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended by the Electronic FOIA Amendments of 1996 (E–FOIA), and to revise the schedule of fees charged to the public by the Commission in providing access to its records. See 64 FR 45650 (Aug. 26, 1998). The Commission received no responses to its request for comments on these amendments.

Accordingly, for the reasons set forth in the statement of basis and purpose accompanying the proposed amendments, the Commission has determined to adopt the amendments as final without change, except for technical corrections needed to bring the FTC's mailing address, as set forth in Rules 4.8(b)(6) (search and review fees) and 4.11(a)(2)(i)(A) (address for FOIA appeals), into conformity with U.S. Postal Service standards. The same corrections are being made in the corresponding provisions for initial FOIA requests under Rule 4.11(a)(1)(i)(A) and Privacy Act requests and appeals under Rules 4.13(c) and (i)(1), which were previously amended by the Commission when it implemented other E–FOIA provisions and made other technical corrections in its Rules. See 63 FR 45644 (Aug. 26, 1998) (final rule).

In addition, the Commission is adding a new paragraph (h) to Commission Rule 4.11, 16 CFR 4.11(h), to permit a Commission member, official or staff to disclose items or categories of information not currently on the Commission's public record upon a determination by the General Counsel (or his or her designee) that the disclosure of such Commission information would facilitate the conduct of official agency business and would not be otherwise prohibited by law, order, or regulation. In determining whether disclosure would facilitate the conduct of official agency business, the General Counsel (or his or her designee) will consider the interest in disclosure and any countervailing agency interests or policies (e.g., whether disclosure would interfere with any ongoing law enforcement investigations). The General Counsel will designate the Deputy General Counsel or an Assistant General Counsel (or a senior manager in an equivalent level) to make these determinations, if delegated. This procedure avoids the need for the full Commission to authorize disclosures by its own members, officials or staff, and will thereby help minimize the administrative burden and delay associated with the authorization process. The General Counsel retains the discretion, which may be exercised by an Acting General Counsel, but is not otherwise intended to be delegated, to refer unusual or difficult cases to the Commission for determination.

Like information released in response to an FOIA request, information disclosed under Rule 4.11(h) will not automatically be placed on the agency's ''public record'' for routine public inspection and copying under Rule 4.9(b) (i.e., ''reading room'' materials). Nothing in new Rule 4.11(h), however, is intended to prevent the information from being included in other documents that are routinely placed on the public record (e.g., press releases). Likewise, new Rule 4.11(h) is not intended to prevent the Commission from later placing the particular category of information on the public record by amending the list of public records in Rule 4.9(b) to that effect, or from voting to place a particular item (rather than the entire category) of information on the public record on an individual, case-by-case basis. See Commission Rule 4.9(b)(10)(xiii); 63 FR at 45646 (discussing the addition of Rule 4.9(b)(10)(xiii) as a catch-all category for individual documents not specifically listed in Rule 4.9(b) that the Commission may from time to time place on the public record).

New Rule 4.11(h) is intended as a rule of purely internal agency applicability and is not intended to confer on the public any additional or separate right of access to nonpublic agency records. Requests by members of the public for access to such records remain subject to the FOIA procedures set forth in Rule 4.11(a).

The Commission hereby certifies that no final regulatory flexibility analysis is required under the Regulatory Flexibility Act because the amendments will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b). Most requests for access to FTC records are filed by individuals, who are not ''small entities'' within the meaning of that Act. 5 U.S.C. 601(6). In any event, the economic impact of the rule changes on requesters is expected to be minimal, if any. None of the amendments contains any information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–3520. Finally, new Rule 4.11(h), which was not published in the earlier notice of proposed rulemaking, is a purely technical amendment and relates solely to agency rules of practice and procedure. For those reasons, the amendment is exempt from the notice-and-comment requirements of the Administrative Procedure Act. *See* 5 U.S.C. 553(A), (B).

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

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

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Amend § 4.8 by revising paragraphs (b)(4) and (b)(6) to read as follows:

§ 4.8 Costs for obtaining Commission records.

* * * * *

(b) * * *

(4) *Waiver of small charges.* Notwithstanding the provisions of paragraphs (b)(1), (2), and (3) of this section, charges will be waived if the total chargeable fees for a request do not exceed $14.00.

* * * * *

(6) *Schedule of direct costs.* The following uniform schedule of fees applies to records held by all constituent units of the Commission.

Paper Fees:

Paper copy (up to 8.5″ x 14″).	
Reproduced by Commission	$0.14 per page.
Reproduced by Requester	0.05 per page.

Microfiche Fees:	
Film Copy—Paper to 16mm film	0.04 per frame.
Fiche Copy—Paper to 105mm fiche	0.08 per frame.
Film Copy—Duplication of existing 100 ft. roll of 16mm film	9.50 per roll.
Fiche Copy—Duplication of existing 105mm fiche	0.26 per fiche.
Paper Copy—Converting existing 16mm film to paper (Conversion by Commission Staff)	0.26 per page.
Paper Copy—Converting existing 105mm fiche to paper (Conversion by Commission Staff)	0.23 per page.
Film Cassettes	2.00 per cassette.
Electronic Services:	
Converting paper into electronic format (scanning)	2.50 per page.
Computer programming	8.00 per qtr. hour.
Other Fees:	
Computer Tape	18.50 each.
Certification	10.35 each.
Express Mail	3.50 for first pound and 3.67 for each additional pound (up to $15.00).

Search and Review Fees

Agency staff is divided into three categories: clerical, attorney/economist, and other professional. Fees for search and review are assessed on a quarter-hourly basis, and are determined by identifying the category into which the staff member(s) conducting the search or review belong(s), determining the average quarter-hourly wages of all staff members within that category, and adding 16 percent to reflect the cost of additional benefits accorded to government employees. The exact fees are calculated and announced periodically and are available from the Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580; (202) 326–2222.

* * * * *

3. Amend § 4.11 by redesignating paragraphs (a)(1)(i)(E) and (a)(1)(iii)(D) as new paragraphs (a)(1)(i)(F) and (a)(1)(iii)(E), respectively; by adding new paragraphs (a)(1)(i)(E), (a)(1)(iii)(D), and (h); and by revising paragraphs (a)(1)(i) (A) and (B), (a)(1)(iii)(A), (a)(2)(i)(A), (a)(2)(i)(B), and (a)(2)(ii)(A) to read as follows:

§ 4.11 Disclosure requests.

(a) * * *

(1) * * *

(i) * * *

(A) A request under the provisions of the Freedom of Information Act, 5 U.S.C. 552, as amended, for access to Commission records shall be in writing and addressed as follows: Freedom of Information Act Request, Assistant General Counsel for Legal Counsel, (Management & Access), Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

(B) Failure to mark the envelope and the request in accordance with paragraph (a)(1)(i)(A) of this section, or the filing of a request for expedited treatment under paragraph (a)(1)(i)(E) of this section, will result in the request (or requests, if expedited treatment has been requested) being treated as received on the date that the processing unit in the Office of General Counsel actually receives the request(s).

* * * * *

(E) *Expedited treatment.* Requests may include an application for expedited treatment. Where such an application is not included with an initial request for access to records under paragraph (a)(1) of this section, the application may be included in any appeal of that request filed under paragraph (a)(2) of this section. Such application, which shall be certified by the requester to be true and correct to the best of such person's knowledge and belief, shall describe the compelling need for expedited treatment, including an explanation as to why a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or, with respect to a request made by a person primarily engaged in disseminating information, an explanation of the urgency to inform the public concerning actual or alleged Federal Government activity. The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will, within 10 calendar days of receipt of a request for expedited treatment, notify the requester, in writing, of the decision to either grant or deny the request for expedited treatment, and, if the request is denied, advise the requester that this determination may be appealed to the General Counsel.

* * * * *

(iii) *Time limit for initial determination.* (A) The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will, within 20 working days of the receipt of a request, either grant or deny, in whole or in part, such request, unless the request has been granted expedited treatment in accordance with this section, in which case the request will be processed as soon as practicable.

* * * * *

(D) If the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee reasonably believes that requests made by a requester, or a group of requesters acting in concert, actually constitute a single request that would otherwise involve unusual circumstances, as specified in paragraph (a)(1)(iii)(B) of this section, and the requests involve clearly related matters, those multiple requests may be aggregated.

* * * * *

(2) * * *

(i) * * *

(A)(1) If an initial request for expedited treatment is denied, the requester, at any time before the initial determination of the underlying request for records by the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee (or, if the request for expedited treatment was filed with any appeal filed under paragraph (a)(2)(i)(A)(2) of this section, at any time before the General Counsel's determination on such an appeal), may appeal the denial of expedited treatment to the General Counsel.

(2) If an initial request for records is denied in its entirety, the requester may, within 30 days of the date of the determination, appeal such denial to the General Counsel. If an initial request is denied in part, the time for appeal will

not expire until 30 days after the date of the letter notifying the requester that all records to which access has been granted have been made available.

(3) The appeal shall be in writing and should include a copy of the initial request and a copy of the response to that initial request, if any. The appeal shall be addressed as follows: Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

(B) Failure to mark the envelope and the appeal in accordance with paragraph (a)(2)(i)(A) of this section will result in the appeal (and any request for expedited treatment filed with that appeal) being treated as received on the actual date of receipt by the Office of General Counsel.

* * * * *

(ii) * * *

(A)(1) Regarding appeals from initial denials of a request for expedited treatment, the General Counsel will either grant or deny the appeal expeditiously;

(2) Regarding appeals from initial denials of a request for records, the General Counsel will, within 20 working days of the receipt of such an appeal, either grant or deny it, in whole or in part, unless expedited treatment has been granted in accordance with this section, in which case the appeal will be processed as soon as practicable.

* * * * *

(h) The General Counsel (or General Counsel's designee) may authorize a Commission member, other Commission official, or Commission staff to disclose an item or category of information from Commission records not currently available to the public for routine inspection and copying under Rule 4.9(b) where the General Counsel (or General Counsel's designee) determines that such disclosure would facilitate the conduct of official agency business and would not otherwise be prohibited by applicable law, order, or regulation. Requests for such determinations shall be set forth in writing and, in the case of staff requests, shall be forwarded to the General Counsel (or General Counsel's designee) through the relevant Bureau. In unusual or difficult cases, the General Counsel may refer the request to the Commission for determination.

§ 4.13 [Amended]

4. In § 4.13, the reference in paragraph (c) to ''6th Street and Pennsylvania Avenue NW.,'' and the reference in paragraph (i)(1) to ''6th Street & Pennsylvania Avenue, NW.,'' are revised to read ''600 Pennsylvania Avenue, NW.,''

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–1178 Filed 1–19–99; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4419–F–01]

RIN 2577–AB93

Due Date of First Annual Performance Report Under the Native American Housing Assistance and Self-Determination Act of 1996

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule sets January 31, 1999 as the due date for recipients of Indian Housing Block Grant funds to submit the first annual performance reports under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). This date provides an additional 60 days to the 60 day period that was assumed to apply, and allows recipients and HUD more time to work out the difficulties of the first performance report submissions.

EFFECTIVE DATE: February 19, 1999.

FOR FURTHER INFORMATION CONTACT: Bruce Knott, Director, Office of Housing and Community Development, Office of Native American Programs, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone (303) 675–1600 (this is not a toll-free number). Speech or hearing-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: NAHASDA section 404 (25 U.S.C. 4164) and 24 CFR 1000.514 require each recipient of Indian Housing Block Grant (IHBG) funds to submit an annual performance report to HUD. Under 24 CFR 1000.514, a performance report must be submitted within 60 days of the end of the recipient's program year. For the first year of NAHASDA, 24 CFR 1000.516 provides that the period to be covered by the annual performance report will be October 1, 1997 through September 30, 1998, and that subsequent reporting periods will coincide with the recipient's program year.

The Department has received numerous inquiries concerning the due date for the first annual report under § 1000.516. Recipients cite unfamiliarity with the new reporting format, the late date at which Indian Housing Plans (IHPs) were approved, and the requirement for public comment on their annual performance reports as reasons why a 60-day due date for the first annual reports is impracticable. In addition, there is an issue as to when the first annual report is due. Although § 1000.514 provides that the annual performance report is due within 60 days of the end of the recipient's program year, the period to be covered by the first report, set by § 1000.516, does not coincide with the program year of many recipients. While it has been generally assumed that the first report would be due within 60 days of September 30, 1998, § 1000.516 does not explicitly establish this submission period.

For these reasons, HUD has determined to amend § 1000.516 to establish January 31, 1999 as the due date for performance reports under the first year of NAHASDA. This date provides an additional 60 days to the 60 day period that was assumed to apply, and allows recipients and HUD more time to work out the difficulties of the first performance report submissions.

Findings and Certifications

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10; however, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary because of the limited scope of the rule. This rule only provides clarification of the date by which the first annual performance reports under NAHASDA are due.

Paperwork Reduction Act

The information collection requirements contained in the IHBG rule at 24 CFR part 1000 have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (42 U.S.C. 3501–3530), and assigned OMB control number 2577–0218. *An*

agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. This final rule does not include any additional information collection requirements.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(c)(2) of the HUD regulations, this rule amends an existing document, the regulations at 24 CFR part 1000, which as a whole would not fall within an exclusion, but the amendment by itself would do so. Therefore, this rule is categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule have no federalism implications, and that the policies are not subject to review under the Order.

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk on children.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for this program is 14.867.

List of Subjects in 24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described above, in title 24 of the Code of Federal Regulations, part 1000 is amended as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

1. The authority citation for part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

2. Section 1000.516 is revised to read as follows:

§ 1000.516 What reporting period is covered by the annual performance report?

For the first annual performance report to be submitted under NAHASDA, the period to be covered is October 1, 1997, through September 30, 1998. This first report must be submitted by January 31, 1999. Subsequent annual performance reports must cover the period that coincides with the recipient's program year.

Dated: January 12, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–1195 Filed 1–19–99; 8:45 am]

BILLING CODE 4419–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

RIN 1512–AA07

[T.D. ATF–407; Ref Notice No. 856]

Establishment of the San Francisco Bay Viticultural Area and the Realignment of the Boundary of the Central Coast Viticultural Area (97–242)

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision establishes a viticultural area in the State of California to be known as ''San Francisco Bay,'' under 27 CFR part 9. The viticultural area is located mainly within five counties which border the San Francisco Bay and partly within two other counties. These counties are: San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa, and partly in Santa Cruz and San Benito Counties. The ''San Francisco Bay'' viticultural area encompasses approximately 2,448 square miles total and contains nearly 5,800 acres planted to grapes and over 39 wineries. In conjunction with establishing the ''San Francisco Bay'' viticultural area, ATF is amending the boundaries of the Central Coast viticultural area to include the ''San Francisco Bay'' viticultural area. The previous boundaries of the Central Coast viticultural area already encompassed part of the ''San Francisco Bay'' viticultural area. Approximately 639 square miles is added to Central Coast with an additional 2,827 acres planted to grapes.

EFFECTIVE DATE: March 22, 1999.

FOR FURTHER INFORMATION CONTACT: David Brokaw, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, 650 Massachusetts Avenue, NW, Washington, DC., 20226, (202) 927–8199.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area,

based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition for the San Francisco Bay Viticultural Area

A consortium of nearly 75 growers and vintners led by Wente Bros., petitioned ATF to establish a new viticultural area in Northern California known as ''San Francisco Bay,'' that will be included within the Central Coast viticultural area. The ''San Francisco Bay'' viticultural area is located mainly within five counties which border the San Francisco Bay and partly within two other counties. These counties are: San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa, and partly in Santa Cruz and San Benito Counties. Santa Cruz County, although it has no Bay shoreline, has traditionally been associated with the place name ''San Francisco Bay.'' The portion of the Santa Clara Valley located in San Benito County has been included. The viticultural area encompasses approximately 2,448 square miles total containing nearly 5,800 acres planted to grapes and over 39 wineries.

ATF has determined that the area is distinguished by a marine climate which is heavily influenced by the proximity of the San Francisco Bay and the Pacific Ocean. Specifically, the San Francisco Bay and the local geographical features surrounding it permit the cooling influence of the Pacific Ocean to reach farther into the interior of California in the Bay Area than elsewhere along the California coast.

The waters of the San Francisco Bay as well as urban areas, particularly the City of San Francisco, have purposely been included since San Francisco Bay is the source of the viticultural area's weather and the focal point of its history. Although it is not a likely vineyard site, the city has long been a wine industry hub.

Comments

On October 20, 1997, ATF published a notice of proposed rulemaking, Notice No. 856, in the **Federal Register** soliciting comments on the proposed viticultural area. Given the scope of the proposals and the wide range of interests that were likely to be affected by the establishment of a San Francisco Bay viticultural area, ATF solicited specific public comment with respect to certain questions raised by the petition. ATF asked the following questions in Notice No. 856:

(1) Is there sufficient evidence that the name, ''San Francisco Bay,'' can be associated with regions south and east of the bay such as Santa Clara Valley and Livermore? Do these regions have climatic or geographic differences with other regions of the proposed area to such a degree that they cannot be considered as one viticultural area?

(2) Does the evidence support exclusion from the proposed viticultural area of the regions north of the Bay, *i.e.*, Marin, Napa, Solano, and Sonoma Counties?

(3) Can the regions where grapes cannot be grown in the proposed viticultural area, such as the dense urban settings and the Bay itself, be easily segregated from the rest of the proposed area? Does it undermine the notion of a viticultural area to keep them included?

ATF received 49 comments in response to Notice No. 856. Basically, the comments fall into five categories. These categories are as follows: those in support (9), those in support for expanding the ''San Francisco Bay'' area (1), those that oppose ''San Francisco Bay'' but support the Central Coast expansion (3), those that oppose being associated with another viticultural area (33), and those that oppose the creation of ''San Francisco Bay'' (3).

Those in support felt that the appellation clearly defines a unique area influenced by San Francisco Bay weather patterns. Among the favorable comments were statements indicating that approval of the area would align the boundaries between coastal appellations, would recognize a historic wine growing region, would reinforce the economic impact of wine growing in the area, and would be of benefit in educating the wine consumer.

One respondent, the Allied Grape Growers, disagreed that the coastal climatic influences stop at the crest of the hills of Altamont. This respondent felt that the Brentwood-Byron area is now considered by most independent observers as a part of the ''San Francisco Bay'' area. While this respondent believed that Brentwood-Byron corridor should be included, no specific evidence was provided.

Three respondents opposed the ''San Francisco Bay'' viticultural area but supported the expansion of the Central Coast viticultural area. Among these respondents was the Sonoma County Grape Growers Association. The Association claimed that the petitioners have taken reference works out of context with ''preposterous'' results. The Association cited dramatic differences in climatic conditions (San Francisco and Livermore), conflicting definitions of the area (disagreement over what constitutes the Bay area), the fact that the climate of San Francisco cannot sustain winegrape growing, and that the proposal was for marketing purposes only. The Association believed that it is not a meaningful viticultural area and will undermine the integrity of the American viticultural area system. On the other hand, the Association believed that there seems to be no reason to oppose expanding the Central Coast viticultural area. The remaining two respondents in this category generally felt that it is too broad an appellation to have climatic integrity and seemed to have been proposed for marketing and convenience considerations. One of the respondents felt that the Central Coast appellation needs to be reexamined while the other respondent felt that the Santa Cruz Mountains viticultural area should be included in the Central Coast viticultural area.

Thirty-three respondents opposed being associated with either the ''San Francisco Bay'' viticultural area or the expansion of the Central Coast viticultural area. These respondents were from the Santa Cruz Mountains viticultural area. They felt that they have worked hard to establish the distinctiveness of their wines and inclusion in either the ''San Francisco Bay'' viticultural area or the expanded central coast viticultural area will do them ''incalculable damage.'' These respondents claimed that the soils, rainfall, climate, and physical features of Livermore differ completely from those of the Santa Cruz Mountains viticultural area. They stated that their vineyards are, for the most part, above the fogs. The average temperatures are in the 2140 to 2880 degree-day zone while Livermore is 3400. Rainfall for Livermore is listed in the petition at 18 inches. These respondents stated that the Santa Cruz Mountains viticultural area averages more than double that amount of rainfall at a minimum of 36 to 40 inches. Further, the Santa Cruz Mountains viticultural area shares virtually none of the soil types of Livermore with the soils producing average yields dramatically smaller than the average yields in Livermore, resulting in a different style of wine entirely. These respondents claimed that the excluded areas in the ''North Bay'' and ''East Bay'' share far more geographical and climatic features with Livermore than does the Santa Cruz Mountains viticultural area. In addition, these respondents felt that it would

undermine the meaning of American viticultural areas by including large, dissimilar areas where grapes cannot be grown. Specifically, these areas include the northern half of the San Francisco Peninsula which is too cold to grow grapes, the heavy urban populations of Oakland and the East Bay, and the Bay itself, which is not an inland lake but a large bay of the Pacific Ocean. These respondents also felt that including areas like southern Santa Clara County, and parts of San Benito County would mislead the American public since residents of these areas, as well as Santa Cruz County, historically have not been considered and do not consider themselves to be living in the San Francisco Bay area. Similarly, these respondents opposed the inclusion of the Santa Cruz Mountains viticultural area in the expanded Central Coast viticultural area since the Santa Cruz Mountains viticultural area does not share the same soils, climate or geographical characteristics. These respondents also felt that the Central coast is a recent construct having only limited validity from Monterey Bay south.

Three respondents generally opposed the creation of the viticultural area. One of these respondents, Mr. William Drake, claimed that anyone who has spent any time at all in the Bay Area is well aware that there are extreme differences in the various climates between the areas included in the petition. In addition, Mr. Drake claimed that the topography of this nearly two million acre proposed area differs dramatically as one travels from the eastern portion westward to, and over the coastal mountains. Mr. Drake also believed that while there may be a Bay Area, that area is understood to include a number of distinctly different areas, some of which are even outside of the Bay Area, let alone the ''San Francisco Bay Area.'' Another respondent in opposition was the Association of California North Coast Grape Growers. Regarding the name evidence, the Association stated that Santa Clara, Santa Cruz, and San Benito are nowhere near the San Francisco Bay. If anything, Santa Cruz is associated with Monterey Bay. The Association further stated that the petitioner provided no supporting evidence that the San Benito area is locally or nationally known to be affiliated with San Francisco. Regarding the exclusion of areas north of the Bay, *i.e.*, Marin, Napa, Solano, and Sonoma Counties, the Association felt that there was not supporting evidence, on the one hand to exclude these areas, while, on the other hand, there was not supporting evidence that the ''San Francisco Bay'' area should be included with regions north of the bay. The Association felt that the most important question revolves around the purpose of appellation names, *i.e.*, to identify and distinguish grape growing regions which are unique from other growing regions based on geographic, altitude, climate, and soil conditions. The Association believed that the fact that the City of San Francisco is ''not a feasible vineyard site'' seemed to be a prima facie case for immediate disqualification of the appellation name. The Association also believed that the fact that the ''San Francisco Bay is a locally, nationally or internationally recognized place name'' is completely irrelevant to the issue of whether that place is known for growing wine grapes. The City of San Francisco, and certainly its bay, are not viticultural areas, according to the Association. The Association went on to state that the petitioner might do just as well calling the viticultural area ''Golden Gate Region'' if name recognition is to be the litmus test for approving an appellation petition. The Association further believed that if this area is approved, it would set a precedent that would allow specific city or location names to be used to describe very large geographic areas. According to the Association, the North Coast appellation could be renamed ''Napa Area,'' Central Coast could be called ''Santa Barbara,'' and the Central Valley might be named ''Yosemite.'' The Association felt that should the petitioned area be found to be unique, and a qualified appellation area, the name of the region should be more generalized (*i.e.*, Central Bay Area) as opposed to the specific city name of San Francisco. The Association claimed that misstatements and irrelevant evidence was provided by the petitioner. As examples, excerpts from Hugh Johnson's book The World Atlas of Wine and Robert Lawrence Balzer's Vineyards and Wineries: Bay Area and Central Coast Counties were cited to illustrate that the ''Bay Area'' is not accepted by these authors and industry experts as a viticultural region as claimed by the petitioners. The Association further claimed that the petitioners have provided extraneous historical and current evidence. The Association cited the use of grape pricing districts as setting a bad precedent to be used as a determinant for appellation designation approval. The Association pointed out that San Benito is clearly not listed as a part of the Grape Pricing District which includes San Francisco, San Mateo, Santa Cruz, Santa Clara, Alameda and Contra Costa.

ATF Analysis of Comments

ATF has reviewed both the comments and the petitioner's response to them and has concluded that, with one exception, the petitioner has demonstrated that the proposed area represents a continuum of coastal climate that is moderated and altered by San Francisco Bay creating a distinct and recognizable area known as ''San Francisco Bay.'' The exception is the Santa Cruz Mountains viticultural area. According to the comments from members of the Santa Cruz Mountains Winegrowers Association, the Santa Cruz Mountains vineyards, in the vast majority, are located above the coastal fogs. The Santa Cruz vintners believe that the Santa Cruz Mountains viticultural area is based primarily on altitude and is not affected by the climates below. They also point out that their viticultural area does not share the soils, climate, or geographical characteristics of other viticultural areas in the State. The Santa Cruz Mountains viticultural area is characterized by a climate which is greatly influenced in the western portion by the Pacific Ocean breezes and fog movements, and in the eastern portion by the moderating influences of the San Francisco Bay. These two influences tend to produce weather which is generally cool during the growing season. Temperatures in the slopes of the hillsides where most of the vineyards are located appear to vary from that at the lower elevations. This is caused by the marine influence coming off the Pacific Ocean which cools the mountains at night much more than the valley floor. ATF has concluded that the Santa Cruz Mountains viticultural area exhibits features and characteristics unique to its boundaries when compared to the surrounding areas and should not be included within the ''San Francisco Bay'' viticultural area. Accordingly, The Santa Cruz Mountains viticultural area has been excluded from the ''San Francisco Bay'' viticultural area.

ATF further believes that there is no significant or substantive evidence at this time that would warrant holding hearings on this issue as requested in some of the comments from the Santa Cruz Mountains vintners.

Finally, ATF is not including the Brentwood—Byron area as requested by the Allied Grape Growers. While this respondent believed that the coastal climatic influences extended into the Brentwood—Byron corridor, no specific evidence was provided to support this request.

Evidence That the Name of the Area Is Locally or Nationally Known

''San Francisco Bay'' is a locally, nationally and internationally recognized place name. ATF has concluded that ''San Francisco Bay'' is the appropriate name for the area. San Francisco Bay is widely recognized as the well-known body of water by that name and, by inference, the land areas that surround it.

The counties of San Francisco, Contra Costa, Alameda, Santa Clara and San Mateo—within which the area is located—border the San Francisco Bay. Santa Cruz County, although it has no Bay shoreline, has traditionally been associated with the place name ''San Francisco Bay.'' Also included is the portion of the Santa Clara Valley located in San Benito County.

The names ''San Francisco Bay area'' or ''San Francisco Bay region'' sometimes refer to an area that is different than the area discussed in the petition. Although sources differ in how broadly they define the San Francisco Bay region, the various definitions—without exception—include the counties mentioned above. The following sources were cited by the petitioner as being representative of the consensus among experts that the petitioned area is widely known by the name San Francisco Bay.

The name San Francisco Bay is more frequently and more strongly associated with the counties lying south and east of the San Francisco Bay than with nearby counties to the north. For example, the 1967 Time Life book entitled The Pacific States, describes the San Francisco Bay Area as a megalopolis with the city [of San Francisco] as the center, stretching 40 miles south to San Jose and from the Pacific to Oakland and beyond.

The weather expert Harold Gilliam, in his book Weather of the San Francisco Bay Region, discusses an area including San Francisco, San Mateo, Alameda, Contra Costa, and Santa Cruz Counties. James E. Vance, Jr., Professor of Geography at the University of California, Berkeley, studied the same area in his book entitled Geography and Urban Evolution in the San Francisco Bay Area. Also, climatologist Clyde Patton studied the same region in his definitive work Climatology of Summer Fogs in the San Francisco Bay Area. Mr. Vance's and Mr. Patton's maps of ''Bay Area Place Names'' were included with the petition.

A final source is Lawrence Kinnaird, University of California Professor of History, who wrote a History of the Greater San Francisco Bay Region. Mr. Kinnaird's book also covers the counties of San Francisco, Santa Clara, Alameda, Contra Costa, San Mateo, and Santa Cruz.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

Within the grape growing and winemaking community, the name San Francisco Bay has always been identified with the ''San Francisco Bay'' viticultural area. Several references reflect the industry's perception of this place name.

For example, wine writer Hugh Johnson, in his book The World Atlas of Wine, devotes a separate section (''South of the Bay'') to the winegrowing areas of the San Francisco Bay and Central Coast. Mr. Johnson describes the traditional centers of wine-growing in this area as concentrated in the Livermore Valley east of the Bay; the western foot-hills of the Diablo range; the towns south of the Bay, and along the slopes of the Santa Cruz mountains down to a cluster of family wineries round the Hecker Pass. Mr. Johnson repeatedly distinguishes the winegrowing region south and east of the Bay from areas to the north of the Bay. A statement in Mr. Johnson's book points out that the area just south and east of San Francisco Bay is wine country as old as the Napa Valley.

Another writer, Robert Lawrence Balzer devotes a chapter to ''Vineyards and Wineries: Bay Area and Central Coast Counties'' in his book Wines of California. This chapter and the accompanying map include wineries and vineyards in Alameda, Contra Costa, San Mateo, Santa Clara, and Santa Cruz Counties. Throughout his book, Mr. Balzer makes it clear that he differentiates the San Francisco Bay area grape growing areas from those north of San Francisco Bay and south of Monterey Bay. In support of this claim are several quotes from the book. For example, Mr. Balzer states that, ''Logic, as well as geography, dictates our division into these unofficial groups of counties: North Coast, Bay Area and Central Coast, South Central Coast, Central Valley, and Southern California. The vineyard domain south of San Francisco is as rich and colorful in its vintage history as the more celebrated regions north of the Bay Area.'' This author does not consider Napa and Sonoma Counties as part of the Bay Area. The following statement is evidence of this. ''Alameda County does not have the scenic charm of * * * Napa and Sonoma.* * *'' The same book contains a photograph showing the Golden Gate Bridge and San Francisco Bay with the caption, ''San Francisco Bay divides the North Coast from the other wine areas of California.''

Another source in support of the ''San Francisco Bay'' viticultural area boundaries is ''Grape Intelligence,'' a reporting service for California winegrape industry statistics. Grape Intelligence issues a yearly report for grape varieties in the San Francisco Bay Area. Reports for this region cover San Francisco, San Mateo, Santa Cruz, Alameda and Contra Costa Counties.

As historical evidence, the San Francisco Viticultural District, defined by the State Viticultural Commissioners at the end of the last century, comprised the counties of San Francisco, San Mateo, Alameda, Santa Clara, Santa Cruz, San Benito, and Monterey—but no areas north of the Bay.

The California Department of Food and Agriculture currently considers the area as a single unit. The Grape Pricing Districts established by the State of California reflect the joined perception of the six San Francisco Bay counties, by grouping San Francisco, San Mateo, Santa Cruz, Santa Clara, Alameda, and Contra Costa together in District 6.

A list of ''Largest Bay Area Wineries'' from a chart which appeared in the San Francisco Business Times of November 21, 1988, includes 21 wineries in Alameda, Contra Costa, San Francisco, and San Mateo Counties. No wineries from the North Coast counties of Sonoma, Napa, Mendocino, or Lake are included.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish Viticultural Features of the Area From Surrounding Areas

Climate

The unifying and distinguishing feature of the coastal climate of the ''San Francisco Bay'' viticultural area is the influence of both the Pacific Ocean and the San Francisco Bay. Coastal areas north of the appellation area are influenced by the Pacific Ocean and by the San Pablo and Richardson Bays, while areas south of the appellation area are influenced by the Pacific Ocean and by Monterey Bay. In addition, the ocean influence enters each region through different routes—through the Estero Gap in the North Coast, through the Golden Gate in the San Francisco Bay region, and through Monterey Bay in the southerly portion of Central Coast.

West to east flowing winds named the westerlies, which bring weather systems in California onshore from the ocean, prevail in the ''San Francisco Bay'' viticultural area. Directly affecting the

weather in the area is the Pacific high pressure system, centered a thousand miles off the Pacific Coast. During winter months, its location south of San Francisco allows the passage of westward moving, rain producing, low pressure storms through the area.

During the summer months the high is located closer to the latitude of San Francisco. It then deflects rain, producing storms to the north, producing a dry summer climate in the San Francisco area. The winds from the high (which flow onshore from the northwest to the southeast) produce a cold southward flowing surface water current (called the California Current) off the California coast by a process called upwelling, in which cold deep water is brought to the surface. When moist marine air from the Pacific High flows onshore over this cold water, it cools, producing fog and/or stratus cloud areas which are transported inland by wind.

Climatic Affect and Boundaries

From a meteorological perspective, the northwesterly windflow through the Estero Gap (near Petaluma in Sonoma County) into the Petaluma Valley, provides the major source of marine influence for areas north of the Golden Gate. Airflow inland from San Pablo Bay also affects the climate of southern Napa and Sonoma Counties. San Francisco Bay has little impact on the weather in the region to its north. The onshore prevailing northwesterly flow direction, in combination with the coastal range topographic features of counties north of the Bay and the pressure differential of the Central Valley, minimize a northward influence from the air that enters the Golden Gate. The higher humidity, lower temperatures, and wind flow that enter the Golden Gate gap do not flow north of the San Francisco Bay.

As a result of the different air mass sources, grape-growing sites immediately north of the Bay are cooler than corresponding sites in the Bay Area. As an example, General Viticulture lists Napa with 2880 degree-days, while Martinez (directly south of Napa on the Carquinez Strait) has 3500 degree-days. Calistoga is listed as 3150 degree-days, while Livermore (approximately equidistant from the Carquinez Strait, but to the south) has 3400. The degree-day concept was developed by UC Davis Professors Amerine and Winkler as a measure of climate support for vine growth and grape ripening; large degree-day values indicate warmer climates.

The ''San Francisco Bay'' viticultural area is also distinguished from the counties north of the San Francisco Bay by annual rainfall amounts. Most winter storms that hit the Central California coast originate in the Gulf of Alaska. Thus, locations in the North Coast viticultural area generally receive more rain than sites in the ''San Francisco Bay'' viticultural area.

This effect is illustrated by Hamilton Air Force Base on the northwest shore of the San Pablo Bay in Marin County. The base gets 25 percent more rain in a season than does San Mateo, which has a corresponding bayshore location 34 miles to the south. San Francisco gets an average of 21 inches of rain annually, but nine miles north of the Golden Gate, Kentfield gets 46 inches—more than double the amount of rain. Average rainfall over the entire south bay wine producing area is only 18 inches, while the City of Napa averages 25 inches, Sonoma County (average of 5 sites) averages 35 inches, and Mendocino County averages 40 inches.

It should be noted that the California North Coast Grape Growers advanced a position that is consistent with the petitioner's current position. In a letter to the Bureau of Alcohol, Tobacco and Firearms dated September 14, 1979, they asked that the term North Coast Counties be applied only to Napa, Sonoma and Mendocino Counties. Part of their reasoning was the observations of Professor Crowley of the Geography Department at Sonoma State University who said that the counties north of the San Francisco Bay have different climates from the counties south of the bay.

Thus, the main determinants of the northern boundary of the viticultural area include the: (1) natural geographic/topographic barriers, (2) lack of direct San Francisco Bay influence in areas to its north, and (3) different predominant coastal influences in the northern area. These factors lead to significant wind flow, temperature, and precipitation differences between the areas north and south of San Francisco Bay. Thus, it is logical to draw the northern boundary of the proposed area at the point where the Golden Gate Bridge and San Francisco Bay separate the northern counties, *i.e.*, Marin, Napa, Solano, and Sonoma of the North Coast viticultural area from the counties of San Francisco and Contra Costa.

The eastern boundary of the ''San Francisco Bay'' viticultural area matches the existing boundary of the Central Coast viticultural area and is located at the inland boundary of significant coastal influence, *i.e.*, along the hills and mountains of the Diablo Range that form a topographical barrier to the intrusion of marine air.

East of the Diablo Range lies the Central Valley, distinguished from the ''San Francisco Bay'' viticultural area by its higher temperature, lower humidity, and decreased rainfall. The Central Valley has a completely continental climate, *i.e.*, much hotter in summer and cooler in winter. Amerine & Winkler categorize the grape growing areas in the Central Valley (Modesto, Oakdale, Stockton, Fresno) as Region V (over 4000 degree-days), while sites in the ''San Francisco Bay'' viticultural area range from Region I to III. This is illustrated on a ''Degree Day Map'' provided by the petitioner.

North of Altamont, the viticultural area boundary continues to follow the inland boundary of coastal influence. (This portion of the boundary matches the boundary extension for the Central Coast Viticultural area.) Like the existing eastern boundary of the Central Coast, this extension excludes the innermost range of coastal mountains. The eastern boundary includes Martinez and Concord, but excludes Antioch, and the eastern portion of Contra Costa County.

The average precipitation in the Central Valley is lower than in the ''San Francisco Bay'' viticultural area. Following are thirty year average rainfall statistics in inches for locations in the Central Valley: Modesto 10.75, Fresno 10.32, Los Banos 7.98, Lodi 12.74, Antioch 12.97.

Thus, the main determinants of the eastern boundary of the viticultural area include the (1) historic existing eastern boundary of the Central Coast viticultural area, (2) natural geographic/topographic climatic barrier created by the Diablo Range, and (3) the inland boundary of the coastal marine influence. These factors lead to significant temperature, humidity and precipitation differences between the areas east and west of the eastern boundary.

The southern boundary matches those of the Santa Cruz and Santa Clara viticultural areas. As discussed in the section on climate, the San Francisco Bay influence is diminished and the Monterey Bay influence is felt south of the ''San Francisco Bay'' viticultural area. The regional northwestern prevailing wind flow direction generally prevents the Monterey Bay influence from affecting the climate in the viticultural area.

Monterey Bay has a very broad mouth with high mountain ranges to both the north and south. Fog and ocean air traveling along the Pajaro River do on rare occasions reach the south end of the Santa Clara Valley to the north, but most of the Monterey Bay influence

travels to the east and south (borne by the prevailing northwest wind) into the Salinas Valley and up against the eastern coastal hills.

Coast climate thus gradually warms with increased distance from the San Francisco Bay, as air traveling over land areas south of the bay accumulates heat and dries out. The warming trend reverses, however, at the point where the south end of the Santa Clara Valley meets the Pajaro River. Here wind and fog from the Monterey Bay, flowing westward through the Pajaro River gap, begins to assert a cooling influence.

The decrease of San Francisco Bay influence, and the concurrent increase of Monterey Bay influence, is demonstrated by the difference in heat summation between Gilroy and Hollister. Central Coast sites warm with increasing distance from the San Francisco Bay, but this pattern reverses at the southern boundary of the Santa Clara Valley viticultural area, between Gilroy and Hollister, as the influence of the Monterey Bay becomes dominant. This produces significantly cooler temperatures in Hollister than in Gilroy, even though Hollister is farther from San Francisco Bay.

Petition Table 2 ''Decrease in San Francisco Bay Influence,'' indicates a gradual warming trend as one travels southward from the San Francisco Bay. Past Gilroy to Hollister, however, a new cooling trend is observed due to the influence of the Monterey Bay.

Hollister is significantly cooler than Gilroy even though its location is sheltered by hills from the full influence of Monterey Bay. The weather station near coastal Monterey shows the strongest cooling from the Monterey Bay. Continuing south in the Salinas Valley, the climate again grows warmer with increasing distance from Monterey Bay.

In summary, the southern boundary of the ''San Francisco Bay'' viticultural area has been defined to match the southern boundary of the Santa Clara Valley and Santa Cruz viticultural areas because this is the location of the transition from a climate dominated by flow from the San Francisco Bay to one dominated by flow from Monterey Bay.

The western boundary of the ''San Francisco Bay'' viticultural area follows the Pacific coastline from San Francisco south to just north of the City of Santa Cruz. This area is greatly influenced by Pacific Ocean breezes and fog. The western hills of the Santa Cruz Mountains are exposed to the strong prevailing northwest winds. The climate of the eastern portion of these hills is affected by the moderating influences of the San Francisco Bay.

Just north of the City of Santa Cruz, the western boundary turns east excluding a small portion of Santa Cruz County from the viticultural area, as it was from the Santa Cruz Mountains viticultural area. The Santa Cruz Mountains viticultural area has been excluded from the ''San Francisco Bay'' viticultural area as discussed above. The area around Santa Cruz and Watsonville is close to sea level, and is sheltered from the prevailing northwesterly Pacific Ocean winds by the Santa Cruz mountains. Therefore, fog and bay breezes from Monterey Bay impact the area, while the San Francisco Bay does not influence the area.

Thus, the main determinant of the western boundary of the proposed viticultural area includes the (1) natural geography of the coastline, (2) Pacific Ocean and San Francisco Bay influence, and (3) historical identity as part of the San Francisco Bay Area.

Topography

The weather in the bay region is a product of the modification of the onshore marine air masses described above by the topography of the coast ranges, a double chain of mountains running north-northwest to south-southeast. Each chain divides into two or more smaller chains, creating a patchwork of valleys.

As the elevation of the western chain of the coastal ridge is generally higher than the altitude of the inversion base, the inversion acts as a lid to prevent the cool onshore flowing marine air and fog from rising over the mountains and flowing inland. Because of this, successive inland valleys generally have less of a damp, seacoast climate and more of a dry, continental climate.

This pattern is modified by a few gaps and passes in the mountain ranges that allow marine influences to spread farther inland without obstruction. These inland areas are, however, somewhat protected from the Pacific fogs, which are evaporated as the flow is warmed by passage over the warmer land surfaces.

The three largest sea level gaps in the central California coastal range mountainous barrier are (north to south): Estero Lowland in Sonoma, Golden Gate into San Francisco Bay, and Monterey Bay. Several smaller mountain pass gaps (San Bruno and Crystal Springs) sometimes also allow for the inland spread of coastal climate in the Bay Area when the elevated inversion base is high enough.

The Bay Area climate is greatly modified by San Francisco Bay, whose influence is similar to that of the ocean, *i.e.,* it cools summer high temperatures and warms winter low temperatures. The narrowness of the Golden Gate limits the exchange of bay and ocean waters, and thus Bay waters are not quite as cold as the coastal ocean currents during the summer.

Marine air exits the San Francisco Bay (without having experienced the normal drying and heating effects associated with over-land travel) in several directions. The predominant outflow is carried by the onshore northwesterly winds toward the south through the Santa Clara Valley to Morgan Hill and to the east via the Hayward Pass and Niles Canyon.

Temperatures at given locations in the Bay Area are thus dependent on streamline distance (actual distance traveled) from the ocean, rather than its ''as the crow flies'' distance from the ocean. Livermore Valley temperatures show this phenomenon. Ocean air flows across San Francisco Bay, through the Hayward Pass and Niles Canyon, and into the Livermore Valley, causing a cooling effect in summer and a warming effect in winter.

In summary, because of the interaction of topography with the prevailing winds in the Bay Area, the Pacific Ocean and San Francisco Bay are the major climatic influences in the ''San Francisco Bay'' viticultural area. This interaction has two principal effects: (1) to allow the coastal influence of the Pacific Ocean to extend farther east than otherwise possible, and (2) to modify that coastal influence because of the moderating effects of Bay waters on surrounding weather.

Boundaries

In the original proposal, a small part of the east end of the Livermore Valley was omitted. This newly described area most accurately completes the description and designation of the climatic and geographic zones for Livermore Valley and has been added to the new ''San Francisco Bay'' viticultural area by ATF. This area adds less than three square miles to the viticultural area and approximately 350 acres of wine grapes.

Amendment of the Boundaries of the Central Coast Viticultural Area

In conjunction with establishing the ''San Francisco Bay'' viticultural area, ATF is amending the boundaries of the Central Coast viticultural area to encompass the ''San Francisco Bay'' viticultural area as proposed by the petitioners and discussed in Notice No. 856.

An examination of the three large viticultural areas on the California coast reveals a gap between Monterey and

Marin, where many acres of existing and potential vineyards are not represented by any viticultural area. The revised Central Coast viticultural area continues the logical pattern already established in the organization of viticultural areas on the California coast. The expanded Central Coast viticultural area is a larger area that ties together several smaller sub-appellations (Santa Clara Valley, Ben Lomond Mountain, Livermore Valley, San Ysidro District, Pacheco Pass, San Benito, Cienega Valley, Mount Harlan, Paicines, Lime Kiln Valley, Monterey, Carmel Valley, Chalone, Arroyo Seco, Paso Robles, York Mountain, Edna Valley, Arroyo Grande Valley, Santa Maria Valley, Santa Ynez Valley, and the ''San Francisco Bay'' viticultural area), all of which are dominated by the same geographic and general marine influences that create their climate. The evidence presented in the petition establishes that the well-known Central Coast name and the general marine climate extend north and northwest beyond the previous Central Coast boundaries.

The Name, Central Coast, as Referring to the Counties Surrounding San Francisco Bay

The name Central Coast, as used by wine writers and the state legislature, extends north and west into Santa Cruz County and five counties that surround the San Francisco Bay, beyond the area previously recognized as the Central Coast viticultural area. In support of this, are the following references.

Patrick W. Fegan's book Vineyards and Wineries of America, contains a map of ''Central Coastal Counties'' designating Contra Costa, Alameda, San Mateo, Santa Clara, Santa Cruz, Monterey, San Benito, San Luis Obispo and Santa Barbara.

Another example is Central Coast Wine Tour, published by Vintage Image in 1977 and 1980, which covers the area from San Francisco to Santa Barbara and specifically describes past and present wineries in San Francisco, Alameda, Contra Costa, Santa Clara, San Mateo and Santa Cruz Counties.

The Connoisseurs' Handbook of California Wines defines ''Central Coast'' in the section entitled ''Wine Geography'' as: ''The territory lying south of San Francisco and north of the city of Santa Barbara—San Mateo, Santa Cruz, Santa Clara, San Benito, Monterey, San Luis Obispo, and Santa Barbara Counties.''

Bob Thompson and Hugh Johnson, in their book The California Wine Book, describe the ''Central Coast'' as an indeterminate area between San Francisco and Santa Barbara, including San Francisco, Contra Costa, Alameda, Monterey, Santa Clara and Santa Cruz Counties.

In Wines of California, by Robert Balzer, the wine producing areas on the California coast are categorized into three groups: North Coast counties, Bay Area and Central Coast counties, and South Central Coast counties. The section on ''Bay Area and Central Coast'' features a map, included with the petition, illustrating the counties surrounding San Francisco Bay. Finally, a vineyard and winery map published by Sally Taylor and Friends in the 1980's includes Santa Cruz County on the map entitled ''North Central Coast.''

In addition to the numerous viticultural writings, government and scholarly studies on the climate and geography of the California Central Coast also include the counties around the San Francisco Bay in the area.

The historic San Francisco Viticultural District in 1880 grouped the counties of San Francisco, San Mateo, Alameda, Santa Clara, Santa Cruz and Contra Costa together. The 1930 University of California monograph ''Summer Sea Fogs of the Central California Coast'' by Horace R. Byers focuses on an area ''from Point Sur to the entrance of Tomales Bay, including San Francisco and Monterey Bays: Santa Clara, San Ramon, Livermore, San Benito, and Salinas valleys.* * *'' These valleys are located in Santa Clara, Contra Costa, Alameda, San Benito and Monterey Counties, respectively.

Section 25236 of the 1955 California Alcoholic Beverage Control Act allowed the use of the description ''central coastal counties dry wine'' on wine originating in several counties including Santa Clara, Santa Cruz, Alameda, Contra Costa, Monterey, San Luis Obispo Counties. While ''central coastal counties'' is not a recognized viticultural area under the Federal Alcohol Administration Act, this law is mentioned solely to support the fact that the counties surrounding San Francisco Bay have been accepted in California as belonging within the place name ''Central Coast.''

The California Division of Forestry's ''Sea Breeze Effects on Forest Fire Behavior in Central Coastal California'' summarizes the results of several fireclimate surveys conducted in the 1960's in several counties surrounding San Francisco Bay. Currently, the National Oceanic and Atmospheric Administration/National Climatic Data Center publishes monthly summaries of climatological data grouped into geographical divisions. The ''Central Coast Drainage'' division includes locations in San Francisco, Alameda, Contra Costa, San Mateo, Santa Clara, Santa Cruz, Monterey and San Luis Obispo Counties.

The sources discussed above demonstrate that the counties included in the revised Central Coast boundaries are commonly and historically known as being within the place-name ''Central Coast.''

The Santa Cruz Mountains viticultural area has been excluded from the revised Central Coast viticultural area for the same reasons cited above for excluding it from the ''San Francisco Bay'' viticultural area.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish the Viticultural Features of the Area From Surrounding Areas

Coastal Climate and Marine Influence

The coastal climate of the Central Coast viticultural area is the principal feature which unifies the area and distinguishes it from surrounding areas. An indication of the ''coastal climate'' effect on the area is the difference between July and September temperatures. September (fall) is usually warmer than July (summer) in coastal areas, while the reverse is true in continental areas. This unique coastal characteristic results from two factors: fogs and air flows. Fogs keep summer coastal temperatures low while the interior regions absorb all of the sun's summer energy. These fogs diminish in strength and frequency in the fall allowing more coastal solar gain and the resultant temperature rise, while interior temperatures begin their relative decline. This seasonal fluctuation comes about when, (1) the pressure differential between the Pacific high and the Central Valley is reduced which eliminates the inversion cap over the coast ranges, and (2) the temperature of the Pacific Ocean reaches its highest level in the fall which reduces the cooling of onshore air flows. These air flows from the Pacific Ocean invade the land mass through gaps in the coast range. Thus, a location's climate is dictated primarily by its position relative to the windstream distance from the Pacific—the greater the windstream distance the greater the July/October temperature differential and the greater the degree day accumulation as the windstream will be increasingly warmed by the ground it passes over.

Table 1 in the petition lists California cities in windstream groups from the most coastal (initiation) to the most continental (terminus). This table lists the difference (in degrees) between the average July and September

temperatures in each city, which constitutes the measure of ''coastal'' character. Continental cities (Antioch to Madera), which are outside the previous and revised boundaries of the Central Coast, exhibit the highest July temperatures and the greatest difference in temperature from July to September. Also, included are accumulated degree-days for April through October following Winkler's system. This chart demonstrates that within the coastal region—north and south—there is a continuum of coastal influence and the ensuing heat gradient during the growing season (degree-days).

Within the extension, the climate acts in an identical manner to the area in the previous Central Coast viticultural area. This claim is supported by Table I, demonstrating that locations within the revision to the Central Coast viticultural area (San Francisco, Richmond, Oakland, Berkeley, Half Moon Bay, Martinez, San Jose, Ben Lomond, Palo Alto) share the same coastal character (*i.e.*, (1) higher September temperatures, and (2) an airstream continuum of degree-day temperatures correlated with the airstream distance from the Pacific Ocean) as found at the current Central Coast cities (Monterey, Salinas, Hollister, King City, Livermore, Gilroy). A Coastal Character Map showing this data was attached to the petition. Accordingly, the data presented above establishes that the Central Coast boundary should be revised to accurately reflect the extent of the Central Coast climate.

The ''San Francisco Bay'' viticultural area and the Central Coast viticultural area lie within the same botanic zone according to the Sunset Western Garden Book published for 55 years by the editors of Sunset Magazine. This comprehensive western plant encyclopedia has become a leading authority regarding gardening in the western United States. The Western Garden Book divides the region from the Pacific Coast to the eastern slope of the Rocky Mountains into twenty-four climate zones. The Central Coast viticultural area lies within Zones 7, 14, 15, 16, and 17.

The climate zones established by Sunset Magazine demonstrate that the main distinguishing feature of Central Coast—the coastal climate—extends west to the Santa Cruz coastline and north to the Golden Gate. The revision to the Central Coast viticultural area also lies within these zones.

The characteristic cool Mediterranean climate of the Central Coast viticultural area extends north and west of the current boundaries. This coastal Mediterranean climate is cool in the summer and the marine fog which penetrates inland makes the coast very oceanic, with little difference in temperature between mild winters and cool summers. The Mediterranean climate classification is so called because the lands of the Mediterranean Basin exhibit the archetypical temperature and rainfall regimes that define the class. The Climatic Regions Map from Atlas of California supports the Mediterranean climate claim. This map is based on the Koeppen classification, which divides the world into climate regions based on temperature, the seasonal variation of drought, and the relationship of rainfall to potential evaporation. The Koeppen system uses letters based on German words having no direct English equivalents. The Climatic Regions Map depicts the extent of cool Mediterranean climate both north and west of the current Central Coast boundary and within it.

The map shows that Alameda, Contra Costa, Santa Clara, San Mateo, and Santa Cruz Counties in the revision to the Central Coast viticultural area, like Monterey, San Benito, San Luis Obispo, and Santa Barbara Counties in the current Central Coast viticultural area, are mostly classified as Csb Mediterranean climates (average of warmest month is less than 22 C), with partial Csbn climate (more than thirty days of fog) along the coast.

It is due to this coastal climate (mainly fog and wind), that the degree of marine influence in the revised Central Coast viticultural area is similar to the degree of marine influence found at other places inside the previous boundaries of the Central Coast viticultural area. A map of central California, submitted with the petition, shows the extent of marine fog in the area. This map shows that the fog pattern in the revised viticultural area is similar to other areas included in Central Coast. The fog extends inland to approximately the same extent throughout the revised viticultural area. The ''Retreat of Fog'' map submitted with the petition also shows the similarity in the duration of fog in the previous and revised Central Coast viticultural area. The similar fog pattern is most evident along the coastal areas of Big Sur, Monterey Bay and San Francisco.

Topography

Santa Cruz and the other San Francisco Bay Counties share the Central Coast's terrain. One of the major California coast range gaps which produces the climate within the previous Central Coast boundaries lies within the revision to the Central Coast. The three largest sea level gaps in the central California coastal range mountainous barrier are (north to south): Estero Lowland in Sonoma County, Golden Gate into San Francisco Bay, and Monterey Bay. The Golden Gate and Monterey Bay allow the ocean influence to enter into the previous Central Coast viticultural area creating its coastal climate which is the unifying and distinguishing feature of the area. The main gap in the previous Central Coast viticultural area, the Monterey Bay allows marine air and fog from the Pacific Ocean to travel south and inland, into the Salinas Valley. This feature creates the grape-growing climate that exists in the Salinas Valley, but from a meteorological perspective, it has comparatively little influence on the portion of Central Coast viticultural area lying north of it. The on-shore prevailing North-Westerly flow direction, combined with the coastal range topographical features north of the Bay's mouth, minimize northward influence from the air that enters the Monterey Bay. The Golden Gate gap introduces a cooling marine influence and the San Francisco Bay allows marine air and fog to travel much further inland and south through the Santa Clara and Livermore Valleys and provides most of the coastal influence affecting the northern portion of the Central Coast viticultural area.

Although the Golden Gate and San Francisco Bay are primary influences on the previous Central Coast climate, neither shoreline was included in the previous Central Coast boundary. The revision to the Central Coast viticultural area logically extends the previous Central Coast boundaries to include the shores of the Golden Gate and San Francisco Bay.

Boundaries

The extension of the Central Coast viticultural area would include the currently excluded portions of five counties which border the San Francisco Bay. These counties are San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa, and all of Santa Cruz County with the exception of the Santa Cruz Mountains viticultural area. The ''San Francisco Bay'' viticultural area adds approximately 639 square miles to Central Coast. This area contains 2,827 acres planted to grapes. In the original proposal, a small part of the east end of the Livermore Valley was omitted. This newly described area most accurately completes the description and designation of the climatic and geographic zones for Livermore Valley and has been added to the revised

Central Coast viticultural area. This area adds less than three square miles to the viticultural area and approximately 350 acres of wine grapes.

The revision to the Central Coast boundary follows the Pacific coastlines of Santa Cruz, San Mateo, and San Francisco Counties, crosses San Francisco Bay, follows the northern boundary of Contra Costa County to Concord, and then follows the inland boundary of coastal influence along straight lines between landmarks in the Diablo Mountain Range to the current Central Coast boundary.

The southern boundary of the Central Coast viticultural area remains unchanged. The changes to the western boundary, the California coastline, consists of extending the boundary north to the Golden Gate. The eastern boundary is extended to include the area northwest of Livermore up to the San Pablo Bay. From Altamont (just east of Livermore) south, the eastern boundary follows the previous boundary of the Central Coast viticultural area. North of Altamont, the boundary extension excludes the easternmost range of coastal mountains. The eastern boundary includes Martinez and Concord, but excludes Antioch, and the eastern portion of Contra Costa County.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 C.F.R. Part 1320, do not apply to this final rule because there is no requirement to collect information.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that region.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is David W. Brokaw, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Section 9.75 is amended by removing the word ''and'' from paragraph (b)(17), by adding paragraphs (b)(19) through (b)(41), by revising the introductory text of paragraph (c), by removing paragraphs (c)(2) through (c)(13) and adding new paragraphs (c)(2) through (c)(16) and, redesignating existing paragraphs (c)(14) through (c)(40) as paragraphs (c)(17) through (c)(43).

§ 9.75 Central Coast.

* * * * *

(b) Approved maps. * * *

(19) Diablo, California, scale 1:24,000, dated 1953, Photorevised 1980;

(20) Clayton, California, scale 1:24,000, dated 1953, Photorevised 1980;

(21) Honker Bay, California, scale 1:24,000, dated 1953, Photorevised 1980;

(22) Vine Hill, California, scale 1:24,000, dated 1959, Photorevised 1980;

(23) Benicia, California, scale 1:24,000, dated 1959, Photorevised 1980;

(24) Mare Island, California, scale 1:24,000, dated 1959, Photorevised 1980;

(25) Richmond, California, scale 1:24,000, dated 1959, Photorevised 1980;

(26) San Quentin, California, scale 1:24,000, dated 1959, Photorevised 1980;

(27) Oakland West, California, scale 1:24,000, dated 1959, Photorevised 1980;

(28) San Francisco North, California, scale 1:24,000, dated 1956, Photorevised 1968 and 1973;

(29) San Francisco South, California, scale 1:24,000, dated 1956, Photorevised 1980;

(30) Montara Mountain, California, scale 1:24,000, dated 1956, Photorevised 1980;

(31) Half Moon Bay, California, scale 1:24,000, dated 1961, Photoinspected 1978, Photorevised 1968 and 1973;

(32) San Gregorio, California, scale 1:24,000, dated 1961, Photoinspected 1978, Photorevised 1968;

(33) Pigeon Point, California, scale 1:24,000, dated 1955, Photorevised 1968;

(34) Franklin Point, California, scale 1:24,000, dated 1955, Photorevised 1968;

(35) Año Nuevo, California, scale 1:24,000, dated 1955, Photorevised 1968;

(36) Davenport, California, scale 1:24,000, dated 1955, Photorevised 1968;

(37) Santa Cruz, California, scale 1:24,000, dated 1954, Photorevised 1981;

(38) Felton, California, scale 1:24,000, dated 1955, Photorevised 1980;

(39) Laurel, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1968;

(40) Soquel, California, scale 1:24,000, dated 1954, Photorevised 1980; and

(41) Watsonville West, California, scale 1:24,000, dated 1954, Photorevised 1980.

(c) Boundary. The Central Coast viticultural area is located in the following California counties: Monterey, Santa Cruz, Santa Clara, Alameda, San Benito, San Luis Obispo, Santa Barbara, San Francisco, San Mateo, and Contra Costa. The Santa Cruz Mountains viticultural area is excluded. (The boundaries of the Santa Cruz Mountains viticultural area are described in 27 CFR § 9.31.)

* * * * *

(2) The boundary follows north along the shoreline of the Pacific Ocean (across the Watsonville West, Soquel, Santa Cruz, Davenport, Año Nuevo, Franklin Point, Pigeon Point, San Gregorio, Half Moon Bay, Montara Mountain and San Francisco South maps) to the San Francisco/Oakland Bay Bridge. (San Francisco North Quadrangle)

(3) From this point, the boundary proceeds east on the San Francisco/Oakland Bay Bridge to the Alameda County shoreline. (Oakland West Quadrangle)

(4) From this point, the boundary proceeds east along the shoreline of Alameda County and Contra Costa County across the Richmond, San Quentin, Mare Island, and Benicia maps to a point marked BM 15 on the shoreline of Contra Costa County. (Vine Hill Quadrangle)

(5) From this point, the boundary proceeds in a southeasterly direction in a straight line across the Honker Bay map to Mulligan Hill elevation 1,438. (Clayton Quadrangle)

(6) The boundary proceeds in southeasterly direction in a straight line to Mt. Diablo elevation 3,849. (Clayton Quadrangle)

(7) The boundary proceeds in a southeasterly direction in a straight line across the Diablo and Tassajara maps to Brushy Peak elevation 1,702. (Byron Hot Springs Quadrangle)

(8) The boundary proceeds due south, approximately 400 feet, to the northern boundaries of Section 13, Township 2 South, Range 2 East. (Byron Hot Springs Quadrangle)

(9) The boundary proceeds due east along the northern boundaries of Section 13 and Section 18, Township 2 South, Range 3 East, to the northeast corner of Section 18. (Byron Hot Springs Quadrangle)

(10) Then proceed south along the eastern boundaries of Sections 18, 19, 30, and 31 in Township 2 South, Range 3 East to the southeast corner of Section 31. (Byron Hot Springs Quadrangle)

(11) Then proceed east along the southern border of Section 32, Township 2 South, Range 3 East to the northwest corner of Section 4. (Altamont Quadrangle)

(12) Then proceed south along the western border of Sections 4 and 9. (Altamont Quadrangle)

(13) Then proceed south along the western border of Section 16 approximately 4275 feet to the point where the 1100 meter elevation contour intersects the western border of Section 16. (Altamont Quadrangle)

(14) Then proceed in a southeasterly direction along the 1100 meter elevation contour to the intersection of the southern border of Section 21 with the 1100 meter elevation contour. (Altamont Quadrangle)

(15) Then proceed west to the southwest corner of Section 20. (Altamont Quadrangle)

(16) Then proceed south along the western boundaries of Sections 29 and 32, Township 3 South, Range 3 East and then south along the western boundaries of Sections 5, 8, 17, 20, Township 4 South, Range 3 East to the southwest corner of Section 20. (Mendenhall Springs Quadrangle)

* * * * *

Par. 3. Subpart C is amended by adding § 9.157 to read as follows:

§ 9.157 San Francisco Bay.

(a) Name. The name of the viticultural area described in this section is ''San Francisco Bay.''

(b) Approved maps. The appropriate maps for determining the boundary of the San Francisco Bay viticultural area are forty-two U.S.G.S. Quadrangle 7.5 Minute Series (Topographic) maps and one U.S.G.S. Quadrangle 5 x 11 Minute (Topographic) map. They are titled:

(1) Pacheco Peak, California, scale 1:24,000, dated 1955, Photorevised 1971;

(2) Gilroy Hot Springs, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1971

(3) Mt. Sizer, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1971

(4) Morgan Hill, California, scale 1:24,000, dated 1955, Photorevised 1980

(5) Lick Observatory, California, scale 1:24,000, dated 1955, Photoinspected 1973, Photorevised 1968

(6) San Jose East, California, scale 1:24,000, dated 1961, Photorevised 1980;

(7) Calaveras Reservoir, California, scale 1:24,000, dated 1961, Photorevised 1980;

(8) La Costa Valley, California, scale 1:24,000, dated 1960, Photorevised 1968;

(9) Mendenhall Springs, California, scale 1:24,000, dated 1956, Photoinspected 1978, Photorevised 1971;

(10) Altamont, California, scale 1:24,000, dated 1953, Photorevised 1981;

(11) Byron Hot Springs, California, scale 1:24,000, dated 1953, Photorevised 1968;

(12) Tassajara, California, scale 1:24,000, dated 1953, Photoinspected 1974, Photorevised 1968;

(13) Diablo, California, scale 1:24,000, dated 1953, Photorevised 1980;

(14) Clayton, California, scale 1:24,000, dated 1953, Photorevised 1980;

(15) Honker Bay, California, scale 1:24,000, dated 1953, Photorevised 1980;

(16) Vine Hill, California, scale 1:24,000, dated 1959, Photorevised 1980;

(17) Benicia, California, scale 1:24,000, dated 1959, Photorevised 1980;

(18) Mare Island, California, scale 1:24,000, dated 1959, Photorevised 1980;

(19) Richmond, California, scale 1:24,000, dated 1959, Photorevised 1980;

(20) San Quentin, California, scale 1:24,000, dated 1959, Photorevised 1980;

(21) Oakland West, California, scale 1:24,000, dated 1959, Photorevised 1980;

(22) San Francisco North, California, scale 1:24,000, dated 1956, Photorevised 1968 and 1973;

(23) San Francisco South, California, scale 1:24,000, dated 1956, Photorevised 1980;

(24) Montara Mountain, California, scale 1:24,000, dated 1956, Photorevised 1980;

(25) Half Moon Bay, California, scale 1:24,000, dated 1961, Photoinspected 1978, Photorevised 1968 and 1973;

(26) San Gregorio, California, scale 1:24,000, dated 1961, Photoinspected 1978, Photorevised 1968;

(27) Pigeon Point, California, scale 1:24,000, dated 1955, Photorevised 1968;

(28) Franklin Point, California, scale 1:24,000, dated 1955, Photorevised 1968;

(29) Año Nuevo, California, scale 1:24,000, dated 1955, Photorevised 1968;

(30) Davenport, California, scale 1:24,000, dated 1955, Photorevised 1968;

(31) Santa Cruz, California, scale 1:24,000, dated 1954, Photorevised 1981;

(32) Felton, California, scale 1:24,000, dated 1955, Photorevised 1980;

(33) Laurel, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1968;

(34) Soquel, California, scale 1:24,000, dated 1954, Photorevised 1980;

(35) Watsonville West, California, scale 1:24,000, dated 1954, Photorevised 1980;

(36) Loma Prieta, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1968;

(37) Watsonville East, California, scale 1:24,000, dated 1955, Photorevised 1980;

(38) Mt. Madonna, California, scale 1:24,000, dated 1955, Photorevised 1980;

(39) Gilroy, California, scale 1:24,000, dated 1955, Photorevised 1981;

(40) Chittenden, California, scale 1:24,000, dated 1955, Photorevised 1980;

(41) San Felipe, California, scale 1:24,000, dated 1955, Photorevised 1971; and

(42) Three Sisters, California, scale 1:24,000, dated 1954, Photoinspected 1978, Photorevised 1971.

(c) Boundary. The San Francisco Bay viticultural area is located mainly within five counties which border the San Francisco Bay and partly within two other counties in the State of California. These counties are: San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa and partly in Santa Cruz and San Benito Counties. The Santa Cruz Mountains viticultural area is excluded (see 27 CFR 9.31.) The boundaries of the San Francisco Bay viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps, are as follows:

(1) Beginning at the intersection of the 37 degree 00' North latitude parallel with State Route 152 on the Pacheco Peak Quadrangle.

(2) Then proceed in a northwesterly direction in a straight line to the intersection of Coyote Creek with the township line dividing Township 9 South from Township 10 South on the Gilroy Hot Springs Quadrangle.

(3) Then proceed in a northwesterly direction in a straight line to the intersection of the township line dividing Township 8 South from Township 9 South with the range line dividing Range 3 East from Range 4 East on the Mt. Sizer Quadrangle.

(4) Then proceed in a northwesterly direction in a straight line (across the Morgan Hill Quadrangle) to the intersection of the township line dividing Township 7 South from Township 8 South with the range line dividing Range 2 East from Range 3 East on the Lick Observatory Quadrangle.

(5) Then proceed in a northwesterly direction in a straight line to the intersection of State Route 130 with the township line dividing Township 6 South from Township 7 South on the San Jose East Quadrangle.

(6) Then proceed in a northeasterly direction following State Route 130 to its intersection with the range line dividing Range 1 East from Range 2 East on the Calaveras Reservoir Quadrangle.

(7) Then proceed north following this range line to its intersection with the Hetch Hetchy Aqueduct on the La Costa Valley Quadrangle.

(8) Then proceed in a northeasterly direction in a straight line following the Hetch Hetchy Aqueduct to the western boundary of Section 14 in Township 4 South, Range 2 East on the Mendenhall Springs Quadrangle.

(9) Then proceed south along the western boundary of Section 14 in Township 4 South, Range 2 East to the southwest corner of Section 14 on the Mendenhall Springs Quadrangle.

(10) Then proceed east along the southern boundary of Section 14 in Township 4 South, Range 2 East to the southeast corner of Section 14 on the Mendenhall Springs Quadrangle.

(11) Then proceed south along the western boundary of Section 24 in Township 4 South, Range 2 East to the southwest corner of Section 24 on the Mendenhall Springs Quadrangle.

(12) Then proceed east along the southern boundary of Section 24 in Township 4 South, Range 2 East and Section 19 in Township 4 South, Range 3 East to the southeast corner of Section 19 on the Mendenhall Springs Quadrangle.

(13) Then proceed north along the western boundaries of Sections 20, 17, 8, and 5 on the Mendenhall Springs Quadrangle in Township 4 South, Range 3 East, north (across the Altamont Quadrangle) along the western boundaries of Sections 32, 29, to the southwest corner of Section 20, in Township 3 South, Range 3 East.

(14) Then east along the southern boundary of Sections 20, and 21, in Township 3 South, Range 3 East on the Altamont Quadrangle to the 1100 meter elevation contour.

(15) Then, along the 1100 meter contour in a northwesterly direction to the intersection with the western boundary of Section 16, Township 3 South, Range 3 East on the Altamont Quadrangle.

(16) Then north along the eastern boundary of Sections 17, 8, and 5 in Township 3 South, Range 3 East to the northeast corner of Section 5.

(17) Then proceed west along the northern border of Section 5 to the northwest corner of Section 5.

(18) Then north along the eastern boundaries of Sections 31, 30, 19, and 18 in Township 2 South, Range 3 East to the northeast corner of Section 18 on the Byron Hot Springs Quadrangle.

(19) Then proceed due west along the northern boundaries of Section 18 and Section 13 (Township 2 South, Range 2 East) to a point approximately 400 feet due south of Brushy Peak on the Byron Hot Springs Quadrangle.

(20) Then proceed due north to Brushy Peak (elevation 1,702) on the Byron Hot Springs Quadrangle.

(21) Then proceed in a northwesterly direction in a straight line (across the Tassajara and Diablo Quadrangles) to Mt. Diablo (elevation 3,849) on the Clayton Quadrangle.

(22) Then proceed in a northwesterly direction in a straight line to Mulligan Hill (elevation 1,438) on the Clayton Quadrangle.

(23) Then proceed in a northwesterly direction in a straight line (across the Honker Bay Quadrangle) to a point marked BM 15 on the shoreline of Contra Costa County on the Vine Hill Quadrangle.

(24) Then proceed west along the shoreline of Contra Costa County and Alameda County (across the Quadrangles of Benicia, Mare Island, Richmond, and San Quentin) to the San Francisco/Oakland Bay Bridge on the Oakland West Quadrangle.

(25) Then proceed west on the San Francisco/Oakland Bay Bridge to the San Francisco County shoreline on the San Francisco North Quadrangle.

(26) Then proceed along the San Francisco, San Mateo, and Santa Cruz County shoreline (across the Quadrangles of San Francisco South, Montara Mountain, Half Moon Bay, San Gregorio, Pigeon Point, Franklin Point, Año Nuevo and Davenport) to the place where Majors Creek flows into the Pacific Ocean on the Santa Cruz Quadrangle.

(27) Then proceed northeasterly along Majors Creek to its intersection with the 400 foot contour line on the Felton Quadrangle.

(28) Then proceed along the 400 foot contour line in a generally easterly/northeasterly direction to its intersection with Bull Creek on the Felton Quadrangle.

(29) Then proceed along Bull Creek to its intersection with Highway 9 on the Felton Quadrangle.

(30) Then proceed along Highway 9 in a northerly direction to its intersection with Felton Empire Road.

(31) Then proceed along Felton Empire Road in a westerly direction to its intersection with the 400 foot contour line on the Felton Quadrangle.

(32) Then proceed along the 400 foot contour line (across the Laurel, Soquel, Watsonville West and Loma Prieta Quadrangles) to its intersection with Highway 152 on the Watsonville East Quadrangle.

(33) Then proceed along Highway 152 in a northeasterly direction to its intersection with the 600 foot contour line just west of Bodfish Creek on the Watsonville East Quadrangle.

(34) Then proceed in a generally east/southeasterly direction along the 600 foot contour line (across the Mt. Madonna and Gilroy Quadrangles), approximately 7.3 miles, to the first intersection of the western section line of Section 30, Township 11 South, Range 4 East on the Chittenden Quadrangle.

(35) Then proceed south along the section line approximately 1.9 miles to the south township line at Section 31, Township 11 South, Range 4 East on the Chittenden Quadrangle.

(36) Then proceed in an easterly direction along the township line (across the San Felipe Quadrangle), approximately 12.4 miles to the intersection of Township 11 South and Township 12 South and Range 5 East and Range 6 East on the Three Sisters Quadrangle.

(37) Then proceed north along the Range 5 East and Range 6 East range line approximately 5.5 miles to Pacheco Creek on the Pacheco Creek Quadrangle.

(38) Then proceed northeast along Pacheco Creek approximately .5 mile to the beginning point.

Signed: November 19, 1998.

John W. Magaw,

Director.

Approved: December 24, 1998.

John P. Simpson,

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

[FR Doc. 99–1209 Filed 1–19–99; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 761

[OPPTS–66009D; FRL–6048–8]

RIN 2070–AC01

Confirmation of Approval and Technical Amendment To Update the EPA Listing of OMB Approval Numbers Under the Paperwork Reduction Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule; technical amendment.

SUMMARY: This technical amendment updates the table that lists the control numbers issued by the Office of Management and Budget (OMB) to indicate the approval of an information collection related activity pursuant to the Paperwork Reduction Act (PRA). Specifically, this technical amendment confirms the effective date and incorporates into 40 CFR part 9 the OMB approval number for the information collections contained in the final rule on the disposal of polychlorinated biphenyls (PCBs), which published in the **Federal Register** on June 29, 1998 (63 FR 35384)(FRL–5726–1), and became effective on August 28, 1998. EPA announced the approval of this ICR on October 26, 1998 (63 FR 57123)(FRL–6180–2).

DATES: This technical amendment is effective January 20, 1999. The information collection requirements of 40 CFR 761.30, 761.35, 761.40, 761.60, 761.61, 761.62, 761.65, 761.71, 761.72, 761.77, 761.79, 761.80, 761.125, 761.180, 761.205, 761.253, 761.274, 761.295, 761.314, 761.357, 7761.359, 761.395 and 761.398 became effective on September 9, 1998.

ADDRESSES: To obtain copies of EPA Form 7710–53, Notification of PCB Activity, and EPA Form 7720–12, PCB Transformer Registration, contact the TSCA Hotline by phone at (202) 554–1404, TDD (202) 544–0551, or by e-mail: TSCA–Hotline@epa.gov. For additional sources of these EPA Forms, see ''SUPPLEMENTARY INFORMATION.''

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (Mail Code: 7408), Office of Pollution Prevention and Toxics, Rm. E–543B, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460, (202) 554–1404, TDD (202) 544–0551, e-mail: TSCA-Hotline@epa.gov. For technical information: Peggy Reynolds, U.S. Environmental Protection Agency, (7404), 401 M St., SW., Washington, DC 20460; telephone: (202) 260–3965; fax: (202) 260–1724; e-mail: ''reynold.peggy@epa.gov''.

SUPPLEMENTARY INFORMATION:

I. Does this Technical Amendment Apply to Me?

You may be affected by this technical correction if you are required by the final PCB disposal rule to report certain PCB activities either to EPA or a third party and/or to maintain certain PCB records, if you own or operate a PCB Transformer and must register your transformers with EPA, or if you manage PCB waste and must notify EPA of your PCB waste activities. Regulated categories and entities may include, but are not limited to:

Category	Examples of Regulated Entities
Industry	Chemical manufacturers, electroindustry manufacturers, end-users of electricity, PCB waste handlers (e.g., storage facilities, landfills and incinerators), waste transporters, general contractors
Utilities and rural electric co-operatives.	Electric power and light companies
Individuals, Federal, State, and Municipal Governments.	Individuals and agencies which own, process, distribute in commerce, use, and dispose of PCBs

This table is not exhaustive, but lists the types of entities that could potentially be regulated by this action. Other types of entities may also be interested in this technical correction. To determine whether your entity is regulated by this action, carefully examine the provisions in the disposal of polychlorinated biphenyls rule (63 FR 35384, June 29, 1998). If you have any questions regarding the applicability of this action to a particular entity, you should consult the applicable regulations, or the technical contact listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How Can I Get Additional Information, Copies of this Document, and Support Documents?

1. *Electronically.* You may obtain electronic copies of this document and EPA Forms 7710–53 and 7720–12 from the EPA Home Page at http://www.epa.gov/fedrgstr/EPA-TOX/1998/ under the ''Federal Register--Environmental Documents'' listing and the date of publication of this document in the **Federal Register**. You may also obtain copies of the EPA Forms from EPA's PCB Home Page (http://www.epa.gov/opptintr/PCB) under PCB Waste Handlers.

2. *Fax-on-Demand.* You may request to receive a faxed copy of the EPA forms by using a faxphone to call 202–401–0527 and selecting item 4047 for a copy of EPA Form 7710–53--Notification of PCB Activity, and item number 4048 for EPA Form 7720–12--PCB Transformer Registration.

3. *In person.* The official record for this technical amendment, including the public version, has been established under docket control number OPPTS–66009D. The official record also includes all material and submissions filed under docket control number OPPTS–66009C, the record for the referenced final rule. The public version of the record, including printed, paper versions of any electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. What Does this Technical Correction Do?

EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations,

which appears at 40 CFR part 9. This correction updates the table to include the OMB approval number related to a final rule issued on June 29, 1998 (63 FR 35384), which amended the regulations affecting, among other things, the disposal of polychlorinated biphenyls (PCBs). The effective date for the rule was August 28, 1998. At publication, OMB had not officially approved the information collection request for the PCB disposal rule. Under the PRA, 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. On September 9, 1998, OMB approved the information collection for a 3–year period and assigned it the clearance number of 2070–0159. In addition to the display of the OMB control number on the forms, this display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The OMB approval numbers being incorporated into 40 CFR part 9 are for the information collection requirements in the PCB disposal rule published at 61 FR 35384, June 29, 1998. This document serves to confirm the approval of those information collection requirements in 40 CFR 761.30, 761.35, 761.40, 761.60, 761.61, 761.62, 761.65, 761.71, 761.72, 761.77, 761.79, 761.80, 761.125, 761.180, 761.205, 761.253, 761.274, 761.295, 761.314, 761.357, 7761.359, 761.395 and 761.398 which became effective on September 9, 1998.

IV. Why Is this Technical Correction Issued as a Final Rule?

The ICR itself was subject to public notice and comment in conjunction with the rulemaking, which occurred prior to submission of the final ICR to OMB and OMB's approval. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

V. What Actions Were Required by the Various Regulatory Assessment Mandates?

This final rule does not impose any requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub.L. 104–4), or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

VI. Are there Any Impacts on Tribal, State and Local Governments?

A. Executive Order 12875

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

Today's 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.

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

Today's 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.

VII. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. As previously stated, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of January 20, 1999. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of this rule in the **Federal Register**. This is a technical correction to the CFR and is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls(PCBs), Reporting and recordkeeping requirements.

Dated: January 5, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I is amended as follows:

PART 9—[AMENDED]

1. In part 9:

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

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g4, 300g5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

b. Section 9.1 is amended by adding new entries to the table in section number order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR Citation	OMB control No.
Polychlorinated Biphenyls (PCBs) Manufacturing,Processing, Distribution in Commerce and Use Prohibitions.	
* * * * *	
761.30(a)(1)(vi) and (xii)	2070–0159
761.30(h)(1)(ii) and (iii)	2070–0159
761.30(i)	2070–0159
761.30(t)(3)	2070–0159
761.35	2070–0159
761.40(k) and (l)	2070–0159
761.60(b)(5)	2070–0159
761.60(j)	2070–0159
761.61	2070–0159
761.62	2070–0159
761.65(a)(2) – (4)	2070–0159
761.65(c)(1)(iv), (c)(5), (c)(6) and (c)(8)	2070–0159
761.65(g)(9)	2070–0159
761.65(j)	2070–0159
* * * * *	
761.71	2070–0159
761.72	2070–0159
* * * * *	
761.77	2070–0159
* * * * *	
761.79(d)	2070–0159
761.79 (f)	2070–0159
761.79 (h)	2070–0159
761.80(e)	2070–0159
761.80(i)	2070–0159
* * * * *	
761.125(a)(1)	2070–0159
761.180(a)(1)(iii)	2070–0159
761.180(a)(2)(ix)	2070–0159
761.180(a)(4)	2070–0159
761.180(b)(1)(iii)	2070–0159
761.180(b)(3)	2070–0159
* * * * *	
761.205(f)	2070–0159
* * * * *	
761.253	2070–0159
761.274	2070–0159
761.295	2070–0159
761.314	2070–0159
761.357	2070–0159
761.359	2070–0159
761.395	2070–0159
761.398	2070–0159
* * * * *	

[FR Doc. 99–1252 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[ORWA–010799–a; FRL–6220–3]

Modification of the Ozone Monitoring Season for Washington and Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending 40 CFR part 58, Appendix D, section 2.5, to shorten the ozone monitoring season in Washington and Oregon from April 1 through October 31 to May 1 through September 30.

DATES: This direct final rule is effective on March 22, 1999 without further notice, unless EPA receives adverse comment by February 19, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Chris Hall, Office of Air Quality (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and at Washington's Department of Ecology.

FOR FURTHER INFORMATION CONTACT: Chris Hall, Office of Air Quality (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1949.

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 1998, EPA released a new guidance document concerning ozone monitoring season selection and modification (''Guideline for Selecting and Modifying the Ozone Monitoring Season Based on an 8-Hour Ozone Standard,'' July 9, 1998. EPA–454/R–98–001). In the guidance, EPA's Office for Air Quality Planning and Standards (''OAQPS'') evaluated the ozone monitoring data and seasons for each state, and provided a methodology for calculating new ozone monitoring seasons.

On November 19, 1998, the Washington Department of Ecology (Ecology) submitted a request to EPA Region 10 to shorten its ozone monitoring season per the guidance document's process and recommendations. Currently the ozone monitoring season for Washington is April 1 through October 31, as required by federal regulations which can be found in the ''Ozone Monitoring Season by State'' table found in 40 CFR part 58, Appendix D section 2.5, and as required by State Implementation Plan for Washington as approved by EPA. Since 1990 there has been no exceedance of the 8-hour NAAQS (0.08 ppm) in Oregon or Washington during the months of April and October. Ecology requested that EPA modify the monitoring season to May through September, in accordance with EPA's guidance.

A similar letter of request was submitted by the Oregon Department of Environmental Quality (DEQ) on December 1, 1998. In response to an earlier request from DEQ, EPA already had approved a modification of the Oregon 1-hour ozone monitoring season from May 1 through September 30. EPA's guidance suggested that a similar

monitoring period of May 1 through September 30 for the 8-hour standard would capture the high ozone values occurring during the spring and summer seasons in Oregon. EPA and DEQ analysis of monitoring data for the 11-year period dating back to 1988 found no exceedances during the months of April or October at Oregon ozone monitoring sites.

II. Summary of Action

EPA is approving a modification to Oregon and Washington's ozone monitoring season. Under the change approved by this notice, the new season will begin on May 1 and end on September 30. EPA Region 10 is taking this action at the request of DEQ and Ecology after reviewing all ambient ozone monitoring data [1] for both Oregon and Washington over the past nine seasons (1990 though 1998).

EPA Region 10 has determined that this review meets the standards of EPA guidance provided in the July 9, 1998 ''Guideline for Selecting and Modifying the Ozone Monitoring Season Based on an 8-Hour Ozone Standard.'' This guidance provides a basis for adjusting the months in which ozone monitoring for the 8-hour ozone standard is required. Analyses provided in the July 9, 1998, EPA guidance showed that between 1990 and 1995 no excursions of the 8-hour ozone standard had occurred at any of the monitoring sites in Oregon or Washington during the months of April or October, and conclude that ozone monitoring during these two months could be discontinued. EPA Region 10 agrees with the analyses of DEQ and Ecology with regard to the months of April and October. Based on the historical data review, the analysis of information contained in EPA's July 9, 1998, guidance, and the information provided by DEQ and Ecology in their requests, EPA Region 10 has determined that discontinuing monitoring in Oregon and Washington during the months of April and October will not result in the potential to miss days in which the 8-hour ozone standard is exceeded, and will result in significant cost savings for both agencies.

EPA notes that the analysis in the OAQPS guidance found no excursions of the 8-hour standard in Washington for the month of September, and suggested that monitoring in Washington could potentially be discontinued during this month as well. EPA Region 10's analysis of Washington ozone monitoring data through September 1998 found one recorded excursion on September 1, 1998 (Tacoma). QA validation of this record had not yet been finalized. Additionally, EPA notes that Oregon and Washington share an ozone maintenance area (Vancouver-Portland), and that a number of excursions have been recorded at ozone monitoring sites in Oregon during September over the past nine seasons. Therefore, EPA Region 10 and Ecology believe that ozone monitoring data should continue to be collected during the month of September given the likelihood future excursions of the 8-hour standard in Washington could occur.

By this notice, EPA Region 10 is agreeing with the conclusions of DEQ and Ecology that ambient ozone monitoring in April and October can be discontinued. EPA believes that reductions in the required schedule will provide significant cost savings for both state agencies without reducing the effectiveness of their ozone monitoring program.

EPA is publishing this rule without a prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 22, 1999 without further notice unless the Agency receives adverse comments by February 19, 1999.

If EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 22, 1999 and no further action will be taken on the proposed rule.

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

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of 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 Executive Order 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

[1] For this review EPA Region 10 used all available data as entered into EPA's Aerometric Information Retrieval System (AIRS).

costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of 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 the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this approval action 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 preexisting 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 22, 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 58

Environmental protection, Air pollution control, Ozone, Oregon, Reporting and recordkeeping requirements, Washington.

Dated: January 7, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

Part 58, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 58—[AMENDED]

1. The authority citation for Part 58 continues to read as follows:

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

2. Part 58, Appendix D, section 2.5: the table is amended by revising the entry for Oregon and Washington to read as follows:

Appendix D—Network Design for State and Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS) and Photochemical Assessment Monitoring Stations (PAMS)

* * * * *

2.5 Ozone (O3) Design Criteria for SLAMS

* * * * *

OZONE MONITORING SEASON BY STATE

State	Begin Month	End Month
* *	*	* *
Oregon	May	September
* *	*	* *
Washington ..	May	September
* *	*	* *

[FR Doc. 99–1121 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[AD–FRL–6221–2]

RIN 2060–AF71

Ambient Air Quality Surveillance for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Lead air pollution levels measured near the Nation's roadways

have decreased 97 percent between 1978 and 1997 with the elimination of lead in gasoline used by on-road mobile sources. Because of this historic decrease, EPA is reducing its requirements for measuring lead air pollutant concentrations near major highways, while retaining its focus on point sources and their impact on neighboring populations. The EPA published a direct final rule for ambient air quality surveillance for lead on November 5, 1997 (62 FR 59813). Due to adverse comments received, the rule was withdrawn on December 23, 1997 (62 FR 67009). Based on comments that were received, today's action revises 40 CFR part 58 lead air monitoring regulations to allow many lead monitoring stations to be discontinued while maintaining a core lead monitoring network in urban areas to track continued compliance with the lead National Ambient Air Quality Standards (NAAQS). This action does not diminish existing requirements for lead ambient air monitoring around lead point sources. Approximately 70 of the National Air Monitoring Stations (NAMS) and a number of the State and Local Air Monitoring Stations (SLAMS) could be discontinued with this action, thus making more resources available to those State and local agencies to deploy lead air quality monitors around heretofore unmonitored lead point sources. Affected industries include primary and secondary lead smelting, lead battery recycling, and primary copper smelting.

DATES: The effective date of this rule is February 19, 1999.

ADDRESSES: All comments relative to this rule have been placed in Docket No. A–91-22, located in the Air Docket (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The docket may be inspected between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For general information, contact Brenda Millar, Emissions, Monitoring, and Analysis Division (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone: (919) 541–4036, e-mail: millar.brenda@epa.gov. For technical information, contact Michael Jones, Emissions Monitoring, and Analysis Division (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone: (919) 541–0528, e-mail: jones.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Authority

Sections 110, 301(a), and 319 of the Clean Air Act as amended 42 U.S.C. 7410, 7601(a), 7619.

II. Background

The current ambient air monitoring regulations that pertain to lead air sampling were written in the 1970's when lead emissions from on-road mobile sources (e.g., automobiles, trucks) were the predominant lead air emission source affecting our communities. As such, the current lead monitoring requirements focus primarily upon the idea of determining the air quality impacts from major roadways and urban traffic arterial highways. Since the 1970's, lead has been removed from gasoline sources for on-road vehicles (on-road vehicles now account for less than 1 percent of total lead emissions), and a 97 percent decrease in lead air pollution levels measured in our neighborhoods and near roadways has occurred nationwide. Because of this historic decrease, EPA is reducing its requirements for measuring lead air pollutant concentrations near major highways, while retaining its focus on point sources and their impacts on neighboring populations.

Several commenters observed that the rule's assessment of on-road vehicles emissions is contrary to the Agency's own figures. Specifically, the proposed rule stated that on-road vehicle emissions account for less than 1 percent of total lead emissions, while the Agency's 1995 National Air Quality and Emissions Trends Report (EPA 454/R–96–005) indicated that nearly 28 percent of total air lead emissions were attributable to on-road vehicles.

Based on the emissions reported in ''Locating and Estimating Air Emissions from Sources of Lead and Lead Compounds'' (Eastern Research Group, Draft Report, July 1996), on-road vehicle emissions had been over estimated. The EPA investigated this inconsistency and found due cause to revise on-road vehicle emissions estimates. These revisions are reflected in subsequent Agency reports (e.g., EPA 454/R–97–011, ''National Air Pollutant Emission Trends, 1900–1996'', EPA 454/R–97013, ''National Air Quality and Trends Report, 1996,'' and EPA 454/R–98–016, ''National Air Quality and Trends Report, 1997'') wherein on-road vehicle emissions are listed as contributing approximately 0.5 percent of the total lead estimate.

Several commenters questioned the rule's asserted need for additional monitors around stationary point sources, particularly the basis for increased scrutiny of stationary sources emitting five or more tons per year, as well as, in select cases, those sources emitting less than 5 tons per year. Further, the potential for increased information collection burden, and means of determining which ''smaller stationary sources'' would be considered ''problematic'' were also questioned.

The primary objective of this rule is to reduce the requirement for lead air pollutant concentration measurements near major highways, while maintaining a focus on lead point sources and their impact on neighboring populations. The EPA has determined that, in the interest of furthering attainment of the National Ambient Air Quality Standard (NAAQS) for lead, it is prudent for State and local agencies to deploy these additional lead monitoring resources in the vicinity of any previously unmonitored point source which they feel may have the potential to cause lead air quality violations. A point source is defined in 40 CFR 51.100(k)(2) as ''For lead or lead compounds measured as lead, any stationary source that actually emits a total of 4.5 metric tons (5 tons) per year or more.'' Though the verbiage '' * * * although smaller stationary sources may also be problematic depending upon the facility's size and proximity to neighborhoods' was removed from this rule, State and local agencies are not precluded from further evaluating any lead source which they feel may have the potential to violate lead air quality standards. Suggested guidelines for such source evaluations are described in ''Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised'' (EPA 454/R–92–019). Finally, ambient lead monitoring occurs at existing major primary and secondary lead smelters, lead acid battery plants, and primary copper smelters. As essentially all quantifiable lead point sources are included in these categories, and considering the substantial decrease in roadside monitoring which will result from this rule, EPA believes this rule will entail little or no increased information collection burden.

A State requested that EPA amend the referenced rule to delete the requirement for one NAMS population-oriented site in the vicinity of a specific facility within their jurisdiction.

The monitoring site north of the facility in question has reported lead NAAQS violations in 1 or 2 quarters during each of the past 3 years. Given that this monitor is sited at the middle

scale, it is not unreasonable to require a NAMS site on the neighborhood scale. Data from such a site are useful in representing typical air quality values for nearby residential areas, and suitable for population exposure and trends analysis.

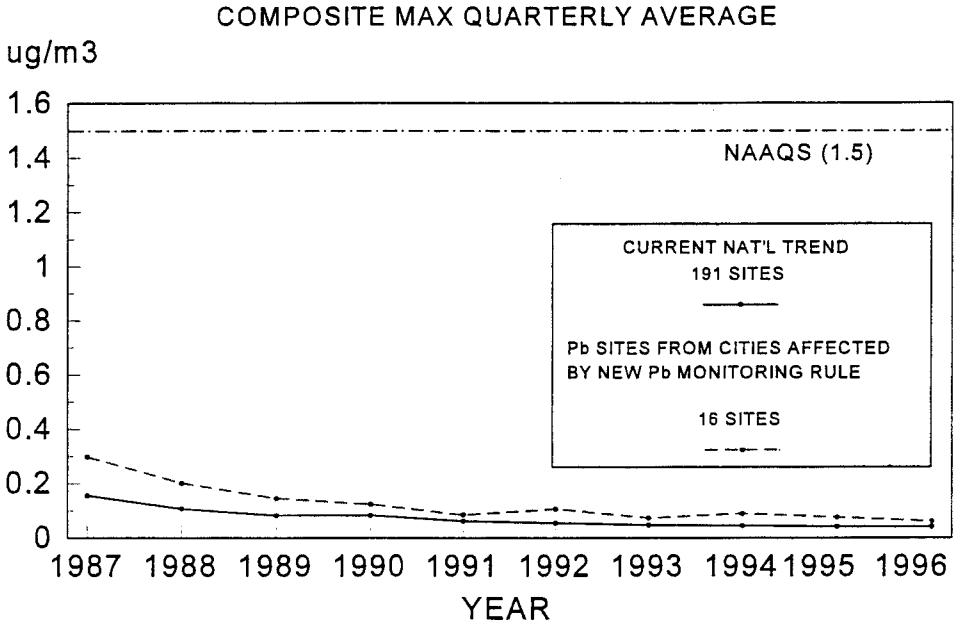
The current lead air monitoring regulations require that each urbanized area with a population of 500,000 or more operate at least two lead NAMS, one of which must be a roadway-oriented site and the second must be a neighborhood site with nearby traffic arteries or other major roadways. There are approximately 58 NAMS in operation and reporting data for 1998. This action would change this NAMS requirement to include one NAMS site in one of the two largest Metropolitan Statistical Areas (MSA/CMSA) within each of the ten EPA Regions, and one NAMS population-oriented site in each populated area (either a MSA/CMSA, town, or county) where lead violations have been measured over the most recent 8 calendar quarters. This latter requirement is designed to provide information to citizens living in areas that have one or more lead point sources that are causing recent air quality violations. At present, the MSA/CMSAs, cities, or counties that have one or more quarterly Pb NAAQS violations that may be subject to this requirement are listed in Table 1.

TABLE 1.—CMSA/MSA'S OR COUNTIES WITH ONE OR MORE LEAD NAAQS VIOLATIONS IN 1996–1997

CMSA/MSA or County	Contributing Lead Source(s)
Philadelphia-Wilmington-Atlantic City CMSA	Franklin Smelter in Philadelphia County, PA.
Tampa-St. Petersburg-Clearwater MSA	Gulf Coast Lead in Hillsborough County, FL.
Memphis MSA	Refined Metals in Shelby County, TN.
Nashville MSA	General Smelting in Williamson County, TN.
St. Louis MSA	Chemetco in Madison County, IL, and Doe Run in Jefferson County, MO.
Cleveland-Akron CMSA	Master Metals in Cuyahoga County, OH.
Iron County, MO	ASARCO in/near Hogan, MO.
Omaha MSA	ASARCO in Douglas County, NE.
Lewis and Clark County, MT	ASARCO in/near East Helena, MT.

Data from these NAMS will be used to assess national trends in lead ambient air pollution. Figure 1 demonstrates the effect that these monitoring reductions will have on our national lead air pollutant trends.

FIGURE 1. LEAD TRENDS: CURRENT U.S. VS SELECTED CITIES



For other monitoring within the SLAMS network, EPA is allowing State and local agencies to further focus their efforts toward establishing air monitoring networks around lead point sources which are causing or have a potential to cause exceedances of the quarterly lead NAAQS. Many of these sources have been identified through EPA's ongoing Lead NAAQS Attainment Strategy, and monitoring has already been established. All point sources (stationary sources emitting five or more tons per year) are considered to be candidates for additional lead monitoring . The EPA recommends a minimum of two sites per source, one located for stack emission impacts and the other for fugitive emission impacts. Variations of this two-site network are expected as source type, topography,

locations of neighboring populations, and other factors play a role in how to most appropriately design such a network. EPA guidance for lead monitoring around point sources has been developed and is available through a variety of sources including the National Technical Information Service (800–553–6847), and electronic forms accessible through EPA's Office of Air Quality Planning & Standards Technology Transfer Network, Ambient Monitoring Technology Information Center (AMTIC) bulletin board system at http://ttnwww.rtpnc.epa.gov.

One commenter questioned the rule's consistency with statutory mandates under section 319 of the Clean Air Act (CAA), in particular by citing the requirement for ''uniform air quality criteria * * * throughout the United States.'' 42 U.S.C. 7619.

In section 319 of the CAA, the term ''criteria'' refers to a specific set of pollutants and the associated levels and forms of their respective standards. The term ''uniform'' refers to both criteria and measurement methodology, relative to a specific air quality index. Uniformity in ambient monitoring is achieved by monitor design specifications (40 CFR part 53) and quality assurance/quality control procedures. Monitors which meet such design specifications are designated as either Federal Reference Method (FRM) or Federal Equivalent Method (FEM), as appropriate. Further, upon reading the entire text of the CAA, section 319, from which the commenter's excerpt was taken, it becomes clear that the new rule is, in fact, consistent with the referenced statutory mandates.

Several commenters noted that this rule is being issued in response to numerous State and local agency requests, yet the docket contains no documentation of such requests.

As many roadside monitored ambient lead values have steadily declined to at or near minimally detectable levels, the need for continued roadside ambient lead monitoring has been increasingly and repeatedly questioned by State representatives at the biannual Standing Air Monitoring Work Group meetings, as well as several instances of written queries and requests. The reason the Agency did not include any such existing documentation in the docket is that the basis for this rule revision is not requests from State and local agencies, but rather EPA's success in essentially eliminating on-road mobile source lead emissions. Given the fact that on-road mobile sources' contribution to the total lead emissions estimate is negligible, as evidenced by minimally detectable ambient levels at all locations other than sites in proximity to lead point sources, it is EPA's inherent responsibility to ensure our nation's ambient air pollution monitoring resources are redirected toward environmental issues of concern.

Several commenters expressed concern over potential data misuse in commencement of unjustified enforcement proceedings or citizen suits. The reason for concern was cited as the combined impact of the proposed revisions to 40 CFR part 58 and EPA's Credible Evidence revisions to 40 CFR parts 51, 52, 60, and 61.

The referenced Credible Evidence revisions and related amendments to 40 CFR part 64, Compliance Assurance Monitoring, pertain exclusively to emissions monitoring data, not ambient air quality data. The proposed revisions to 40 CFR part 58, Ambient Air Quality Surveillance, do not allow for use of non-reference data in any compliance or enforcement actions. There is, therefore, no plausible potential for data misuse in commencement of unjustified enforcement proceedings or citizen suits.

In addition to the changes to the lead monitoring requirements, EPA is making several minor changes to update and correct regulatory provisions to current practices. Specifically this affects §§ 58.31, 58.34, 58.41, Appendix B, Appendix D Sections 3.2 and 3.3, and Appendix G, Sections 1 and 2b.

III. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 F.R. 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

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

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

It has been determined that this action is not a ''significant regulatory action'' under the terms of the Executive Order 12866 and is therefore not subject to formal OMB review.

B. Paperwork Reduction Act

Today's action does not impose any new information collection burden. This action revises the part 58 air monitoring regulations for lead to allow many monitoring sites to be discontinued. The Office of Management and Budget (OMB) has previously approved the information collection requirements in the part 58 regulation under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0084 (EPA ICR No. 0940.13 and revised by 0940.14).

C. Executive Order 12875 Enhancing the Intergovernmental Partnership

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

Today's rule implements requirements specifically set forth by the Congress in 42 U.S.C. 7410 without the exercise of any discretion by EPA. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under Executive Order 12866, and (2) the environmental

health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

E. Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

F. Impact on Small Entities

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 whose jurisdictions are less than 50,000 people. This rule will not have a significant impact on a substantial number of small entities because it does not impact small entities whose jurisdictions cover less than 50,000 people. Pursuant to the provision of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities.

Since this modification is classified as minor, no additional reviews are required.

G. Unfunded Mandates Reform Act of 1995

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 standards that include a Federal mandate that may result in estimated costs to State, local, or tribal governments, or to the private sector, of, in the aggregate, $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the standard 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 standards. The EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments. Therefore, the requirements of the Unfunded Mandates Act of 1995 do not apply to this action.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs 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.

I. Submission to Congress and the General Accounting Office

The Congressional Review Act, 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 58

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Quality assurance requirements, Ambient air quality monitoring network.

Dated: January 12, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I, part 58 of the Code of Federal Regulations is amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), 7613, 7619.

2. Section 58.31(a) is revised to read as follows:

§ 58.31 NAMS network description.

* * * * *

(a) The AIRS site identification number for existing stations.

* * * * *

3. Section 58.34(a) is revised to read as follows:

§ 58.34 NAMS network completion.

* * * * *

(a) Each NAMS must be in operation, be sited in accordance with the criteria in Appendix E to this part, and be located as described in the AIRS database; and

* * * * *

4. Section 58.41(b) is revised to read as follows:

§ 58.41 PAMS network description.

* * * * *

(b) The AIRS site identification number for existing stations.

* * * * *

5. Appendix D is amended by revising the first sentence of the undesignated paragraph following paragraph (6) of section 1, revising section 2.7, revising the fifth paragraph of section 3, revising the last sentence of the first paragraph of section 3.2, revising the last sentence of the first paragraph of section 3.3, revising section 3.6, and revising references 6, 7, 10 of section 6 and adding reference 19 to section 6 to read as follows:

Appendix D—Network Design for State and Local Air Monitoring Stations (SLAMS), National Air Monitoring Stations (NAMS), and Photochemical Assessment Monitoring Stations (PAMS)

* * * * *

1. SLAMS Monitoring Objectives and Spatial Scales

* * * * *

It should be noted that this appendix contains no criteria for determining the total number of stations in SLAMS networks, except in areas where Pb concentrations currently exceed or have exceeded the Pb NAAQS during any one quarter of the most recent eight quarters. * * *

* * * * *

2.7 *Lead (Pb) Design Criteria for SLAMS.* Presently, less than 1 percent of the Nation's Pb air pollution emissions originate from on-road mobile source exhaust. The majority of Pb emissions come from point sources, such as metals processing facilities, waste disposal and recycling, and fuel combustion (reference 19 of this appendix). The SLAMS networks are used to assess the air quality impacts of Pb point sources, and to determine the broad population exposure from any Pb source. The most important spatial scales to effectively characterize the emissions from point sources are the micro, middle, and neighborhood scales. For purposes of establishing monitoring stations to represent large homogeneous areas other than the above scales of representativeness, urban or regional scale stations may also be needed.

Microscale—This scale would typify areas in close proximity to lead point sources. Emissions from point sources such as primary and secondary lead smelters, and primary copper smelters may under fumigation conditions likewise result in high ground level concentrations at the microscale. In the latter case, the microscale would represent an area impacted by the plume with dimensions extending up to approximately 100 meters. Data collected at microscale stations provide information for evaluating and developing ''hot-spot'' control measures.

Middle Scale—This scale generally represents Pb air quality levels in areas up to several city blocks in size with dimensions on the order of approximately 100 meters to 500 meters. The middle scale may for example, include schools and playgrounds in center city areas which are close to major Pb point sources. Pb monitors in such areas are desirable because of the higher sensitivity of children to exposures of elevated Pb concentrations (reference 7 of this appendix). Emissions from point sources frequently impact on areas at which single sites may be located to measure concentrations representing middle spatial scales.

Neighborhood Scale—The neighborhood scale would characterize air quality conditions throughout some relatively uniform land use areas with dimensions in the 0.5 to 4.0 kilometer range. Stations of this scale would provide monitoring data in areas representing conditions where children live and play. Monitoring in such areas is important since this segment of the population is more susceptible to the effects of Pb. Where a neighborhood site is located away from immediate Pb sources, the site may be very useful in representing typical air quality values for a larger residential area, and therefore suitable for population exposure and trends analyses.

Urban Scale—Such stations would be used to present ambient Pb concentrations over an entire metropolitan area with dimensions in the 4 to 50 kilometer range. An urban scale station would be useful for assessing trends in citywide air quality and the effectiveness of larger scale air pollution control strategies.

Regional Scale—Measurements from these stations would characterize air quality levels over areas having dimensions of 50 to hundreds of kilometers. This large scale of representativeness, rarely used in Pb monitoring, would be most applicable to sparsely populated areas and could provide information on background air quality and inter-regional pollutant transport.

Monitoring for ambient Pb levels is required for all major urbanized areas where Pb levels have been shown or are expected to be of concern due to the proximity of Pb point source emissions. Sources emitting five tons per year or more of actual point and fugitive Pb emissions would generally be candidates for lead ambient air monitoring. Modeling may be needed to determine if a source has the potential to exceed the quarterly lead National Ambient Air Quality Standards (NAAQS). The total number and type of stations for SLAMS are not prescribed but must be determined on a case-by-case basis. As a minimum, there must be two stations in any area where Pb concentrations currently exceed or have exceeded the Pb NAAQS during any one quarter of the most recent eight quarters. Where the Pb air quality violations are widespread or the emissions density, topography, or population locations are complex and varied, there may be a need to establish more than two Pb ambient air monitoring stations. The EPA Regional Administrator may specify more than two monitoring stations if it is found that two stations are insufficient to adequately determine if the Pb standard is being attained and maintained. The Regional Administrator may also specify that stations be located in areas outside the boundaries of the urbanized areas.

Concerning the previously discussed required minimum of two stations, at least one of the stations must be a category (a) type station and the second may be either category (a) or (b) depending upon the extent of the point source's impact and the existence of residential neighborhoods surrounding the source. When the source is located in an area that is subject to NAMS requirements as in Section 3 of this Appendix, it is preferred that the NAMS site be used to describe the population's exposure and the second SLAMS site be used as a category (a) site. Both of these categories of stations are defined in section 3.

To locate monitoring stations, it will be necessary to obtain background information such as point source emissions inventories, climatological summaries, and local geographical characteristics. Such information should be used to identify areas that are most suitable to the particular monitoring objective and spatial scale of representativeness desired. References 9 & 10 of this appendix provide additional guidance on locating sites to meet specific urban area monitoring objectives and should be used in locating new stations or evaluating the adequacy of existing stations.

After locating each Pb station and, to the extent practicable, taking into consideration the collective impact of all Pb sources and surrounding physical characteristics of the siting area, a spatial scale of representativeness must be assigned to each station.

* * * * *

3. Network Design for National Air Monitoring Stations (NAMS)

* * * * *

For each urban area where NAMS are required, both categories of monitoring stations must be established. In the case of Pb and SO_2 if only one NAMS is needed, then category (a) must be used. The analysis and interpretation of data from NAMS should consider the distinction between these types of stations as appropriate.

* * * * *

3.2 Sulfur Dioxide Design Criteria for NAMS

* * * The actual number and location of the NAMS must be determined by EPA Regional Offices and the State Agency, subject to the approval of EPA Headquarters, Office of Air Quality Planning and Standards (OAQPS).

* * * * *

3.3 Carbon Monoxide (CO) Design Criteria for NAMS

* * * At the national level, EPA will not routinely require data from as many stations as are required for PM–10, and perhaps SO_2, since CO trend stations are principally needed to assess the overall air quality progress resulting from the emission controls required by the Federal motor vehicle control program (FMVCP) and other local controls.

* * * * *

3.6 *Lead (Pb) Design Criteria for NAMS.* In order to achieve the national monitoring objective, one NAMS site must be located in one of the two cities with the greatest population in the following ten regions of the country (the choice of which of the two metropolitan areas should have the lead NAMS requirement is made by the Administrator or the Administrator's designee using the recommendation of the Regional Administrators or the Regional Administrators' designee):

TABLE 1.—EPA REGIONS & TWO CURRENT LARGEST MSA/CMSAS (USING 1995 CENSUS DATA)

Region (States)	Two Largest MSA/CMSAs
I (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont).	Boston-Worcester-Lawrence CMSA, Hartford, CT MSA.
II (New Jersey, New York, Puerto Rico, U.S. Virgin Islands)	New York-Northern New Jersey-Long Island, CMSA, San Juan-Caguas-Arecibo, PR CMSA.
III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, Washington, DC).	Washington-Baltimore CMSA, Philadelphia-Wilmington-Atlantic City CMSA.
IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee).	Miami-Fort Lauderdale CMSA, Atlanta, GA MSA.
V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)	Chicago-Gary-Kenosha CMSA, Detroit-Ann Arbor-Flint CMSA.
VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)	Dallas-Fort Worth CMSA, Houston-Galveston-Brazoria CMSA.
VII (Iowa, Kansas, Missouri, Nebraska)	St. Louis MSA, Kansas City MSA.
VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)	Denver-Boulder-Greeley CMSA, Salt Lake City-Ogden MSA.
IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada)	Los Angeles-Riverside-Orange County CMSA, San Francisco-Oakland-San Jose CMSA.
X (Alaska, Idaho, Oregon, Washington)	Seattle-Tacoma-Bremerton CMSA, Portland-Salem CMSA.

In addition, one NAMS site must be located in each of the MSA/CMSAs where one or more violations of the quarterly Pb NAAQS have been recorded over the previous eight quarters. If a violation of the quarterly Pb NAAQS is measured at a monitoring site outside of a MSA/CMSA, one NAMS site must be located within the county in a populated area, apart from the Pb source, to assess area wide Pb air pollution levels. These NAMS sites should represent the maximum Pb concentrations measured within the MSA/CMSA, city, or county that is not directly affected from a single Pb point source. Further, in order that on-road mobile source emissions may continue to be verified as not contributing to lead NAAQS violations, roadside ambient lead monitors should be considered as viable NAMS site candidates. A NAMS site may be a microscale or middle scale category (a) station, located adjacent to a major roadway (e.g., >30,000 ADT), or a neighborhood scale category (b) station that is located in a highly populated residential section of the MSA/CMSA or county where the traffic density is high. Data from these sites will be used to assess general conditions for large MSA/CMSAs and other populated areas as a marker for national trends, and to confirm continued attainment of the Pb NAAQS. In some cases, the MSA/CMSA subject to the latter lead NAMS requirement due to a violating point source will be the same MSA/CMSA subject to the lead NAMS requirement based upon its population. For these situations, the total minimum number of required lead NAMS is one.

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6. References

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6. Lead Guideline Document, U. S. Environmental Protection Agency, Research Triangle Park, NC. EPA–452/R–93–009.

7. Air Quality Criteria for Lead. Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC. EPA–600/8–83–028 aF–dF, 1986, and supplements EPA–600/8–89/049F, August 1990. (NTIS document numbers PB87–142378 and PB91–138420.)

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10. ''Guidance for Conducting Ambient Air Monitoring for Lead Around Point Sources,'' Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC EPA–454/R–92–009, May 1997.

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19. National Air Pollutant Emissions Trends, 1900–1995, Office of Air Quality Planning and Standards, U. S. Environmental Protection Agency, Research Triangle Park, NC. EPA–454/R96–007, October 1996, updated annually.

6. Appendix E is amended by revising the first paragraph of section 7.1, adding a sentence at the beginning of section 7.3, revising section 7.4, and revising reference 18 in section 13 to read as follows:

Appendix E—Probe and Monitoring Path Siting Criteria for Ambient Air Quality Monitoring

* * * * *

7.1 *Vertical Placement.* Optimal placement of the sampler inlet for Pb monitoring should be at breathing height level. However, practical factors such as prevention of vandalism, security, and safety precautions must also be considered when siting a Pb monitor. Given these considerations, the sampler inlet for microscale Pb monitors must be 2–7 meters above ground level. The lower limit was based on a compromise between ease of servicing the sampler and the desire to avoid unrepresentative conditions due to re-entrainment from dusty surfaces. The upper limit represents a compromise between the desire to have measurements which are most representative of population exposures and a consideration of the practical factors noted above.

* * * * *

7.3. *Spacing from Roadways.* This criteria applies only to those Pb sites designed to assess lead concentrations from mobile sources. Numerous studies have shown that ambient Pb levels near mobile sources are a function of the traffic volume and are most pronounced at ADT >30,000 within the first 15 meters on the downwind side of the roadways.

* * * * *

7.4. *Spacing from trees and other considerations.* Trees can provide surfaces for deposition or adsorption of Pb particles and obstruct normal wind flow patterns. For microscale and middle scale category (a) sites there must not be any tree(s) between the source of the Pb and the sampler. For neighborhood scale category (b) sites, the sampler should be at least 20 meters from the drip line of trees. The sampler must, however, be placed at least 10 meters from the drip line of trees which could be classified as an obstruction, i.e., the distance between the tree(s) and the sampler is less than the height that the tree protrudes above the sampler.

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13. References

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18. Air Quality Criteria for Lead. Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC EPA–600/8–83–028 aF–dF, 1986, and supplements EPA–600/8–89/049F, August 1990. (NTIS document numbers PB87–142378 and PB91–138420.)

* * * * *

7. Section 1 and section 2 b of Appendix G are revised to read as follows:

Appendix G—Uniform Air Quality Index and Daily Reporting

* * * * *

1. *General.* This appendix describes the uniform air quality index to be used by States in reporting the daily air quality index required by § 58.50.

2. *Definitions.*

* * * * *

b. Reporting Agency means the applicable State agency or a local air pollution control agency designated by the State, that will carry out the provisions of § 58.50.

* * * * *

[FR Doc. 99–1125 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300771; FRL 6051–6]

RIN 2070–AB78

Imidacloprid; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of imidacloprid in or on Legume Vegetables (Crop Group 6, 40 CFR 180.41(c)(6)) and Strawberries. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on legumes and strawberries. This regulation establishes maximum permissible levels for residues of imidacloprid in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on June 30, 2000.

DATES: This regulation is effective January 20, 1999. Objections and requests for hearings must be received by EPA on or before March 22, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300771], 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–300771], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300771]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9356; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the insecticide imidacloprid (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine), in or on legume vegetables and strawberries, at 1.0 and 0.1 part per million (ppm), respectively. These tolerances will expire and are revoked on 6/30/00. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

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

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

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

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

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

II. Emergency Exemption for Imidacloprid on Legume Vegetables and Strawberries and FFDCA Tolerances

The State of Florida requested a specific exemption for use of imidacloprid on legume vegetables to control the silverleaf whitefly. The state of California also requested a specific exemption for use of imidacloprid on strawberries to control the silverleaf whitefly. Both Florida and California stated that an emergency situation is present due to this recently introduced pest, its devastating effects on many fruit and vegetable crops, and its resistance to registered alternatives. The Applicants state that this pest can have devastating effects on growers' production and revenue. EPA has authorized under FIFRA section 18 the use of imidacloprid on Legume Vegetables and Strawberries for control of silverleaf whitefly in Florida and California, respectively. After having reviewed the submissions, EPA concurs that emergency conditions exist for these states.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of imidacloprid in or on legume vegetables and strawberries. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemptions in order to address urgent non-routine situations and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on 6/30/00, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on legume vegetables and strawberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether imidacloprid meets EPA's registration requirements for use on legume vegetables and strawberries or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of imidacloprid by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Florida or California to use this pesticide on the respective crops under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for imidacloprid, contact the Agency's Registration Division at the address provided above.

III. Aggregate Risk Assessment and Determination of Safety

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).

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 imidacloprid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, on legume vegetables and strawberries at 1.0 and 0.1 ppm, respectively. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances 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 imidacloprid are discussed below.

1. *Acute toxicity*. Based on the available acute toxicity data, OPP has determined that the lowest observed effect level (LOEL) of 42 milligrams per kilogram body weight per day (mg/kg/bwt/day) from the neurotoxicity study in rats should be used to assess risk from acute toxicity. There was no observed adverse effect level (NOAEL) in the study. Decreased motor activity in female rats was observed at the LOEL. Using the uncertainty factors (UFs) of 10X for inter- and 10X for intra-species variations, the acute Reference Dose (RfD) is 0.42 mg/kg/day. This risk assessment is required for all population subgroups.

2. *Short - and intermediate - term toxicity*. OPP has determined that available data do not demonstrate that imidacloprid has dermal or inhalation toxicity potential. Therefore, short-term or intermediate-term dermal and inhalation risk assessments, for occupational and residential exposure scenarios, are not required. However, a short-term aggregate risk assessment (oral exposure) is required for hand-to-mouth residential exposure, and the acute toxicological endpoint, as described above, is used for this risk assessment. Incorporating the 3X uncertainty factor, as described below, an MOE of 300 or greater would be acceptable.

3. *Chronic toxicity*. EPA had established the RfD for imidacloprid at 0.057 mg/kg/day. This RfD is based on a standard uncertainty factor (UF) of 100, and the NOAEL of 5.7 mg/kg/day from a combined chronic toxicity/carcinogenicity study in rats, which demonstrated increased number of thyroid lesions in male rats and decreased body weight gains in female rats. For chronic dietary risk assessment, the Agency determined that the FQPA uncertainty factor could be reduced to 3X and should be applied to all population subgroups. This determination is based on the weight-of-the-evidence considerations relating to potential sensitivity and completeness of the data, specifically, in regard to developmental neurotoxicity. This determination is further explained below under section III(D)(v) of this document. Because a developmental neurotoxicity study potentially relates to both acute and chronic effects in both the mother and the fetus, the 3X UF for FQPA is being applied for all population subgroups, and both acute and chronic risk. Therefore, for the purposes of this risk assessment, dietary exposure must not be above 33.3% of the RfD, to make the finding of reasonable certainty of no harm.

4. *Carcinogenicity*. Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified imidacloprid as a ''Group E'' chemical (no evidence of carcinogenicity for

humans) based on the results of carcinogenicity studies in two species. The doses tested are adequate for identifying a cancer risk, and thus, a cancer risk assessment is not required.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.472) for the residues of imidacloprid (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites, in or on a variety of raw agricultural commodities, ranging from 0.02 ppm in/on eggs to 15 ppm in/on raisin waste. Existing meat/milk/poultry tolerances are adequate to cover any secondary residues which may occur as a result of feeding legume products; secondary residues are not expected to occur from strawberries, as they are not a significant livestock feed item. Risk assessments were conducted by EPA to assess dietary exposures and risks from imidacloprid 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. An acute dietary risk assessment for imidacloprid is required for all population subgroups. The acute dietary risk assessment used the Theoretical Maximum Residue Contribution (TMRC, tolerance level residues and 100% crop treated); the tolerances used for legumes and strawberries were 1.0 and 0.1 ppm, respectively. The Novigen Dietary Exposure Evaluation Model (DEEM) analysis was used and this analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of dietary exposure. Resulting exposure values at the 99th percentile and percentage of the acute RfD are shown below. Values for the 99th percentile are considered to be conservative as OPP policy dictates exposure estimates from as low as the 95th percentile may be utilized for risk estimates from acute DEEM runs. Thus, these results are viewed as conservative estimates, and refinement using anticipated residue values and percent crop treated information, in conjunction with a Monte Carlo analysis, would result in lower estimates of acute dietary exposure and risk. The subgroups listed in the table below are the U.S. population, and those for infants and children. There are no other subgroups (adult) for which the percentage of the Acute RfD occupied is greater than that occupied by the subgroup U.S. Population (48 states).

Population Subgroup	Exposure @ 99th Percentile (mg/kg bwt/day)	Percent Acute RfD
U.S. Population (48 states)	0.051	12%
Infants (< 1 yr)	0.067	16%
Nursing Infants (<1 yr)	0.096	23%
Non-nursing Infants (<1 yr)	0.059	14%
Children (1–6 yrs)	0.086	20%
Children (7 – 12 yrs)	0.058	14%

ii. *Chronic exposure and risk.* The endpoint selected for chronic risk assessment is decreased body weight gains in females and increased thyroid lesions observed in males at 7.6 mg/kg/day in a combined chronic toxicity/carcinogenicity study in rats. The NOAEL was 5.7 mg/kg/day. In conducting this chronic dietary (food) risk assessment, EPA used: (1) tolerance level residues for legumes, strawberries, and all other commodities with pending, published, permanent or time-limited imidacloprid tolerances; and, (2) percent crop-treated (%CT) information on some of these crops. Thus, this risk assessment should be viewed as partially refined. Further refinement using anticipated residue values and additional %CT information would result in a lower estimate of chronic dietary exposure. As discussed above, the FQPA UF of 3X must also be utilized, resulting in an acceptable dietary exposure level not to exceed 33.3% of the chronic RfD for all population subgroups. The Novigen DEEM system was used for this chronic dietary exposure analysis.

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

Population Subgroup	Exposure (mg/kg bwt/day)	%Chronic RfD
U.S. Population (48 states)	0.0037	6.6%
All Infants (< 1 yr)	0.0053	9.3%
Nursing Infants (<1 yr)	0.0017	3.0%
Non-nursing Infants (<1 yr)	0.0068	12%
Children (1–6 yrs)	0.0086	1.5%
Children (7–12 yrs)	0.0054	9.5%
U.S. Population (Autumn & Winter)	0.0038	6.7%
Non-Hispanic Black	0.0038	6.7%
Females (13+ / Nursing)	0.0038	6.7%
Non-Hispanic Others	0.0041	7.2%

2. *From drinking water.* There is no established Maximum Contaminant Level or Health Advisory Levels for imidacloprid in drinking water. To date, there are no validated modeling approaches for reliably predicting pesticide levels in drinking water. The Agency uses models designed for use for ecological assessment, which are not ideal tools for use in drinking water risk assessment, as they could overestimate actual drinking water concentrations. Thus, these models are considered a coarse screening tool for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern. For surface water, the Agency used PRZM1 (Pesticide Root Zone Model - simulates the transport of a pesticide off the agricultural field) and EXAMS (Exposure Analysis Modeling System - simulates fate and transport of a pesticide in surface water) models which are used to produce estimates of pesticide concentrations in a farm pond. For ground water the Agency used SCI-GROW (Screening Concentration In Ground Water) model to estimate the concentration of imidacloprid residues in ground water. SCI-GROW is a prototype model for estimating ''worst case'' ground water concentrations of pesticides. SCI-GROW is biased in that studies where the pesticide is not detected in ground water are not included in the data set. Thus, it is not expected that SCI-GROW estimates would be exceeded.

In the absence of monitoring data for pesticides, drinking water levels of comparison (DWLOCs) are calculated

and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and residential uses. A DWLOC will vary depending on the toxic endpoint, with drinking water consumption, and body weights. Different populations will have different DWLOCs. DWLOCs are used in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. DWLOC values are not regulatory standards for drinking water. Since DWLOCs address total aggregate exposure to imidacloprid they are further discussed in the aggregate risk sections below.

i. *Acute exposure.* EPA used estimated concentrations of imidacloprid in surface and ground water for acute exposure analysis of 4.1 and 1.1 milligram/Liter (µg/L) parts per billion (ppb), respectively. These estimated concentrations of imidacloprid in surface and ground water were based upon an application rate of 0.5 lbs active ingredient/ Acre/ year (ai/A/year). For purposes of risk assessment, the estimated maximum concentration of 4.1 ppb was used. The calculated acute DWLOCs ranged from 440 ppb for Nursing Infants <1 yr. old, to 3,100 ppb for the U.S. population - Males.

ii. *Short-term exposure.* For purposes of risk assessment, the estimated maximum chronic exposure of imidacloprid from surface and ground waters of 1.1 µg/L is used for comparison to the back-calculated human health DWLOCs for the short-term endpoint. The DWLOC for short-term exposure for the population subgroup of concern, Children 1 – 6 yrs. old was calculated to be 600 ppb.

iii. *Chronic exposure.* EPA used estimated concentrations of imidacloprid in surface and ground water for chronic exposure analysis of 0.1 and 1.1 µg/L (ppb), respectively. These estimated concentrations of imidacloprid in surface and ground water are based upon an application rate of 0.5 lbs ai/A/year. The calculated chronic DWLOCs ranged from 100 ppb for Children 1 – 6 yrs. old, to 540 ppb for the U.S. population - Males.

iv. *Conclusions concerning residues in drinking water.* The estimated concentrations of imidacloprid in surface and ground water are considerably less than the Agency's DWLOCs for imidacloprid in drinking water as a contribution to acute, short-term, and chronic aggregate exposure. Therefore, taking into account the present uses, including those under emergency exemptions, EPA concludes with reasonable certainty that residues of imidacloprid in drinking water would not result in an unacceptable estimate of acute, short-term, or chronic aggregate human health risk at this time.

3. *From non-dietary exposure.* Imidacloprid is currently registered for use on the following residential non-food sites: ornamentals (e.g., flowering and foliage plants, ground covers, turf, lawns, et al.), tobacco, golf courses, walkways, recreational areas, bathrooms, household or domestic dwellings (indoor/outdoor), cats/dogs, and wood protection treatment to buildings. Available data do not demonstrate that imidacloprid has either dermal or inhalation toxicity potential, therefore, occupational/ residential risk assessments are not required. Since data show no toxicity from short term exposure via the dermal or inhalation route, the Agency feels there is no contribution to toxicity from these routes of exposure, and no increase in aggregate risk is anticipated from this exposure. However, oral exposure due to the registered residential uses may result, in particular for Children (1–6 years old). Post-application exposure scenarios for children include: incidental non-dietary ingestion of residues on lawn from hand-to-mouth transfer; ingestion of pesticide-treated turfgrass; incidental ingestion of soil from treated gardens; and incidental ingestion of pesticide residues on pets from hand-to-mouth transfer. These exposures are considered to be short-term oral exposures, and thus a residential short-term risk assessment via the oral route is required.

Incidental ingestion of pesticide residues on pets from hand-to mouth transfer may occur during the same period as the exposures from the turf and home garden uses. However, children's exposures from pet and turf uses are not expected to both occur at the high-end level. Therefore, these exposures were considered in separate estimates of risk. For Children (1 – 6 years), the residential exposure from the home garden and turf uses was estimated to be 0.072 mg/kg bwt/day and the residential exposure from the pet use was estimated to be 0.058 mg/ kg bwt/day.

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.'' An explanation of the current Agency approach to assessment of pesticides with a common mechanism of toxicity may be found in the Final Rule in Bifenthrin Pesticide Tolerances (**Federal Register**, November 26, 1997, 62 FR 62961–62970).

EPA does not have, at this time, available data to determine whether imidacloprid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, imidacloprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that imidacloprid has a common mechanism of toxicity with other substances. Imidacloprid is the sole member to date of the new chloronicotinyl class of pesticides.

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

1. *Acute risk.* Acute dietary risk was estimated using the conservative TMRC assumptions, as explained above. There was no refinement using anticipated residue values and percent crop-treated information in conjunction with Monte Carlo analysis which would result in much lower estimates of acute dietary exposure. For the most highly exposed subgroup, (Nursing Infants <1 Year) dietary esposure was estimated to utilize 23% of the acute RfD. Since an additional 3-fold uncertainty factor is used, in accordance with FQPA requirements, for imidacloprid an acceptable acute dietary exposure (food plus water) is 33.3% or less of the acute RfD.

For the purposes of this risk assessment, the estimated maximum concentration for imidacloprid in surface and ground waters of 4.1 µg/L is used for comparison to the human health DWLOCs for the acute endpoint. Despite the potential for exposure to imidacloprid in drinking water, after calculating DWLOCs and comparing them to these conservative model estimates of concentrations of imidacloprid for surface and ground water, EPA does not expect the aggregate exposure to exceed 33.3% of the acute RfD. Under current guidelines, non-dietary uses of imidacloprid do not constitute an acute exposure scenario. Therefore, EPA concludes that there is a reasonable certainty that no harm will

result to infants, children, or adults from acute aggregate (food and water) exposure to imidacloprid residues.

Dermal and inhalation exposure endpoints were not selected due to the demonstrated absence of toxicity; thus, there is no residential component for assessing chronic aggregate exposure and risk.

The refined assumptions described above were used, and thus this risk assessment should be viewed as partially refined. Further refinement using anticipated residue values and additional %CT information would result in a lower estimate of chronic dietary exposure. EPA has estimated that the chronic exposure to imidacloprid from food for the most highly exposed adult population subgroup (Non-Hispanic Other Than Black or White) will utilize 7.2% of the Chronic RfD, and for the most highly exposed population subgroup that includes children (Children, 1–6 years old), dietary exposure will utilize 15% of the Chronic RfD, as shown previously. For imidacloprid, it was determined that an acceptable chronic dietary exposure (food plus water) of 33.3% or less of the Chronic RfD is needed to protect the safety of all population subgroups (due to the FQPA 3-fold uncertainty factor).

For purposes of chronic risk assessment, the estimated maximum concentration for imidacloprid in surface and ground waters (which is 1.1 µg/L) is used for comparison to the human health drinking water levels of comparison (DWLOCs) for the chronic (non-cancer) endpoint. Despite the potential for exposure to imidacloprid in drinking water, after calculating DWLOCs and comparing them to these conservative model estimates of concentrations of imidacloprid for surface and ground water, EPA does not expect the aggregate exposure to exceed 33.3% of the chronic RfD. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants, children, or adults from chronic aggregate (food and water) exposure to imidacloprid residues.

2. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Dermal and inhalation short- and intermediate term risk assessments are not required for imidacloprid as dermal and inhalation exposure endpoints were not identified due to the demonstrated absence of toxicity. Short- and intermediate-term oral exposure are not expected for adult population subgroups. Thus, this risk assessment is not required.

Since imidacloprid is registered for use on turf, home gardens and pets. EPA has identified potential short-term oral exposures to children for these uses. These exposures were considered in separate estimates of risk. These risk estimates are discussed below in the section on aggregate risks and determination of safety for infants and children.

3. *Aggregate cancer risk for U.S. population*. Imidacloprid has been classified as a Group E chemical, no evidence of carcinogenicity for humans; therefore, a cancer risk assessment is not required.

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

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

1. *Safety factor for infants and children*—i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Developmental toxicity studies*. In the rat developmental study, the maternal (systemic) NOAEL was 30 mg/kg/day, based on decreased weight gain at the LOEL of 100 mg/kg/day. The developmental (fetal) NOAEL was 30 mg/kg/day based on increased wavy ribs at the LOEL of 100 mg/kg/day. In the rabbit developmental study, the maternal (systemic) NOAEL was 24 mg/kg/day, based on decreased body weight, increased resorptions and abortions, and death at the LOEL of 72 mg/kg/day. The developmental (fetal) NOAEL was 24 mg/kg/day, based on decreased body weight and increased skeletal anomalies at the LOEL of 72 mg/kg/day.

iii. *Reproductive toxicity study*. In a 2-generation reproductive toxicity study, imidacloprid (95.3%) was administered to Wistar/Han rats at dietary levels of 0, 100, 250, or 700 ppm (0, 7.3, 18.3, or 52.0 mg/kg/day for males and 0, 8.0, 20.5, or 57.4 mg/kg/day for females). For parental/systemic/reproductive toxicity, the NOAEL was 250 ppm (18.3 mg/kg/day) and the LOEL was 750 ppm (52 mg/kg/day), based on decreases in body weight in both sexes in both generations.

iv. *Pre- and post-natal sensitivity*. The developmental toxicity data demonstrated no increased sensitivity of rats or rabbits to *in utero* exposure to imidacloprid. In addition, the multi-generation reproductive toxicity study data did not identify any increased sensitivity of rats to *in utero* or postnatal exposure. Parental NOAELs were lower or equivalent to developmental or offspring NOAELs. 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.

v. *Conclusion*. Although developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following *in utero* exposures in rats and rabbits, no increased sensitivity in pups as compared to adults was seen in the 2-generation reproduction toxicity study in rats, and the toxicology data base is complete as to core requirements, the Agency determined that the additional safety factor for the protection of infants and children will be retained but reduced to 3X based on the following weight-of-the-evidence considerations

relating to potential sensitivity and completeness of the data:

a. There is concern for structure activity relationship. Imidacloprid, a chloronicotinyl compound, is an analog to nicotine and studies in the published literature suggests that nicotine, when administered causes developmental toxicity, including functional deficits, in animals and/or humans that are exposed *in utero*.

b. There is evidence that imidacloprid administration causes neurotoxicity following a single oral dose in the acute study and alterations in brain weight in rats in the 2–year carcinogenicity study.

c. The concern for structure activity relationship along with the evidence of neurotoxicity dictates the need for a developmental neurotoxicity study for assessment of potential alterations on functional development.

Because a developmental neurotoxicity study potentially relates to both acute and chronic effects in both the mother and the fetus, the UF for FQPA is being applied for all population subgroups, and for both acute and chronic risk. Therefore, for the purposes of this risk assessment, dietary exposure must not be above 33.3% of the RfD, to make the finding of reasonable certainty of no harm.

2. *Acute risk*. More detail on the acute risk assessments are given above. EPA used the conservative exposure assumptions described above, and estimated acute exposure to imidacloprid from food will utilize 23% of the acute RfD for the most highly exposed population subgroup that includes children (Non-nursing Infants <1 yr. old). All other population subgroups have acute risk estimates below this level. It was determined that an acceptable acute dietary exposure (food plus water) for imidacloprid is 33.3% or less of the acute RfD, and the estimated exposures for all population subgroups at the 99th percentile are less than this level. Despite potential for exposure to imidacloprid via drinking water, EPA does not expect the aggregate exposure to exceed 33.3% of the acute RfD. Under current EPA guidelines, the registered non-dietary uses of imidacloprid do not constitute an acute exposure scenario. Therefore, EPA concludes that there is reasonable certainty that no harm will result to infants and children from acute aggregate exposure to imidacloprid residues.

3. *Chronic risk*. Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to imidacloprid from food will utilize 15% of the RfD for the most highly exposed population subgroup, Children (1–6 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. However, as discussed previously, a 3X UF in accordance with FQPA is also required. Thus, for the purposes of this risk assessment, dietary exposure must not be above 33.3% of the RfD, to make the finding of reasonable certainty of no harm. Despite the potential for exposure to imidacloprid in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 33.3% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to imidacloprid residues.

4. *Short- or intermediate-term risk*. Dermal and inhalation short- and intermediate term risk assessments are not required for imidacloprid as dermal and inhalation exposure endpoints were not identified due to the demonstrated absence of toxicity. Short- and intermediate-term oral exposures are not expected for adult population subgroups. Thus, this risk assessment is not required.

Since imidacloprid is registered for use on turf, home gardens and pets. EPA has identified potential short-term oral exposures to children for these uses. These exposures could occur through the following routes: incidental ingestion of residues on lawns from hand-to-mouth transfer; ingestion of pesticide-treated turfgrass; incidental ingestion of soil from treated gardens; and, incidental ingestion of pesticide residues on pets from hand-to-mouth transfer. These exposures are considered to be short-term oral exposures. Incidental ingestion of pesticide residues on pets from hand-to-mouth transfer may occur during the same period as the exposures from the turf and home garden uses. However, it is extremely unlikely that children's exposures from pet and turf/garden uses would both occur at the high-end level. Therefore, these exposures are considered in two separate estimates of risk.

A short-term oral endpoint was not identified for imidacloprid. According to current Agency policy, if an oral endpoint is needed for short-term risk assessment (for incorporation of food, water, or oral hand-to-mouth type exposures into an aggregate risk assessment), the acute oral endpoint (Acute RfD = 0.42 mg/kg bwt/day) will be used to incorporate the oral component into aggregate risk. Short-term aggregate exposure is defined by EPA to be average food and water exposure (chronic) plus residential exposure. The short-term risk estimates for the population subgroup (Children, 1–6 yrs. old) is summarized below. This subgroup was chosen because it has the highest chronic food exposure and because toddlers have the highest exposure from the residential uses.

The table below aggregates the dietary exposure (food only) and residential exposures from the two different routes (hand-to-mouth from turf and home garden use; and hand-to-mouth from pet use) for the population subgroup Children 1–6 yrs. old.

IMIDACLOPRID: SHORT-TERM AGGREGATE EXPOSURE AND RISK FOR CHILDREN (1–6 YRS. OLD)

Exposure Scenario	Chronic Food Exposure (mg/kg bwt/day)	Residential Exposure (mg/kg bwt/day)	Total Exposure (mg/kg bwt/day)	Margin of Exposure (MOE)
Turf & Garden Use	0.0086	0.072	0.081	520
Pet Use	0.0086	0.058	0.067	630

As the table indicates, the total MOEs are 520 and 630, for turf/garden and pet uses, respectively, both of which are higher than 300, the determined acceptable MOE for imidacloprid. Additionally, potential short-term exposure from drinking water is at a level well below EPA's level of concern. EPA concludes the short-term aggregate risk to the highest exposed population subgroup (Children, 1 – 6 Yrs. Old) from home garden, turf, and pet uses of imidacloprid does not exceed EPA's level of concern.

IV. Other Considerations

A. Metabolism In Plants and Animals

The nature of imidacloprid residues in plants and animals is adequately understood. The residue of concern is imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, as specified in 40 CFR 180.472 .

B. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of the regulated imidacloprid residue in plant (Bayer GC/MS Method 00200 and Bayer HPLC-UV Confirmatory Method 00357) and animal (Bayer GC/MS Method 00191) commodities. These methods have successfully completed EPA Tolerance Method Validation, and are awaiting publication in Pesticide Analytical Manual II (PAM II). In the interim, these methods are available from Calvin Furlow, EPA, OPP, IRSD, PIRIB.

C. Magnitude of Residues

Residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, are not expected to exceed 0.1 ppm in/on strawberries, and 1.0 ppm in/on legume vegetables.

D. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) for imidacloprid on legumes or strawberries. International compatibility is thus not an issue.

E. Rotational Crop Restrictions

EPA previously concluded that field crop rotational studies with three crop groups (small grains, root crops, and leafy vegetables) supported a 12-month plant-back restriction. However, EPA recently recommended in favor of granting tolerances for inadvertent residues of imidacloprid in/on the following crop groups: cereal grains, forage, fodder, and straw of cereal grains, legume vegetables and the foliage of legume vegetables; and on sweet corn, soybeans, and safflower. EPA recommended a 30–day plant back interval be observed fore these crops. Therefore, the following rotation restriction is adequate for this section 18 use: Any crops may be planted back 12 months following imidacloprid applications, except for the following: crops having imidacloprid tolerances, sweet corn, soybeans, and safflower; and the commodities of the crop groups Cereal grains and Legume vegetables. These aforementioned crops may be rotated 30-days after the last imidacloprid treatment; except for crops with imidacloprid tolerances, which may be rotated at any time.

V. Conclusion

Therefore, the time-limited tolerances are established for residues of imidacloprid in/on legume vegetables at 1.0 ppm, and strawberry at 0.1 ppm.

VI. 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 22, 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 CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300771] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

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

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

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes time-limited tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

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

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), 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.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and 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 23, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

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

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

2. In §180.472, by alphabetically adding the following commodities to the table in paragraph (b) to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ Revocation Date
* *	* *	*
Legume Vegetables.	0.1	6/30/00
Strawberry	1.0	6/30/00
* *	* *	*

* * * * *

[FR Doc. 99–1253 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 185

Tolerances for Pesticides in Food

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 150 to 189, revised as of July 1, 1998, on page 533, § 185.5000 was incorrectly published. The text, with the correctly revised table and reinstated effective date note, reads as follows:

§ 185.5000 Propargite.

Tolerances are established for residues of the insecticide propargite (2-(*p-tert*-butylphenoxy)cyclohexyl 2-propynyl sulfite) in or on the following processed foods when present therein as a result of the application of this insecticide to growing crops:

Food	Parts per million
Figs, dried	9
Hops, dried	30
Tea, dried	10

[44 FR 38841, July 3, 1979. Redesignated at 53 FR 24667, June 29, 1988, as amended at 61 FR 12009, Mar. 22, 1996]

Effective Date Note: At 61 FR 12009, Mar. 22, 1996, in § 185.5000, the entries for ''Figs, dried'' and ''Tea, dried'' were removed from the table, effective May 21, 1996. At 61 FR 25154, May 20, 1996, those removals were stayed indefinitely, effective May 21, 1996.

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7268]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Pima	City of Tucson	December 2, 1998, December 9, 1998, *Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	November 3, 1998	040076

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Orange	City of Lake Forest.	December 1, 1998, December 8, 1998, *Orange County Register*.	The Honorable Peter Herzog, Mayor, City of Lake Forest, 23161 Lake Center Drive, Suite 100, Lake Forest, California 92630.	March 8, 1999	060759
Colorado: Ouray ...	City of Ouray	December 3, 1998, December 10, 1998, *Ouray County Plaindealer*.	The Honorable Jim Miller, Mayor, City of Ouray, P.O. Box 468, Ouray, Colorado 81427.	November 9, 1998	080137
Colorado: Ouray ...	Unincorporated Areas.	December 3, 1998, December 10, 1998, *Ouray County Plaindealer*.	The Honorable Alan Staehle, Chairman, Ouray County, Board of Commissioners, P.O. Box C, Ouray, Colorado, 81427.	November 9, 1998	080136
Kansas: McPherson.	City of McPherson	December 3, 1998, December 10, 1998, *McPherson Sentinel*.	The Honorable Vernon L. Dossett, Mayor, City of McPherson, P.O. Box 1008, McPherson, Kansas 67460.	November 4, 1998	200217
Oklahoma: Oklahoma.	City of Oklahoma City.	November 18, 1998, November 25, 1998, *Daily Oklahoman*.	The Honorable Ronald Norick, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	November 2, 1998	405378
Oklahoma: Oklahoma.	City of Oklahoma City.	December 2, 1998, December 9, 1998, *Daily Oklahoman*.	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	November 6, 1998	405378
Texas: Tarrant	City of Fort Worth	December 1, 1998, December 8, 1998, *Fort Worth Star-Telegram*.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	November 5, 1998	480596
Texas: Hays	Unincorporated Areas.	December 2, 1998, December 9, 1998, *San Marcos Daily Record*.	The Honorable Eddy Etheredge, Hays County Judge, Hays County Courthouse, 111 East San Antonio Street, San Marcos, Texas 78666.	November 6, 1998	480321
Texas: Dallas	City of Mesquite ...	November 20, 1998, November 27, 1998, *Dallas Morning News*.	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850131, Mesquite, Texas 75185–0137.	November 2, 1998	485490

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

Dated: January 11, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–1212 Filed 1–19–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARKANSAS	
Clarksville (City), Johnson County (FEMA Docket No. 7254)	
Little Spadra Creek:	
Approximately 100 feet downstream from eastbound I–40	+352.5
Approximately 500 feet upstream of Highway 64	+368.8
Spadra Branch:	
Approximately 1,990 feet downstream from the downstream County Road 82	+391.6
Approximately 100 feet upstream of County Road 82	+411.5
Spadra Creek (Before Overtopping):	
Approximately 120 feet downstream of Highway 40	+356.2
Approximately 4,600 feet upstream of the Missouri Pacific Railroad	+394.4
Little Willett Branch:	
Approximately 4,150 feet downstream of Highway 103	+377.3
Approximately 75 feet upstream of Highway 103	+409.6
Maps are available for inspection at the City of Clarksville City Hall, Walnut and Cherry, Clarksville, Arkansas.	
CALIFORNIA	
Los Angeles (City), Los Angeles County (FEMA Docket No. 7246)	
Overflow Area of Lockheed Storm Drain:	
Approximately 330 feet downstream of the Southern Pacific Railroad	*702
Just downstream of the Southern Pacific Railroad	*707
Maps are available for inspection at the B Permit Desk, 14410 Sylvan Street, Second Floor, Van Nuys, California and the Stormwater Management Division, 650 South Spring Street, Suite 700, Los Angeles, CA.	
OKLAHOMA	
Mayes County (Unincorporated Areas) (FEMA Docket No. 7254)	
Pryor Creek:	
Approximately 1 mile downstream of Elliot Street	*594
Approximately 7,000 feet upstream of County Road	*615
Pryor Creek Tributary A and Pryor Creek Backwater:	
Approximately 500 feet upstream of Elliot Street	*600
Approximately 1,600 feet upstream of Elliot Street at the Mayes County corporate limit	*600
Maps are available for inspection at the Mayes County Commissioner's Office, One Court Street, Pryor, Oklahoma.	
Pryor Creek (City), Mayes County (FEMA Docket No. 7254)	
Pryor Creek Tributary A and Pryor Creek Backwater:	
Approximately 1,600 feet upstream of Elliot Street at the City of Pryor Creek corporate limits	*600
Approximately 75 feet upstream of 14th Street	*619
Pryor Creek:	
Approximately 5,800 feet upstream of Elliot Street	*600
Approximately 400 feet downstream of confluence of Salt Branch Creek at the City of Pryor Creek corporate limits	*611
Park Branch Creek and Pryor Creek Backwater:	
Approximately 2,225 feet downstream of MKT Railroad	*605
Approximately 200 feet upstream of Ora Street	*630
Pryor Creek Tributary B:	
Approximately 2,300 feet downstream of First Street	*606
Approximately 1,520 feet upstream of County Road	*620
Park Branch Creek Tributary A:	
At confluence of Park Branch Creek	*616
Approximately 130 feet upstream of Graham Avenue	*623
Maps are available for inspection at the City of Pryor Creek City Hall, 6 North Adair, Pryor Creek, Oklahoma	
TEXAS	
Chambers County (Unincorporated Areas) (FEMA Docket No. 7254)	
Oyster Bayou:	
Just upstream of Lone Star Canal	*22
Approximately 2,500 feet downstream of State Highway 65	*23
Approximately 2,000 feet upstream of State Highway 65	*24
Approximately 7,000 feet upstream of State Highway 65	*26
Maps are available for inspection at the Chambers County Engineer's Office, 201 Airport Road, Anahuac, Texas.	

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

Dated: January 11, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–1213 Filed 1–19–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 96–28; FCC 97–270]

Connection of Customer-Provided Terminal Equipment to the Telephone Network; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: On August 22, 1997, the Commission released a Report and Order in the matter of Connection of Customer-Provided Terminal Equipment to the Telephone Network. This document contains a correction to the final regulations that appeared in the **Federal Register**, 62 FR 61649 (November 19, 1997), by adding paragraph (c) to § 68.300. This paragraph was inadvertently removed from the 1997 version of the Code of Federal Regulations.

EFFECTIVE DATE: February 19, 1999.

FOR FURTHER INFORMATION CONTACT: Kurt Schroeder, Attorney, 202/418–0966, Fax 202/418–2345, TTY 202/418–2224, kschroeder@fcc.gov, Network Services Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction relate to all registered telephones, manufactured or imported for use in the United States, including cordless telephones, as defined in Section 15.3(j) of this chapter.

Need For Correction

As published, the final regulations contained an error which requires updating.

List of Subjects in 47 CFR Part 68

Labeling requirements.

Accordingly, 47 CFR Part 68 is corrected by making the following correcting amendment:

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303).

2. In § 68.300, add paragraph (c) to read as follows:

* * * * *

§ 68.300 Labeling requirements.

* * * * *

(c) As of April 1, 1997, all registered telephones, including cordless telephones, as defined in § 15.3(j) of this chapter, manufactured in the United States (other than for export) or imported for use in the United States, that are hearing aid compatible, as defined in § 68.316, shall have the letters ''HAC'' permanently affixed thereto. ''Permanently affixed'' shall be defined as in paragraph (b)(5) of this section. Telephones used with public mobile services or private radio services, and secure telephones, as defined by § 68.3, are exempt from this requirement.

Dated: January 11, 1999.

Federal Communications Commission.

Kurt A. Schroeder,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–1158 Filed 1–19–99; 8:45 am]

BILLING CODE 6712–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 96–86, FCC 98–191]

The Development of Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, Establishment of Rules and Requirements for Priority Access Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of rules amended by the Commission in order to implement the development of technical and spectrum requirements for meeting federal, state and local public safety agency communication requirements through the year 2010, shall become effective January 20, 1999. These sections, which contained new information collection requirements, were published in the **Federal Register** on November 2, 1998. This is to let the public know the effective date of the rules that contain new information collection requirements.

EFFECTIVE DATE: The amendments to 47 CFR Part 90, 47 CFR §§ 90.523, 90.527, 90.545, and 90.551 published at 63 FR 58645 (November 2, 1998) are effective January 20, 1999.

FOR FURTHER INFORMATION CONTACT: Peter Daronco, Attorney-Advisor, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680.

SUPPLEMENTARY INFORMATION: Congressional mandates in the Balanced Budget Act of 1997, Public Law 105–33, § 3004, 111 Stat. 251 (1997), codified at 47 U.S.C. 337(a)(1), that the Commission establish the terms and conditions that will govern use of 24 megahertz of spectrum recently reallocated from broadcast to public safety services. On August 6, 1998, the Commission adopted a *First Report and Order* (''Order'') (FCC 98–191) establishing a band plan and adopting service rules necessary to commence the process of assignment of licenses for public safety stations to operate in the newly allocated spectrum at 746–776 megahertz and 794–806 megahertz, a summary of which was published in the **Federal Register**. See 63 FR 58645, November 2, 1998. We stated that the ''Part 90 of the Commission's Rules, 47 CFR Part 90, is amended effective January 4, 1999, except §§ 90.523, 90.527, 90.545, and 90.551 which contains information collections that are not effective until approved by the Office of Management and Budget.'' We also stated that the Commission ''will publish a document in the **Federal Register** announcing the effective date for those sections.'' This statement requires further action by the Commission to establish the effective date, notwithstanding the preceding statement in the summary that the rule change would become effective upon OMB approval. In order to resolve this matter in a manner that most appropriately provides interested parties with proper notice, the rule changes adopted in the Order shall become effective January 20, 1999. The information collection were approved by OMB on December 23, 1998. See OMB No. 3060–0805 and 3060–0221.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–1156 Filed 1–19–99; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 64, No. 12
Wednesday, January 20, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 98–057–1]

RIN 0579–AA99

Importation of Unmanufactured Wood Articles; Solid Wood Packing Material

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are soliciting public comment on how to amend the regulations on the importation of logs, lumber, and other unmanufactured wood articles to decrease the risk of solid wood packing material (e.g., crates, dunnage, wooden spools, pallets, packing blocks) introducing exotic plant pests into the United States. Introductions of exotic plant pests such as the pine shoot beetle and the Asian longhorned beetle have been linked to the importation of solid wood packing material. These and other plant pests that could be carried by imported solid wood packing material pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests.

DATES: Consideration will be given only to comments received on or before March 22, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–057–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–057–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Orr, Senior Entomologist, Risk Analysis Systems, PPD, APHIS, 4700 River Road Unit 117, Riverdale, MD 20737–1238, (301) 734–8939; or e-mail: richard.l.orr@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Logs, lumber, and other unmanufactured wood articles imported into the United States could pose a significant threat of introducing plant pests detrimental to agriculture and to natural, cultivated, and urban forests. The regulations in 7 CFR 319.40–1 through 319.40–11 (referred to below as the regulations) are intended to mitigate the plant pest risk presented by the importation of logs, lumber, and other unmanufactured wood articles. Regulated articles include unprocessed logs, lumber, trees, bark, cork, raw wood products, wood chips, mulch, solid wood packing material, and other unmanufactured wood articles.

Introductions into the United States of exotic plant pests such as the pine shoot beetle and the Asian longhorned beetle have been linked to the importation of solid wood packing material (SWPM). These and other plant pests that could be carried by imported SWPM pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests.

On September 18, 1998, we published an interim rule in the **Federal Register** (63 FR 50100–50111, Docket No. 98–087–1) to require that SWPM from China be heat treated, fumigated, or treated with preservatives prior to arrival in the United States. (Under the September 18 interim rule, China means the People's Republic of China, including the Hong Kong Special Administrative Region.) We took this action because of a number of recent incidents, including the introduction of the Asian longhorned beetle, that demonstrate that China is the largest source of exotic plant pests in SWPM imported into the United States.

We are publishing this advance notice of proposed rulemaking to seek information and develop regulatory options on the general problem of plant pests in SWPM imported from any country. SWPM accompanies nearly all types of imported commodities, from fruits and vegetables to machinery and electrical equipment. We are seeking ways to maximize our protection against the introduction of exotic plant pests by SWPM without unduly affecting international trade or the environment. We are requesting public comment on what actions would be most effective and appropriate to further reduce the risk of SWPM introducing exotic plant pests.

We are specifically requesting public comment on options for strengthening restrictions on the importation of SWPM, alternative treatments to methyl bromide that could be used to reduce the risk of SWPM introducing exotic plant pests, and a number of specific questions. Following are descriptions of the current restrictions and treatment options for importing SWPM, the problem with importing SWPM, and several options we are considering for strengthening restrictions on importing SWPM. A list of specific questions for which we are seeking comments appears at the end of this document.

Current Restrictions on Importing SWPM

The regulations concerning logs, lumber, and other unmanufactured wood articles imported into the United States were promulgated on May 25, 1995 (60 FR 27674, Docket No. 91–074–6), to reduce the plant pest risks presented by the importation of these articles. The regulations were considered to be necessary because a changing national and world economy has increased importations of wood and related articles over the past several years. Trees produced in many foreign locations are attacked by a wide variety of exotic plant pests that do not occur in this country. Many of these plant pests pose a significant hazard to agriculture and to natural, cultivated, and urban forests and carry the potential of causing billions of dollars of damage to these resources.

SWPM is one of the classes of wood articles that are subject to import restrictions under the regulations. The regulations define SWPM in § 319.40–1 as ''Wood packing materials other than loose wood packing materials, used or for use with cargo to prevent damage, including, but not limited to, dunnage, crating, pallets, packing blocks, drums, cases, and skids.'' Most of the wooden pallets, crates, dunnage, and similar articles used to assist the movement of

commodities in international commerce meet the definition of SWPM and are subject to the regulations. However, more synthetic or highly processed wood materials are being used as packing material, and these articles (e.g., plywood, oriented strand board, corrugated paperboard, plastic, resin composites) are not subject to the requirements for SWPM.

(Loose wood packing material is not included within the scope of this advance notice of proposed rulemaking. Loose wood packing material is defined in the regulations as ''Excelsior (wood wool), sawdust, and wood shavings, produced as a result of sawing or shaving wood into small, slender, and curved pieces.'' No restrictions on importing loose wood packing material are being considered because the risk of exotic plant pests being carried in loose wood packing material is negligible.)

The importation of SWPM is regulated because this material presents a number of plant pest risks. SWPM is often constructed from raw wood cut shortly before it is used, often includes bark on some surfaces, and is often made from wood that may be of low quality due to pest damage. These factors all mean that SWPM presents a high risk of spreading wood pests that exist in the areas where the SWPM was constructed. Additionally, the SWPM in transit is in close contact with the commodities (including wood products) it is used to pack, with an excellent opportunity for pests to move from SWPM to commodities. After commodities arrive in the United States, pests from the SWPM have many opportunities to escape and become established, especially since the SWPM associated with commodities often moves long distances throughout the United States, is reused frequently, and is often stored outdoors at ports and warehouses when not in use.

To control these risks, § 319.40–3 of the regulations imposes certain requirements on imported SWPM. The least restrictive requirement for importing SWPM occurs when the SWPM is used to move nonregulated articles (articles that are not wood, or that are highly processed wood excluded from the regulations). When SWPM is used to move nonregulated articles, the SWPM must be completely free of bark and apparently free from live plant pests. It need not be heat treated, fumigated, or treated with preservatives.

If the SWPM is not completely free of bark, it must be heat treated, fumigated, or treated with preservatives in accordance with the regulations prior to arrival. Even if the SWPM is completely free of bark, the SWPM must be either heat treated, fumigated, or treated with preservatives in accordance with the regulations prior to arrival if it is used to pack regulated wood commodities in transit, or must meet all the importation and entry conditions required for the regulated wood commodities the SWPM is used to move. (As mentioned previously, on September 18, 1998, we published an interim rule that places additional restrictions on SWPM from China. The interim rule became effective on December 17, 1998.)

Importing SWPM Under Current Restrictions

Most SWPM imported into the United States is imported under the requirement that it be completely free of bark and apparently free from live plant pests. When the regulations were promulgated in 1995, we believed that the plant pests of particular concern were those found on or under bark. Requiring SWPM to be completely free of bark significantly reduces the risk that exotic plant pests associated with bark will be introduced into the United States. However, since promulgation of the regulations in 1995, we have found that the complete removal of bark from SWPM has limitations in reducing the risk of plant pests being carried in SWPM imported into the United States. In particular, deep wood-boring plant pests can remain in wood even after the bark has been removed, and, therefore, can be difficult to detect. Other types of exotic plant pests that threaten agriculture and forests, such as pathogenic fungi, are also difficult to detect by mere visual inspection and may remain even after complete removal of bark. Such plant pests pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests.

Interceptions of potentially destructive exotic plant pests by Animal and Plant Health Inspection Service (APHIS) inspectors at U.S. ports clearly identify SWPM as the highest risk pathway into the United States for exotic plant pests of all types that threaten forests. Between August 1995 and March 1998, approximately 500 shipments were found by port inspectors to be infested with a variety of exotic plant pests that threaten forests; 97 percent of these findings were associated with SWPM. These findings were in shipments originating from all over the world, including countries of Europe, Africa, South America, and Asia.

Recent introductions into the United States of exotic plant pests that threaten forests have been linked with the importation of SWPM. For example, an infestation of the Asian longhorned beetle was discovered in three areas in and around Chicago, IL, in July 1998, and has been linked to the importation of SWPM from China. A similar infestation was discovered in 1996 in Brooklyn, Queens, and Amityville, NY. Control of the pest in these locations has required the felling and burning of hundreds of trees on public and private land. Control efforts in both areas continue. These actions have been necessary because the spread of the Asian longhorned beetle into U.S. hardwood forests could result in severe economic losses to the nursery and forest products industries. Even though the Asian longhorned beetle was likely established in these areas prior to implementation of our current regulations governing SWPM, the Asian longhorned beetle continues to be intercepted on shipments associated with SWPM from China.

In 1992, the pine shoot beetle was discovered in the United States on a Christmas tree farm in Ohio; since then, APHIS has quarantined portions of nine States to prevent the spread of the pine shoot beetle. The pine shoot beetle is a highly destructive pest of pine trees, and was probably introduced into the United States in ship dunnage from Europe—again, prior to implementation of our current regulations governing SWPM.

Options for Managing the Pest Risks Associated with SWPM

As stated previously in this document, SWPM accompanies nearly all types of imported commodities, from fruits and vegetables to machinery and electrical equipment. Any further restrictions we place on its importation are likely to affect international trade. Likewise, other countries may adopt similar restrictions, which could significantly affect U.S. exports. We are seeking public comment on ways to maximize protection of U.S. agriculture and forests against exotic plant pests associated with SWPM without unjustifiably affecting international trade.

We are also seeking ways to respond to environmental concerns about the use, both domestically and overseas, of methyl bromide fumigation for imported wood products in the long term. Most fumigations of wood products have historically involved treatments with methyl bromide due to convenience, cost, availability, ease of handling, timely completion of treatment, and good efficacy. It is anticipated that most treatments conducted under the September 18 interim rule concerning SWPM from China will employ methyl

bromide fumigation, for the same reasons. Any potential increase in the use of methyl bromide is of concern because of the associated risk of increased ozone depletion, which results in increased ultraviolet radiation at the Earth's surface. Under the Montreal Protocol, the United States and other signatories have agreed to a phaseout of the use of methyl bromide by developed countries by the year 2005, but there is an exemption for methyl bromide used for quarantine purposes. In the absence of any agreed upon international controls on the use of methyl bromide for quarantine purposes, use of methyl bromide for these purposes may not only continue, but could increase. This makes it all the more critical that we find a long-term solution to the problem of how best to manage the pest risk associated with imported SWPM. We are intent on minimizing the use of methyl bromide in order to protect the stratospheric ozone layer, and we are seeking options that will accomplish this objective.

One option for addressing the pest risks associated with imported SWPM is imposing restrictions—either treatment requirements or a ban—on a country-by-country basis, based on an assessment of the risk of exotic plant pests being carried on SWPM from a particular country. This is our current approach, demonstrated in the September 18 interim rule concerning importation of SWPM from China. This option may have the advantage of limiting trade effects to the highest risk sources. There may be several disadvantages to this option. As noted earlier, exotic plant pests in SWPM have been found in shipments originating from countries all over the world, including some in Europe, Africa, South America, and Asia. Further, SWPM is exchanged among shippers, importers, and exporters, making it difficult to determine the origin and history of most SWPM in use. Even if we could determine a method of certifying the origin of SWPM, such a requirement might put an unrealistic burden on inspectors at U.S. ports of entry to inspect the certifications.

Another option for strengthening regulations on importing SWPM is requiring that all SWPM imported into the United States be heat treated (kiln dried), fumigated, or treated with a preservative. The September 18 interim rule concerning SWPM from China requires that SWPM imported into the United States from China be heat treated, fumigated, or treated with preservatives prior to departure from China. One possible advantage to this option is that it would address the potential pest risk associated with SWPM from any region, including SWPM that may have been exchanged among shippers, importers, and exporters from multiple countries. This option might broadly affect trade from numerous sources, while still allowing use of SWPM. One disadvantage of this option may be that, although treated SWPM may be stored, handled, or safeguarded in a manner that excludes reinfestation by plant pests, the available treatments by themselves have different levels of residual effects in preventing reinfestation, with fumigation providing no residual protection against reinfestation with pests. Also, heat treated, kiln dried, or fumigated wood is visually indistinguishable from untreated wood. As SWPM deteriorates from use, shippers often replace single boards or portions of the SWPM, so that, for example, a pallet may contain some wood that has been kiln dried and some wood that has not. Another disadvantage of this option is that it could increase the use of methyl bromide or other fumigants that are harmful to the environment.

A third option would be to prohibit the importation of SWPM in any form and from any country. This could include SWPM from Canada and the States of Mexico adjacent to the U.S. border. (Currently, the regulations allow SWPM from Canada and the States of Mexico adjacent to the U.S. border to be imported without restriction, provided they are derived from trees harvested in, and have never been moved outside, Canada or the States of Mexico adjacent to the United States.) Alternative packing material that could be allowed would include processed wood (e.g., particle board, plywood, press board) and nonwood materials (e.g., plastic). The advantages of this option are that it would provide the greatest protection against pest risk and could eventually result in decreased use of methyl bromide. A disadvantage of this option is that it could have an undesirable effect on international trade. This effect could be mitigated by a phase-in period to allow shippers to adjust to the prohibition, and, during this time, heat treatment, treatment with preservatives, fumigation, or other effective alternative treatments could be required before SWPM could be imported.

We are seeking public comment on the options discussed in this document. We are also seeking alternative options for consideration. The environmental effects of any alternatives selected will be analyzed in full compliance with the National Environmental Policy Act. Our goal is to maximize protection of U.S. agriculture and forests against exotic plant pests associated with SWPM without unduly affecting international trade or the environment. We are interested in information on any alternatives that would accomplish this goal. We welcome comments that address the economic impacts that the various options would impose on entities in the United States and abroad.

We are also seeking public comment addressing the following questions, which will help us better consider the issues surrounding the importation of SWPM:

- Are there treatments, other than those currently authorized under the regulations, that can be used to reduce the risk of SWPM introducing exotic plant pests?
- What would be the economic, environmental, or other effects of requiring treatment of SWPM, including the cost of treatment, disruption in trade and potential delays in shipping, effects on the ozone layer, etc.?
- What would be the economic, environmental, or other effects of prohibiting the importation of SWPM from any country, including disruption in trade and potential delays in shipping, effects of alternative materials on the environment, etc.?
- How could APHIS best monitor treatment requirements?
- Is it feasible and cost-effective for the shipping industry to replace SWPM with processed wood packing material (e.g., particle board) or nonwood packing material?
- One advantage of wood dunnage is that it is biodegradable. What would be the environmental effects, if any, of requiring that nonbiodegradable material be substituted for wood dunnage?
- If SWPM is allowed to be imported into the United States, with treatment, how should APHIS determine who is responsible for a regulatory violation, since SWPM is exchanged among shippers, importers, and exporters?
- If importation of SWPM into the United States were to be prohibited, or if treatment of some kind were to be required for all SWPM imported into the United States, would the shipping industry need a phase-in period to allow time to adapt? If yes, how long?
- What is the magnitude of the pest risk associated with SWPM and to what extent would the options discussed, or other options, reduce these pest risks?
- What other regulatory or nonregulatory actions would help us maximize protection in a cost-effective manner against exotic plant pests associated with SWPM without unduly

affecting international trade or the environment?

We are also asking the public to address any other issues that they consider appropriate in connection with the importation of SWPM.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 13th day of January 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–1226 Filed 1–19–99; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 31 and 32

RIN 3150–AD82

Requirements Concerning the Accessible Air Gap for Generally Licensed Devices

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a proposed rulemaking that would have amended the Commission's regulations to provide additional regulatory control over certain measuring, gauging, and controlling devices to prevent unnecessary radiation exposure to individuals resulting from the use of the devices that contain radioactive sources. This proposed rule would have addressed only generally licensed devices. It did not include devices subject to specific licenses. The NRC is conducting a risk review of the current licensing and inspection programs and licensees' activities for both generally and specifically licensed devices. The risk review will determine the risk associated with licensees' activities by determining and relating the probabilities of the occurrence and consequences of events during use and likely accidents involving radioactive material. The NRC will determine from the results of the risk review the need to develop restructured licensing and inspection programs for material licensees and the associated rulemaking for implementing these programs. Therefore, pending the results of the risk review and the need for a comprehensive rulemaking, and because the proposed rule did not include both generally and specifically licensed devices, the Commission is withdrawing this proposed rule.

ADDRESSES: The Commission paper, the staff requirements memoranda (SRM), and associated documents are available for public inspection and/or copying for a fee at the NRC Public Document Room located at 2120 L Street, NW. (Lower Level), Washington, DC 20003–1527, telephone: (202) 634–3273.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail jmm2@nrc.gov.

SUPPLEMENTARY INFORMATION: On November 27, 1992 (57 FR 56287), the Commission published a notice of proposed rulemaking in the **Federal Register** entitled ''Requirements Concerning the Accessible Air Gap for Generally Licensed Devices.'' The proposed rule would have amended the Commission's regulations to provide additional regulatory control over certain measuring, gauging, and controlling devices distributed by manufacturers and used by persons under NRC's general license provisions. The rulemaking would have affected devices with an accessible air gap or radiation levels that exceed a specified value. This rulemaking would have made it increasingly difficult for personnel to obtain access to the device's radiation beam, thereby reducing the frequency and likelihood of unnecessary radiation exposure. The rulemaking applied to persons who distribute these special measuring, gauging, and controlling devices under the NRC general license provisions, and to persons who use the devices under the general license.

The NRC received 5 comment letters on the proposed rule. Three comments were received from manufacturers and two comments were received from device users. Development of the final rule was suspended. On July 2, 1996, the NRC/Agreement State Working Group (WG) issued a final report concerning its evaluation of current regulations on generally and specifically licensed devices and provided recommendations to increase licensees' accountability regarding these devices. The staff's evaluation of the WG recommendations was provided to the Commission. The subsequent SRM dated December 31, 1996, requested a response to specific issues raised by the Commission in SECY–96–221. On November 26, 1997, the NRC staff provided for the Commission's consideration SECY–97–273, entitled ''Improving NRC's Control Over, and Licensees' Accountability for, Generally and Specifically Licensed Devices.'' Included as an attachment to this Commission paper was the SRM, entitled ''Responses to Issues Included in the December 31, 1996, Staff Requirement Memorandum.'' Additional recommendations from the NRC staff that were not addressed in the WG report, such as proceeding with or dropping the air gap rule, were discussed. Subsequently, an SRM dated April 13, 1998, directed the NRC staff to terminate the proposed rulemaking.

This proposed rule addressed only generally licensed devices and has been on hold for the last five years. The NRC's current strategy for both generally and specifically licensed devices, is to perform a comprehensive risk review of the licensing and inspection programs, including licensees' activities. The results will be used to develop new risk-based licensing and inspection programs and will be approved by the Commission before they are implemented. In addition, the risk review will determine whether a similar rulemaking should be developed. Because of these actions, the Commission is withdrawing this proposed rulemaking.

Dated at Rockville, Maryland, this 12th day of January, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–1196 Filed 1–19–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–219–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

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 certain CASA Model CN–235 series airplanes. This proposal would require a one-time visual inspection to detect relative movement or deformation of the joint areas of the rear attaching supports and lower skin of the left and right outer flaps; repetitive borescopic inspections to detect cracking of the spar and of the

rear internal support fittings of the outer flaps; and corrective actions, if necessary. This proposal also provides for optional terminating action for the repetitive inspections. 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 fatigue cracking of the rear internal support fittings of the outer flap structure, which could result in failure of the outer flaps, and consequent reduced controllability of the airplane.

DATES: Comments must be received by February 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–219–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 Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. 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–219–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–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Dirección General de Aviación Civil (DGAC), which is the airworthiness authority for Spain, notified the FAA that an unsafe condition may exist on certain CASA Model CN–235 series airplanes. The DGAC advises that, during routine maintenance on a Model CN–235 series airplane with a high number of flight cycles, relative displacement between the lower skin of the outer flap and the outer rear fittings of the outer flap was detected. Further inspection revealed that fatigue cracking had developed in the rear internal support fittings of the outer flap, which attaches the flap structure to the outer rear support fittings. Such fatigue cracking, if not detected and corrected, could result in failure of the outer flaps, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

CASA has issued Maintenance Instructions COM 235–123, Revision 01, dated October 7, 1997, which describes procedures for a one-time detailed visual inspection to detect relative movement or deformation of the joint areas of the rear attaching supports and lower skin of the left and right outer flaps, and repetitive borescopic inspections to detect cracking of the spar and of the rear internal support fittings of the outer flaps.

CASA also has issued Service Bulletin SB–235–57–20, dated December 23, 1997, which describes procedures for replacement of the left and right outer flaps with new, improved outer flaps that have modified rear internal support fittings installed. Accomplishment of this action will eliminate the need for the repetitive borescopic inspections of the replaced outer flap only, as described in CASA Maintenance Instructions COM 235–123, Revision 01, dated October 7, 1997.

Accomplishment of the actions specified in CASA Maintenance Instructions COM 235–123, Revision 01, and CASA Service Bulletin SB–235–57–20, is intended to adequately address the identified unsafe condition.

The DGAC classified the CASA Maintenance Instructions COM 235–123, Revision 01, as mandatory and issued Spanish airworthiness directive 10/97, dated March 19, 1997, to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

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

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 require accomplishment of the actions specified in the maintenance instructions and the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Related Service Information

Operators should note that, although the parallel Spanish airworthiness directive does not mandate the accomplishment of required actions for CASA Model CN–235 series airplanes, serial number C–011, the applicability of this proposed AD would include that airplane. Although that airplane was not certificated for civilian operation by the DGAC, the FAA has certificated it as such. The FAA has determined that the unsafe condition addressed in this AD may also exist or develop on that airplane.

The proposed AD also would differ from the Spanish airworthiness directive in that the latter document requires accomplishing the following actions prior to the accumulation of 4,000 total landings:

- A detailed visual inspection within 24 hours (after the receipt of the Spanish airworthiness directive); and
- A borescopic inspection within 10 days; and
- Repetitive borescopic inspections for any outer flap replaced with a new, improved outer flap within 4,000 landings and thereafter at intervals not to exceed 600 landings.

In developing appropriate compliance times and repetitive intervals for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the visual inspection. In light of all of these factors, the FAA finds the following to be warranted prior to the accumulation of 4,000 total landings:

- A one-time detailed visual inspection within 30 days after the effective date of the AD; and
- If no relative movement or deformation is detected, a borescopic inspection within 300 landings after accomplishment of the visual inspection; and
- No repetitive inspections of an outer flap that is replaced with a new, improved outer flap.

Operators should further note that, although CASA Maintenance Instructions COM 235–123, Revision 01, dated October 7, 1997, specify that the manufacturer may be contacted for disposition of certain cracking conditions, this proposed AD would require addressing those conditions by replacement of the outer flap with a new, improved outer flap in accordance with CASA Service Bulletin SB–235–57–20, dated December 23, 1997.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection proposed by this AD on U.S. operators is estimated to be $120, or $60 per airplane.

It would take approximately 4 work hours to accomplish the proposed borescopic inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the borescopic inspection proposed by this AD on U.S. operators is estimated to be $480, or $240 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the 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 elect to accomplish the terminating action that is provided by this AD action, it would take approximately 30 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $123,204 per airplane. Based on these figures, the cost impact of the optional terminating action would be $125,004 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 adding the following new airworthiness directive:

Construcciones Aeronauticas, S.A. (CASA): Docket 98–NM–219–AD.

Applicability: Model CN–235 series airplanes, as listed in CASA Service Bulletin SB–235–57–20, dated December 23, 1997; and Model CN–235 having serial number C–011; 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 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the rear internal support fittings of the outer flap structure, which could result in failure of the outer flaps, and consequent reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 4,000 total landings, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time detailed visual inspection to detect relative movement or deformation of the joint areas of the rear attaching supports and lower skin of the left and right outer flaps, in accordance with CASA Maintenance Instructions COM 235–123, Revision 01, dated October 7, 1997.

(1) If no relative movement or deformation is detected: Within 300 landings, perform the requirements of paragraph (b) of this AD.

(2) If any relative movement or deformation is detected: Prior to further flight, perform the requirements of paragraph (b) of this AD.

(b) Remove the rear support attach bolts, one at a time, and perform a borescopic inspection to detect cracking of the spar and of the rear internal support fittings of the outer flaps, in accordance with CASA Maintenance Instructions COM 235–123, Revision 01, dated October 7, 1997.

(1) If no crack is detected, repeat the borescopic inspection thereafter at intervals not to exceed 600 landings until the replacement specified in paragraph (c) of this AD is accomplished.

(2) If any crack is detected, prior to further flight, replace the cracked outer flap with a new outer flap on which modified rear internal support fittings are installed, in accordance with CASA Service Bulletin SB–235–57–20, dated December 23, 1997. Such replacement constitutes terminating action for the repetitive borescopic inspection required by paragraph (b) of this AD for the replaced outer flap only.

(c) Accomplishment of the replacement specified in CASA Service Bulletin SB–235–57–20, dated December 23, 1997, constitutes terminating action for the repetitive borescopic inspections required by paragraph (b) of this AD.

(d) As of the effective date of this AD, no person shall install on any airplane an outer flap having part number 35–15501–00.

(e) 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, FAA Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

(f) 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.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 01/97, dated March 19, 1997.

Issued in Renton, Washington, on January 12, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1182 Filed 1–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–1999–4971, Notice No. 99–1]

RIN 2120–AG50

High Density Airports; Allocation of Slots; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains a correction to the notice of proposed rulemaking published in the **Federal Register** on January 12, 1999 (64 FR 2086). That document proposed rulemaking regarding takeoff and landing slots and slot allocation procedures at certain High Density Traffic Airports.

FOR FURTHER INFORMATION CONTACT: Lorelei D. Peter, (202) 267–3073.

Correction of Publication

In proposed rule FR Doc. 99–621 beginning on page 2086 in the **Federal Register** issue of January 12, 1999, make the following corrections:

1. On page 2086, in column 1, in the heading, beginning in the fourth line from the top, correct ''Notice No. 99–20'' to read ''Notice No. 99–1''.

2. On page 2086, in column 1, in the **ADDRESSES** section, beginning in line 9, correct the internet address ''9-NPRM-CMTS@faa.dot.gov'' to read ''9-NPRM-CMTS@faa.gov''.

3. On page 2093, in column 3, correct the issuance date ''January 6, 1998'' to read ''January 6, 1999''.

Issued in Washington, DC on January 12, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–1232 Filed 1–19–99; 8:45 am]

BILLING CODE 4910–13–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 251

[Docket No. 98–3A CARP]

Copyright Arbitration Royalty Panels; Rules and Regulations

ACTION: Extension of comment period.

SUMMARY: The Copyright Office of the Library of Congress is extending the comment period on proposed amendments to the regulations governing the conduct of royalty distribution and rate adjustment proceedings prescribed by the Copyright Royalty Tribunal Reform Act of 1993.

DATES: Written comments are due March 22, 1999. Reply comments are due April 5, 1999.

ADDRESSES: If sent by mail, an original and 10 copies of written comments should be addressed to Office of the General Counsel, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. If delivered by hand, an original and 10 copies should be brought to: Office of the General Counsel, Copyright Office, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. 20559–6000.

FOR FURTHER INFORMATION CONTACT: Contact David O. Carson, General Counsel, or Tanya Sandros, Attorney-Advisor. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On December 18, 1998, the Copyright Office published a notice of proposed rulemaking seeking comments on proposed amendments to the regulations governing the conduct of royalty distribution and rate adjustment proceedings prescribed by the Copyright Royalty Tribunal Reform Act of 1993 (the Act), Public Law 103–198, 17 Stat. 2304. 63 FR 70080 (December 18, 1998). Comments to the proposed changes were due to be filed on January 19, 1999; reply comments were due to be filed on February 16, 1999.

The Office, however, has decided to extend the deadline for filing comments by a period of 45 days beginning from the date of publication of this notice. The Office takes this action in response to a motion to extend the comment period by 45 days until March 5, 1999. The moving parties argue that additional time is needed in order to address adequately the specific proposals in the December 18 notice as well the Office's invitation to provide comment on procedural and substantive issues not covered by those proposals. It is further argued that since several of the moving parties are actively involved in ongoing Office proceedings, the moving parties have been unable to devote the time necessary to provide the Office with useful and comprehensive comments. After considering the arguments set forth in the motion, the Office grants the motion to extend the comment period. The Office sets the extended deadline for filing comments 45 days from publication of this notice in the **Federal Register** in order to afford all interested parties sufficient time in which to file their comments. Consequently, the extended deadline for filing reply comments is set for 75 days from publication of this notice in the **Federal Register**. Parties who have previously filed comments may supplement those comments or withdraw those comments and resubmit them in accordance with the extended deadline for filing comments, if they desire.

Dated: January 14, 1999.

David O. Carson,

General Counsel.

[FR Doc. 99–1239 Filed 1–19–99; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[ORWA–010799–b; FRL–6220–4]

Modification of the Ozone Monitoring Season for Washington and Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In the Final Rules section of this **Federal Register**, the EPA is approving these States' request to modify its current ozone monitoring season as a direct final rule without a prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. EPA's approval of these revisions will change the ozone monitoring season for Oregon and Washington to May 1 through September 30. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by February 19, 1999.

ADDRESSES: Written comments should be addressed to: Chris Hall, Office of Air Quality (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. Copies of the state submittal are available at the following address for inspection during normal business hours. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA 98101

The State of Washington

FOR FURTHER INFORMATION CONTACT: Chris Hall, Office of Air Quality (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1949.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: January 7, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 99–1122 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7270]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Butte County and Incorporated Areas.	Keefer Slough	Just upstream of State Route 99 Approximately 930 feet upstream of Keefer Road.	*177	None
				*239	None
Maps are available for inspection at the Butte County Public Works Department, 7 County Center Drive, Oroville, California.					
Send comments to The Honorable John Blacklock, Chief Administrative Officer, Butte County, 25 County Center Drive, Oroville, California 95965.					
California	Hillsborough (Town) San Mateo County.	San Mateo Creek	Approximately 415 feet downstream of Baywood Avenue.	None	*32
			Approximately 515 feet upstream of El Cerrito Avenue.	None	*74
Maps are available for inspection at the Town Engineer's Office, 1600 Floribunda Avenue, Hillsborough, California.					
Send comments to Mr. Anthony Constantouros, Town Manager, Town of Hillsborough, 1600 Floribunda Avenue, Hillsborough, California 94010.					
Colorado	Alamosa (City) Alamosa County.	Rio Grande	Approximately 800 feet downstream of Broadway/Fourth Street.	*7,537	*7,539
			Approximately 10,100 feet upstream of State Avenue.	None	*7,545
Maps are available for inspection at the City of Alamosa Public Works Department, 314 Hunt, Alamosa, Colorado.					
Send comments to The Honorable Farris Bervig, Mayor, City of Alamosa, P.O. Box 419, Alamosa, Colorado 81101.					
Colorado	Alamosa County (Unincorporated Areas).	Rio Grande	Approximately 10,800 feet downstream of Denver and Rio Grande Western Railroad.	*7,534	*7,534
			Approximately 17,500 feet upstream of State Avenue.	*7,548	*7,548
Maps are available for inspection at Land Use and Administration, 402 Edison Avenue, Alamosa, Colorado.					
Send comments to The Honorable Robert Zimmerman, Chairman, Alamosa County Board of Commissioners, P.O. Box 178, Alamosa, Colorado 81101.					
Colorado	Severance (Town) Weld County.	The Slough	Approximately 1,000 feet downstream of Great Western Railroad.	None	*4,864
			Approximately 3,400 feet upstream of County Road 74.	None	*4,878
Maps are available for inspection at the Town of Severance Town Hall, 336 South First Street, Severance, Colorado.					
Send comments to The Honorable Keith Kline, Mayor, Town of Severance, Municipal Building, P.O. Box 142, Severance, Colorado 80546.					
Colorado	Weld County (Unincorporated Areas).	The Slough	Approximately 1,050 feet downstream of Great Western Railroad.	None	*4,864
			Approximately 6,500 feet upstream of County Road 74½.	None	*4,889
Maps are available for inspection at the Weld County Planning and Zoning Office, 1400 North 17th Avenue, Greeley, Colorado.					
Send comments to The Honorable Connie Harbert, Chairman, Board of Weld County Commissioners, 915 Tenth Street, Greeley, Colorado 80631.					
Montana	Yellowstone County (Unincorporated Areas).	Alkali Creek	Downstream of Alkali Creek Road	*3,247	*3,247
			Upstream of Alkali Creek Road	*3,247	*3,250
			Approximately 850 feet upstream of Alkali Creek Road.	None	*3,382
Maps are available for inspection at the Yellowstone County Emergency and General Services Department, 217 North 27th, Room 309, Billings, Montana.					
Send comments to The Honorable Bill Kennedy, Chairman, Yellowstone County Board of Commissioners, P.O. Box 35000, Billings, Montana 59107.					
Missouri	Granby (City) Newton County.	Culpepper Creek	Approximately 400 feet upstream of confluence with Shoal Creek.	*1,034	*1,034
			Approximately 100 feet downstream of Old County Highway E.	*1,051	*1,050
			Approximately 120 feet upstream of Main Street.	*1,074	*1,072
		Wolf Creek	Approximately 3,450 feet downstream of Vance Street.	*1,049	*1,048

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 1,150 feet upstream of Vance Street.	None	*1,082
Maps are available for inspection at the City of Granby City Hall, 302 North Main Street, Granby, Missouri.					
Send comments to The Honorable Craig Hopper, Mayor, City of Granby, 302 North Main Street, Granby, Missouri 64844.					
Missouri	Warren County (Unincorporated Areas).	Peruque Creek	Approximately 6,200 feet downstream of Stringtown Road.	None	*644
			Approximately 1,885 feet upstream of Stringtown Road.	*671	*672
Maps are available for inspection at the Warren County Plans and Zoning Department, 105 South Market, Warrenton, Missouri.					
Send comments to The Honorable Walter Schirr, Presiding Commissioner, 105 South Market, Warrenton, Missouri.					
Nebraska	O'Neill (City) Holt County.	Elkhorn River	Approximately 800 feet downstream of County Bridge 4536520.	None	[1] *1,956
			Approximately 750 feet upstream of County Bridge 4525920.	None	[1] *1,976
		O'Neill Tributary	Approximately 400 feet downstream of Fulton Street.	None	[1] *1,968
			Approximately 350 feet upstream of Bogue Avenue.	None	[1] *1,999
Maps are available for inspection at the City of O'Neill City Hall, 401 East Fremont Street, O'Neill, Nebraska.					
Send comments to The Honorable Bill Price, Mayor, City of O'Neill, 401 East Fremont Street, O'Neill, Nebraska 68763.					
Oregon	Athena (City) Umatilla County.	Wildhorse Creek	Approximately 1,970 feet downstream of Labor Camp Road.	None	*1,679
			Approximately at Fifth Street	None	*1,719
Maps are available for inspection at the City of Athena, 215 South Third Street, Athena, Oregon.					
Send comments to The Honorable Mark Seltmann, Mayor, City of Athena, P.O. Box 686, Athena, Oregon 97813.					
Oregon	Umatilla County (Unincorporated Areas).	Wildhorse Creek	Approximately 2,600 feet downstream of Damburn Road.	None	*1,671
			Approximately at Fifth Street	None	*1,719
		Mill Creek	Approximately 80 feet downstream of Henry Canyon Bridge.	*2,200	*2,199
			Approximately 720 feet upstream of Forest Service #65 Bridge.	None	*2,348
Maps are available for inspection at the Umatilla County Department of Resource Services and Development, 216 Southeast Fourth Street, Pendleton, Oregon.					
Send comments to The Honorable Dennis D. Doherty, Chairman, Umatilla County Board of Commissioners, 216 Southeast Fourth Street, Pendleton, Oregon 97801.					
Texas	Harris County and Incorporated Areas.	Bens Branch (G103–33–00).	Just upstream of confluence With Lake Houston.	*50	*50
			Just upstream of Tree Lake Court	*66	*66
			Approximately 2,800 feet upstream of Woodland Hills.	*74	74
		Brays Bayou	Just upstream of Forest Hill Boulevard		
			Just upstream of Martin Luther King Boulevard.	+19	++18
			Approximately 300 feet downstream Of Kirby Drive.	+35	++32
			At the intersection of Carson and Swanee.	+49	++48
			Just upstream of Southern Pacific Railroad.	None	++49
			Just upstream of Interstate 610	+53	++51
			Approximately 1,000 feet upstream of Beechnut.	+55	++53
			Just upstream of Dairy Ashford Road	+71	++70
			Approximately 1,100 feet upstream of Addicks-Clodine Road.	+80	++79
			Approximately 1,300 feet upstream of South Wayside Drive.	+86	++83
		Yates Gully	At Sunrise Drive	+20	++19

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Kuhlman Gully	Approximately 500 feet upstream of South Post Oak Road.	+30	++28
		Willow Waterhole Bayou	Just upstream of Chimney Rock Road	+56	++52
			Approximately 550 feet upstream of Ruthglenn Avenue.	+60	++56
		Chimney Rock Diversion Channel.	Approximately 400 feet upstream of McKnight.	+57	++56
			Approximately 700 feet downstream Of Grape.	+60	++56
		Tributary 17.42 To Brays Bayou.	Just downstream of Neff Dirve	+63	++61
			Approximately 2,000 feet downstream Of West Bellefort.	+67	++65
		Fondren Diversion Channel.	Just downstream of Arbor Ridge	+63	++61
			Approximately 1,900 feet upstream Of McLain Boulevard.	+63	++64
			Approximately 1,500 feet upstream of South Braeswood Boulevard.	+64	++67
		Keegans Bayou	Just downstream of U.S. Highway 59	+66	++68
			Approximately 1,000 feet upstream of Synott Road.	+75	++77
			Just downstream of Carvel Lane	+86	++86
		Tributary 20.86	Just upstream of Leader Street	+70	++69
		To Brays Bayou	Just upstream of Harwin Drive	+70	++72
			Approximately 1,300 feet downstream of Sam Houston Tollway.	+76	++74
		Tributary 20.90 To Brays Bayou.	Approximately 2,300 feet upstream of Kirkwood Road.	+70	++69
			Just downstream of Bellepark Drive	+83	++80
		Tributary 21.95 To Brays Bayou.	Approximately 800 feet downstream Of Synott Road.	+73	++72
			Approximately 200 feet downstream of Richmond Avenue.	+85	++82
		Tributary 22.69 To Brays Bayou.	Approximately 400 feet upstream of Richmond Avenue.	+75	++74
			Approximately 150 feet upstream of Bellepark Drive.	None	++74
		Tributary 23.53 To Brays Bayou.	Just upstream of Dairy Ashford Road	+77	++75
			Approximately 2,000 feet upstream of Piping Rock Road.	+83	++76
		Tributary 26.20 To Brays Bayou.	Approximately 1,200 feet downstream Of Old Winkleman Road.	+85	++84
		Tributary 29.16 To Brays Bayou.	At the intersection of Marchena Road And Mesita Drive.	+85	++84
			Approximately 200 feet upstream of Addicks-Clodine Road.	+85	++84
	Fort Bend County and Incorporated Areas.	Keegans Bayou	Along Monticeto Lane, approximately 500 feet west of the intersection of Briarwood.	+87	++85
			Just south of Belknap Road	None	++83
			Approximately 500 feet west of the Intersection of Maykirk.	None	++84
			Approximately 1,000 feet upstream of Synott Road.	+86	++86

Maps are available for inspection at the Harris County Flood Control District Building, 9900 Northwest Freeway, Suite 103, Houston, Texas.
Send comments to The Honorable Robert Eckels, Judge, Harris County, 1001 Preston Street, Suite 911, Houston, Texas 77002.

Maps are available for inspection at the City of Piney Point Village City Office, 7721 San Felipe, Suite 100, Houston, Texas.
Send comments to The Honorable C. Jim Stewart, III, Mayor, City of Piney Point Village, 7721 San Felipe, Suite 100, Houston, Texas 77063.

Maps are available for inspection at Putney, Moffitt & Easley, Inc., 1303 Sherwood Forest, Houston, Texas.

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Send comments to Mr. James Davis, President, Mission Bend M.U.D., c/o Vincent & Elkins, First City Tower, 100 Fannin, Houston, Texas 77002.					
Maps are available for inspection at 7007 South Rice, Bellaire, Texas.					
Send comments to The Honorable Harold Penn, Mayor, City of Bellaire, 7008 South Rice, Bellaire, Texas 77401.					
Maps are available for inspection at the City of Houston Building (Basement), 1801 Main, Houston, Texas.					
Send comments to The Honorable Lee P. Brown, Mayor, City of Houston, 901 Bagby, Houston, Texas 77002.					
Maps are available for inspection at the City of Humble City Hall, 114 West Higgins, Humble, Texas.					
Send comments to The Honorable Wilson Archer, Mayor, City of Humble, P.O. Box 1627, Humble, Texas 77459.					
Maps are available for inspection at the Office of the Chief Building Official, 3826 Amherst, West University Place, Texas.					
Send comments to The Honorable Teresa Fogler, Mayor, City of West University Place, 3800 University Boulevard, Houston, Texas 77005.					
Maps are available for inspection at the City of Stafford City Hall, 2610 South Main, Stafford, Texas.					
Send comments to The Honorable Leonard Scarcella, Mayor, City of Stafford, 2610 South Main, Stafford, Texas 77477.					
Maps are available for inspection at the City of Missouri City Hall, 1522 Texas Parkway, Missouri City, Texas.					
Send comments to The Honorable Allen Owen, Mayor, City of Missouri City, P.O. Box 666, Missouri City, Texas 77459.					
Maps are available for inspection at the City of Galena Park City Hall, 2000 Clinton Drive, Galena Park, Texas.					
Send comments to The Honorable Bobby Barrett, Mayor, City of Galena Park, P.O. Box 46, Galena Park, Texas 77547.					
Maps are available for inspection at 800 First City Tower, 1001 Fannin Street, Houston, Texas.					
Send comments to Mr. Richard Baker, President, Chelford City M.U.D., c/o Coats, Rose, Yale, et al., 800 First City Tower, 1001 Fannin Street, Houston, Texas 77002.					
Maps are available for inspection at 301 Jackson Street, Suite 719, Richmond, Texas.					
Send comments to The Honorable Michael D. Rozell, Judge, Fort Bend County, 301 Jackson Street, Suite 719, Richmond, Texas 77469.					
Maps are available for inspection at Mission Bend M.U.D. No. 2, c/o Vinson & Elkins, 2300 First City Tower, 1001 Fannin, Houston, Texas.					
Send comments to Ms. Diana Littlefield, President, Mission Bend M.U.D. No. 2, c/o Vinson & Elkins, 2300 First City Tower, 1001 Fannin, Houston, Texas 77002–6760.					
Maps are available for inspection at the City of Meadow Place City Hall, One Troyan Drive, Meadows Place, Texas.					
Send comments to The Honorable Jim McDonald, Mayor, City of Meadows Place, One Troyan Drive, Meadows Place, Texas 77477.					
Maps are available for inspection at the City of Sugarland Engineering Department, 10405 Corporate Drive, Sugarland, Texas.					
Send comments to The Honorable Dean Hrbacek, Mayor, City of Sugarland, P.O. Box 110, Sugarland, Texas 77487–0110.					
Maps are available for inspection at the City of Southside Place City Hall, 6309 Edloe Street, Houston, Texas.					
Send comments to The Honorable Ben Hurst, Mayor, City of Southside Place, 6309 Edloe Street, Houston, Texas 77005.					
Texas	Montgomery County And Incorporated Areas.	Bens Branch	Approximately 2,900 feet downstream of confluence with Bens Branch Tributary 1.	*71	*74
			Just downstream of Southern Pacific Railroad.	*81	*80
			Approximately 150 feet upstream of U.S. Route 59 South.	*82	*81
Maps are available for inspection at 301 North Thompson Street, Suite 208, Conroe, Texas.					
Send comments to The Honorable Alan B. Sadler, Judge, Montgomery County, 301 North Thompson Street, Suite 210, Conroe, Texas 77301.					

[1]Value rounded to nearest whole foot.
+NGVD–1973 Releveling
++NGVD–1987 Releveling

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

Dated: January 11, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–1211 Filed 1–19–99; 8:45 am]

BILLING CODE 6718–04–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1537 and 1552

[FRL–6220–9]

Acquisition Regulation: Service Contracting—Avoiding Improper Personal Services Relationships

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this proposed rule to amend the EPA Acquisition Regulation (EPAAR) (48 CFR Chapter 15) to emphasize the proper relationship between the Government and its contractors in its non-personal services contracts. The Agency recognizes that regardless of the express terms of its contracts, if a contract is administered improperly, an improper personal services relationship can be the result. This proposed rule is designed to ensure that the manner in which contracts are administered will not create an improper employer-employee relationship.

DATES: Comments should be submitted no later than March 22, 1999.

ADDRESSES: Written comments should be submitted to the contact listed below at the following address: U.S. Environmental Protection Agency, Office of Acquisition Management (3802R), 401 M Street, SW, Washington, D.C. 20460. Comments and data may also be submitted by sending electronic mail (e-mail) to: Senzel.Louise@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 6.1 format or ASCII file format. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this rule may be filed on-line at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Louise Senzel, U.S. EPA, Office of Acquisition Management, (3802R), 401 M Street, SW, Washington, D.C. 20460, Telephone: (202) 564–4367.

SUPPLEMENTARY INFORMATION:

A. Background

Recent Agency audits have indicated a vulnerability in the manner in which Agency contracts have been administered which could create the existence of improper personal services relationships. The proposed rule will amend the EPAAR to emphasize the proper relationship between the Government and its contractors in the Government's non-personal services contracts. The Agency recognizes that regardless of the express terms of its contracts, if a contract is administered improperly, improper personal services relationship can be the result. Accordingly, the Agency is trying to highlight the nature of the proper relationship to ensure that the manner in which contracts are administered will not create an improper employer-employee relationship.

B. Executive Order 12866

The proposed rule is not a significant regulatory action for the purposes of E.O. 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

D. Regulatory Flexibility Act

The EPA certifies that this proposed rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the rule impose no reporting, record-keeping, or any compliance costs.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the impact of their regulatory actions on State, local, and tribal governments, and the private sector. This proposed 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 one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

E.O. 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.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

G. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and 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.

H. Executive Order 13084

Under E.O. 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 these governments. If EPA complies by consulting EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's 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.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. No. 104–113, § 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 48 CFR Parts 1537 and 1552

Government procurement.

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390.

Therefore, 48 CFR Chapter 15 is proposed to be amended as set forth below:

1. The authority citation for Parts 1537 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended.

PART 1537—[AMENDED]

2. Section 1537.110 is amended to add paragraph (g) to read as follows:

§ 1537.110 Solicitation provisions and contract clauses.

* * * * *

(g) To ensure that Agency contracts are administered so as to avoid creating an improper employer-employee relationship, contracting officers shall insert the contract clause at 48 CFR 1552.237–76, ''Government-Contractor Relations'', in all solicitations and contracts for non-personal services.

PART 1552—[AMENDED]

3. Add 1552.237–76 to read as follows:

§ 1552.237–76 Government-contractor relations.

As prescribed in 1537.110(g), insert the following clause:

GOVERNMENT-CONTRACTOR RELATIONS

(month and year of publication in the **Federal Register**)

(a) The Government and the contractor understand and agree that the services to be delivered under this contract by the contractor to the Government are non-personal services and the parties recognize and agree that no employer-employee relationship exists or will exist under the contract between the Government and the contractor's personnel. It is, therefore, in the best interest of the Government to afford both parties a full understanding of their respective obligations.

(b) Contractor personnel under this contract shall not:

(1) Be placed in a position where they are under the supervision, direction, or evaluation of a Government employee.

(2) Be placed in a position of command, supervision, administration or control over Government personnel, or over personnel of other contractors under other EPA contracts, or become a part of the Government organization.

(3) Be used in administration or supervision of Government procurement activities.

(c) Employee Relationship:

(1) The services to be performed under this contract do not require the Contractor or his/her personnel to exercise personal judgment and discretion on behalf of the Government. Rather the Contractor's personnel will act and exercise personal judgment and discretion on behalf of the Contractor.

(2) Rules, regulations, directives, and requirements that are issued by the U.S. Environmental Protection Agency under its responsibility for good order, administration, and security are applicable to all personnel who enter the Government installation or who travel on Government transportation. This is not to be construed or interpreted to establish any degree of Government control that is inconsistent with a non-personal services contract.

(d) Inapplicability of Employee Benefits: This contract does not create an employer-employee relationship. Accordingly, entitlements and benefits applicable to such relationships do not apply.

(1) Payments by the Government under this contract are not subject to Federal income tax withholdings.

(2) Payments by the Government under this contract are not subject to the Federal Insurance Contributions Act.

(3) The Contractor is not entitled to unemployment compensation benefits under the Social Security Act, as amended, by virtue of performance of this contract.

(4) The Contractor is not entitled to workman's compensation benefits by virtue of this contract.

(5) The entire consideration and benefits to the Contractor for performance of this contract is contained in the provisions for payment under this contract.

(e) Notice. It is the Contractor's, as well as, the Government's responsibility to monitor contract activities and notify the Contracting Officer if the Contractor believes that the intent of this clause has been or may be violated.

(1) The Contractor should notify the Contracting Officer in writing promptly, within _____ (to be negotiated) calendar days from the date of any incident that the Contractor considers to constitute a violation of this clause. The notice should include the date, nature and circumstance of the conduct, the name, function and activity of each Government employee or Contractor official or employee involved or knowledgeable about such conduct, identify any documents or substance of any oral communication involved in the contact, and the estimate in time by which the Government must respond to this notice to minimize cost, delay or disruption of performance.

(2) The Contracting Officer will promptly, within _____ (to be negotiated) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer will either:

(i) Confirm that the conduct is in violation and when necessary direct the mode of further performance,

(ii) Countermand any communication regarded as a violation,

(iii) Deny that the conduct constitutes a violation and when necessary direct the mode of further performance; or

(iv) In the event the notice is inadequate to make a decision, advise the Contractor what additional information is required, and establish the date by which it should be furnished by the Contractor and the date thereafter by which the Government will respond.

(End of clause)

Dated: December 9, 1998.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 99–1128 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 64, No. 12
Wednesday, January 20, 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

Forest Service

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC advisory Committee will meet on February 11, 1999 at the Jefferson County Firehall on the corner of Adam and ''J'' Street in Madras, Oregon. A business meeting will begin at 9:30 am and finish at 4 pm. Agenda items include introduction of new members, an update on the Eastside EIS (ICBEMP), an update on the Hosmer Lake Working Group, and a public forum from 3:30 pm till 4 pm. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 N.E. 3rd., Bend, OR, 97701, mollie.chaudet/r6pnw__deschutes@fs.fed.us, phone (541) 383–4769.

Dated: January 7, 1999.

Sally Collins,

Forest Supervisor.

[FR Doc. 99–1161 Filed 1–19–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on February 16, 1999 at the Confederated Tribes of Warm Springs Forestry and Fire Management Conference Room at 4430 Upper Dry Creek Road in Warm Springs, Oregon. A business meeting will begin at 9:30 a.m. and finish at 4:00 p.m. Agenda items include introduction of new members, an update on the Eastside EIS (ICBEMP), an update on the Hosmer Lake Working Group, and a public forum from 3:30 p.m. till 4:00 p.m. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 N.E. 3rd., Bend, OR 97701, mollie.chaudet/r6pnw__deschutes@fs.fed.us, phone (541) 383–4769.

Dated: January 12, 1999.

Sally Collins,

Forest Supervisor.

[FR Doc. 99–1223 Filed 1–19–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Committee of Scientists will hold three public teleconference calls; one on Thursday, January 28; one on Tuesday, February 2; and one on Thursday, February 4. Each teleconference call will begin at 12 p.m. and end at 3 p.m. (eastern standard time). The purpose of these telephone conference calls is for the Committee of Scientists to continue discussion of its report and recommendations to the Secretary of Agriculture and the Chief of the Forest Service. The public is invited to attend these teleconference calls and may be provided an opportunity to comment on the Committee of Scientists' deliberations during the teleconferences, only at the request of the Committee.

DATES: The teleconference calls will be held on Thursday, January 28; Tuesday, February 2; and Thursday, February 4, from 12 p.m. to 3 p.m. (eastern standard time).

ADDRESSES: The teleconferences will be held at the USDA Forest Service headquarters, Auditor's Building, 201 14th Street, SW., Washington, DC, in the Roosevelt Conference Room on January 28 and February 4 and in the McArdle Conference Room on February 2. The teleconference calls can be accessed at all Regional Offices of the Forest Service, which are listed in the table under **SUPPLEMENTARY INFORMATION**.

Written comments on improving land and resource management planning may be sent to the Committee of Scientists, P.O. Box 2140, Corvallis, OR 97339. Also, the Commitee may be accessed via the Internet at www.cof.orst.edu./org/scicomm/.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the teleconferences, contact Bob Cunningham, Designated Federal Official to the Committee of Scientists, by telephonne (202) 205–1523.

SUPPLEMENTARY INFORMATION: The public may attend the teleconferences at the following field locations:

USDA FOREST SERVICE REGIONAL OFFICE LOCATIONS

Region 1, Northern Region	Federal Building, 200 E Broadway	Missoula, MT.
Region 2, Rocky Mountain Region	740 Simms St	Golden, CO.
Region 3, Southwestern Region	Federal Building, 517 Gold Ave., SW	Albuquerque, NM.
Region 4, Intermountain Region	Federal Building, 324 25th St	Ogden, UT.
Region 5, Pacific Southwest Region	630 Sansome St	San Francisco, CA.
Region 6, Pacific Northwest Region	333 SW 1st Ave	Portland, OR.
Region 8, Southern Region	1720 Peachtree Rd., NW	Atlanta, GA.
Region 9, Eastern Region	310 W. Wisconsin Ave., Room 500	Milwaukee, WI.
Region 10, Alaska Region (office will open early)	Federal Office Building, 709 W. 9th St	Juneau, AK.

The Committee of Scientists was chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made to the National Forest System land and resource management planning process (62 FR 43691; August 15, 1997). Notice of the names of the appointed Committee members was published December 16, 1997 (62 FR 65795).

Dated: January 13, 1999.

Gloria Manning,

Acting Deputy Chief for National Forest System.

[FR Doc. 99–1177 Filed 1–19–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Wednesday, January 27, 1999, in Olympia, Washington, at the Olympic National Forest Headquarters Office (1835 Black Lake Blvd.) in the Willaby meeting room. The meeting will begin at 10 a.m. and continue until 4:15 p.m. The purpose of the meeting is to: (1) Present and discuss the Wilderness Resource Protection Environmental Assessment for the Gifford Pinchot National Forest; (2) share ideas for partnership opportunities; (3) provide information about Salmon Recovery Initiatives; (4) discuss prioritization criteria and select a subcommittee for the Jobs-in-the-Woods program; and (5) provide a Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled as part of agenda item (5) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Linda Turner, Public Affairs Specialist, at (360) 891–5195, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE 51st Circle, Vancouver, WA 98682.

Dated: January 11, 1999.

Ted C. Stubblefield,

Forest Supervisor.

[FR Doc. 99–1152 Filed 1–19–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Thursday, January 28, 1999, at the Wenatchee National Forest headquarters conference room, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 3:30 p.m. The agenda includes a review of the new charter for the advisory committees, re-establishment of the subcommittees, outreach to fill vacant positions, updates on rec fee demo and watershed restoration, and Forest Service/Park Service coordination on wilderness management. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: December 29, 1998.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 99–1162 Filed 1–19–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1016]

Expansion of Foreign-Trade Zone 15; Kansas City, MO

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Kansas City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 15, submitted an application to the Board for authority to expand FTZ 15 to include a site at the Richards-Gebaur Memorial Airport/ Industrial Park (Site 7) in Kansas City, Missouri, within the Kansas City Customs port of entry (FTZ Docket 10–98; filed 2/27/98);

Whereas, notice inviting public comment was given in **Federal Register** (63 FR 11652, 3/10/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 15 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit.

Signed at Washington, DC, this 8th day of January 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–1245 Filed 1–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1015]

Expansion of Foreign-Trade Zone 38; Spartanburg County, South Carolina

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 38, submitted an application to the Board for authority to expand FTZ 38-Site 2 to include the Gateway International Business Center in Greer, South Carolina, within the Greenville/ Spartanburg Customs ports of entry (FTZ Docket 9–98; filed 2/25/98);

Whereas, notice inviting public comment was given in **Federal Register** (63 FR 10589, 3/4/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the

examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 38-Site 2 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 8th day of January, 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–1244 Filed 1–19–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above (DRAMs) From the Republic of Korea: Postponement of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for preliminary results of antidumping duty administrative review.

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 DRAMs from the Republic of Korea, covering the period May 1, 1997, through April 30, 1998, since it is not practicable to complete the review within the time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: January 20, 1999.

FOR FURTHER INFORMATION: John Conniff, Antidumping Duty and Countervailing Duty Enforcement, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington DC 20230, telephone 202/482–1009.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

In addition, unless stated otherwise, all citations to the Department's regulations are to the current regulations codified at 19 CFR 351 (1998).

Background

On June 29, 1998 (63 FR 35188), the Department initiated an administrative review of the antidumping order on DRAMs from the Republic of Korea, covering the period May 1, 1997 through April 30, 1998.

Postponement of Preliminary Result of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to 365 days and 180 days, respectively.

We determine that it is not practicable to complete the preliminary results of this review within the original time frame because of the complexity of the legal and methodological issues involved in this review (*see* January 4, 1999 Memorandum from Holly Kuga, Acting Deputy Assistant Secretary to Robert LaRussa, Assistant Secretary). Accordingly, the deadline for issuing the preliminary results of this review is now due no later than June 1, 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 Act (19 U.S.C. 1675 (a)(3)(A)).

Dated: January 13, 1999.

Holly Kuga,

Acting Deputy Assistant Secretary for Group II.

[FR Doc. 99–1243 Filed 1–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–817]

Oil Country Tubular Goods from Mexico; Antidumping Duty Administrative Review; Extension of Time Limit

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 final results of the antidumping duty administrative review of Oil Country Tubular Goods from Mexico. This review covers the period August 1, 1996 through July 31, 1997.

EFFECTIVE DATE: Janaury 20, 1999.

FOR FURTHER INFORMATION CONTACT: John Drury or Linda Ludwig, 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) 482–0195 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limit for completion of the final results until March 10, 1999, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act'') by the Uruguay Round Agreements Act of 1994 (19 U.S.C. § 1675(a)(3)(A)). See memorandum to Robert S. LaRussa from Joseph A. Spetrini regarding the extension of case deadline, dated January 11, 1999.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. § 1675(a)(3)(A)).

Dated: January 11, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–1242 Filed 1–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 011199D]

Notice of Intent to Prepare an Environmental Impact Statement Regarding Proposed Issuance of an Incidental Take Permit to the City of Tacoma, Washington, for Water Storage and Withdrawal and Forest Management in the Green River Watershed, King County, Washington

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (USFWS), Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act, USFWS and NMFS (the Services) intend to prepare an Environmental Impact Statement (EIS) regarding the proposed issuance of an Incidental Take Permit (Permit) to the City of Tacoma for take of endangered and threatened species, in accordance with the Endangered Species Act of 1973, as amended (Act). The Permit applicant is the City of Tacoma, Washington, Public Utilities, Water Division (Tacoma Water), and the application is related to water storage and withdrawal from the Green River and to forest management activities in the Green River Watershed, in south King County, Washington. Takoma Water is preparing a Habitat Conservation Plan (HCP) as required by the Act, and intends to request a Permit for northern spotted owl (*Strix occidentalis*), marbled murrelet (*Brachyramphus marmoratus*), gray wolf (*Canis lupus*), peregrine falcon (*Falco peregrinus*), bald eagle (*Haliaeetus leucocephalus*), and grizzly bear (*Ursus arctos*). Tacoma Water also plans to seek coverage for approximately 25 currently unlisted fish and wildlife species (including Chinook salmon (*Oncorhynchus tshawytscha*) and the Puget Sound distinct population segment of the bull trout (*Salvelinus confluentus*), which are proposed for listing under the Act, and other anadromous and resident fishes) under specific provisions of the Permit, should these species be listed in the future. The HCP and Permit would be in effect for 50 years. Through development of a joint EIS, the applicant also proposes to comply with the requirements of the Washington State Environmental Policy Act.

The Services are furnishing this notice in order to (1) advise other agencies and the public of our intentions and (2) announce that a joint draft EIS is expected to be available for public review and comment during the first quarter of 1999.

ADDRESSES: Comments and requests for information should be sent to Tim Romanski, Fish and Wildlife Service, 510 Desmond Drive, SE, Suite 102, Lacey, Washington 98503, (360) 753–5823; or Mike Grady, National Marine Fisheries Service, 510 Desmond Drive, SE, Suite 103, Lacey, Washington 98503, (360)753–6052.

SUPPLEMENTARY INFORMATION: In accordance with the Act, Tacoma Water will prepare an HCP for, among other things, minimizing and mitigating to the maximum extent practicable any such take of listed species which could occur incidental to the proposed Plan activities (watershed management). Previous announcements relating to this project indicated that an environmental review (EIS or Environmental Assessment) would be conducted. The Services have now concluded that an EIS will be prepared. Public input into the environmental review of this proposal was obtained during a public scoping period conducted from August 21 to September 21, 1998, and was announced in a previous **Federal Register** notice (63 FR 44918, August 21, 1998). That public scoping period was used to fulfill scoping requirements under 40 CFR 1501.7, consistent with 46 FR 18026 (March 23, 1981), as amended at 51 FR 15618 (April 25, 1985).

Tacoma Water owns and manages a water diversion dam and associated facilities (Headworks) on the Green River, approximately 13,600 acres of land upstream of the diversion dam on both sides of the River, and a well field (North Fork Well Field) located approximately 5 miles upstream of the Headworks. Tacoma Water operates and manages the Headworks, watershed lands, and the North Fork Well Field as the principal source of municipal and industrial water for the City of Tacoma and for portions of Pierce and King Counties. Howard Hanson Dam and Howard Hanson Reservoir, owned and operated by the U.S. Army Corps of Engineers (Corps), are also located on the Green River, upstream of the City's Headworks. City lands in the watershed are adjacent to the Dam and Reservoir on all sides.

Current trends in population growth within the Puget Sound region create a need for Tacoma Water to explore possibilities for increasing its water supply capabilities. To meet this need, Tacoma has developed two separate, but related plans. The first of these, the Second Supply Project, involves improvements at Tacoma's Headworks and the construction of a 33.5–mile long pipeline from the Headworks to the City of Tacoma. This project is the subject of a State Environmental Policy Act review in the document entitled ''Final Supplemental Environmental Impact Statement for the Second Supply Project, October 18, 1994,'' prepared by Tacoma Water. The second related plan was developed in conjunction with the Corps and in cooperation with the Services, the Washington Department of Fish and Wildlife, Washington Department of Ecology, and Muckleshoot Indian Tribe for increasing the size of Howard Hanson Dam and, consequently, Howard Hanson Reservoir. Known as the Additional Water Storage Project, this plan incorporates restoration and mitigation measures (including fish passage) to alleviate the historical barrier to migrating salmon and hence spawning, created by the City's Headworks and the Corps' Dam. This project is the subject of a National Environmental Policy Act review in the document entitled ''Final Feasibility Report and Final Environmental Impact Statement, Howard Hanson Dam, Green River, Washington, August 1998,'' prepared by the Seattle District of the Corps.

Tacoma Water's activities associated with the Second Supply Project, the Additional Water Storage Project, and other management activities on the City's watershed lands have the potential to impact species subject to protection under the Act. Section 10 of the Act contains provisions for the issuance of incidental take permits to non-Federal landowners for the take of endangered and threatened species, provided the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the applicant must prepare and submit to the Services for approval an HCP containing a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also demonstrate that adequate funding will be provided to ensure the HCP will be implemented and monitored throughout the proposed 50-year life of the HCP.

Activities proposed for coverage under the Incidental Take Permit include the following:

(1) Water withdrawal at Tacoma Water's Headworks for Municipal and Industrial Water Supply, which will reduce flows and have concomitant habitat effects downstream, including the bypass of fish at the Headworks intake, and inundate the impoundment area;

(2) Water withdrawal from the North Fork Well Field for Municipal and Industrial Water Supply, which will potentially reduce flows in the North Fork Green River above Howard Hanson Dam reservoir;

(3) Construction of Headworks improvements (anticipated to occur during a 2-year period from the third quarter of 1999 through the third quarter of 2001). Such construction will cause:

(a) Bypassing of fish at the Headworks intake during construction;

(b) Raising the Headworks diversion dam by about 6.5 feet (2 meters) which will extend the inundation pool to about 2,570 feet (811 meters) upstream of the Headworks diversion;

(c) Realigning and enlarging the existing intake and adding upgraded fish screens and bypass facilities for downstream passage;

(d) Reshaping the Green River channel downstream of the existing diversion to accommodate the future installation of an efficient trap and haul facility for upstream fish passage; and

(e) Installing, monitoring, and maintening the instream structures in the impoundment for fisheries mitigation for raising the Headworks dam;

(4) Fish and water quality impacts related to the Headworks improvement construction;

(5) Operation and maintenance of a wetland restoration project at Auburns Narrows associated with the Second Supply Project;

(6) Operation of a downstream fish bypass facility at the Headworks;

(7) Tacoma watershed forest management activities;

(8) Monitoring of downstream fish passage through a proposed fish passage facility at Howard Hanson Dam associated with the Additional Water Supply Project;

(9) Monitoring and maintenance of Additional Water Supply Project fish habitat restoration projects and Additional Water Supply Project fish and wildlife habitat mitigation projects; and

(10) Restoration of anadromous fish above Howard Hanson Dam by trapping and hauling of adults returning to the Headworks and, if found beneficial to restoration efforts, possible planting of hatchery juveniles.

Alternatives for the environmental review cover two distinct sets of activities: (1) The withdrawal of water at the Tacoma Water Supply Intake (Headworks) at River Mile 61.0 and associated water withdrawal activities and (2) the management of City-owned forestlands in the upper Green River watershed above the Headworks. For the purposes of clarity, the alternatives for water withdrawal are considered separate from the alternatives for forestland management.

Water withdrawal alternatives include (1) No Action (continue current water withdrawal practices); (2) Proposed Action (with primary features including upstream and downstream fish passage, water flow management for anadromous fish, and riparian habitat restoration); (3) Reduced Withdrawal Alternative (supply Tacoma's service area only); (4) Reduced Withdrawal Alternative (supply Tacoma Water's current service area and the Lakehaven Utility District); and (5) supply Tacoma, Seattle, and South King County communities without the Howard Hanson Dam Additional Water Storage Project.

Forestland management alternatives include (1) No Action (continue current forest management and timber harvest practices); (2) Proposed Action (with primary features including species-specific protection measures for wildlife species of interest); (3) Management of Tacoma City Lands in the Upper Green River Watershed with no timber harvest; and (4) Management of Tacoma City Lands in the Upper Green River Watershed with timber harvesting to create or enhance fish and/or wildlife habitat only.

The environmental review of this project will be conducted in accordance with 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 parts 1500 through 1508), other appropriate Federal laws and regulations, and policies and procedures of the Services for compliance with those regulations.

Dated: January 13, 1999.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: January 11, 1999.

Thomas Dwyer,

Acting Regional Director, Region 1, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 99–1227 Filed 1–19–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010799B]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Annual Report on Implementation of the Conservation Plan for Atlantic Salmon in Seven Maine Rivers

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: The State of Maine has submitted to NMFS and FWS (the Services) the draft annual report on its 1998 implementation of the *Atlantic Salmon Conservation Plan for Seven Maine Rivers* (Conservation Plan).

DATES: Written comments should be received on or before March 8, 1999.

ADDRESSES: Comments should be addressed to Mary Colligan, NMFS, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930. Written comments may also be sent by facsimile to (978) 281–9394.

FOR FURTHER INFORMATION CONTACT: Mary Colligan, NMFS, at the same address (978–281–9116) or Paul Nickerson, FWS, Region 5, Endangered Species Division, 300 Westgate Center Drive, Hadley, MA 01035 (413–253–8615).

SUPPLEMENTARY INFORMATION: The Services are soliciting comments from the public on the adequacy of the protective measures in place, implementation activities during 1998, and the effect of these protective measures on Atlantic salmon and their habitat. The Services are particularly interested in assistance in determining whether the protective measures in place, including the provisions of the Conservation Plan, remain adequate to protect the species in light of current knowledge. After public comments and comments from the Services are addressed by the State of Maine in the final annual report, the Services will update the 1995 Atlantic salmon status review. If that update indicates that the species is now in danger of extinction or likely to become endangered in the foreseeable future, the Services will promptly issue a proposed listing under the Endangered Species Act (ESA).

Availability of Documents

Copies of the draft annual report on implementation of the Conservation Plan may be obtained from the individuals identified under the preceding **FOR FURTHER INFORMATION CONTACT** heading.

Background Information

On December 18, 1997, the Services withdrew a proposed rule to list a distinct population segment (DPS) of Atlantic salmon in seven Maine Rivers as ''threatened'' under the ESA (62 FR 66325). In reaching the determination, the Services considered the status of the Atlantic salmon in the seven Maine Rivers. This evaluation took into account the efforts being made to protect the species, the extent of implementation of the Conservation Plan, private and Federal efforts to restore the species, and international efforts to control ocean harvest through the North Atlantic Salmon Conservation Organization. The Services determined that ongoing actions, including those identified in the Conservation Plan, substantially reduced threats to the species and that these ongoing actions would rehabilitate the seven rivers DPS. Based on this analysis, the Services determined that the seven rivers DPS of Atlantic salmon was not likely to become endangered in the foreseeable future, and, therefore, listing under the ESA was not warranted. In addition, the Services renamed the seven rivers DPS the ''Gulf of Maine DPS'' in recognition of the possibility that other populations of Atlantic salmon could be added to the DPS in the future. The Services stated that other populations of Atlantic salmon would be added if they were found to be naturally reproducing and to have historical river-specific characteristics. The area within which populations of Atlantic salmon would be most likely to meet the criteria for inclusion was identified as ranging from the Kennebec River north to, but not including, the St. Croix River.

In the withdrawal notice, the Services committed to making the annual report on Conservation Plan implementation available for review to the public in order to keep interested parties informed and to provide an opportunity for review and comment. The NMFS retained the Gulf of Maine DPS of Atlantic salmon on its list of candidate species, and the Services committed to maintaining oversight over the species under the ESA. Specifically, the Services stated that the process for listing the Gulf of Maine DPS would be reinitiated if (1) an emergency which poses a significant risk to the well-being of the Gulf of Maine DPS is identified and not immediately and adequately addressed, (2) the biological status of the Gulf of Maine DPS is such that the DPS is in danger of extinction throughout all or a significant portion of its range, or (3) the biological status of the Gulf of Maine DPS is such that the DPS is likely to become endangered in the foreseeable future throughout all or a significant portion of its range. Further, the notice stated that the circumstances described under (1), (2), and (3) could be the result of insufficient progress in implementation of the Conservation Plan; a failure to modify the Conservation Plan to address new threats or an increase in the severity of threats; a failure to modify the Conservation Plan, if necessary, to address threats facing any other populations added to the Gulf of Maine DPS in the future; or the inability of the State of Maine to address threats. The notice stated that a decision to reinitiate the listing process would be made shortly after the end of an annual reporting period.

The annual review of the Conservation Plan is part of the Services' broader comprehensive review of the species' status relative to the ESA. In determining whether a species is threatened or endangered, the Services examine the effect of five factors on the species' status. These five factors are: (1) the present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence.

In order to assist the Services in their review, specific information is requested on how these threats may have changed in severity since December, 1997. The Services are requesting specific suggestions for appropriate modifications to the Conservation Plan and request that those suggestions be accompanied with justification as to how the proposed actions benefit Atlantic salmon. In addition to the draft annual report on the Conservation Plan, comments are requested on the adequacy of the other protective measures in place for Atlantic salmon and whether these measures remain adequate to protect the species in light of current knowledge. The principal other protective measures include the river-specific hatchery stocking program and the North Atlantic Salmon Conservation Organization (NASCO) ocean harvest agreements. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

The Services will review all comments on the draft annual report submitted by the public and provide a summary of those, along with their own comments, to the State of Maine in early March, shortly after the close of the comment period. The Services have requested a final annual report from the State of Maine by March 31, 1999. By April 30, 1999, the Services will update the 1995 Atlantic salmon status review. If that update indicates that the species is now in danger of extinction or likely to become endangered in the foreseeable future, the Services will promptly issue a proposed listing under the ESA.

Dated: January 14, 1999.

Ann D. Terbush,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

Dated: January 12, 1999.

Gerry A. Jackson,

Assistant Director - Ecological Services, Fish and Wildlife Service.

[FR Doc. 99–1228 Filed 1–19–99; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection: Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Corporation is soliciting comments concerning its new Performance Standards Assessment Form. This form will be used by the Corporation to determine the adequacy and quality of state commission administrative systems.

Copies of the proposed information collection form can be obtained by contacting the office listed below in the address section of this notice.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section March 22, 1999.

ADDRESSES: Send comments to Corporation for National and Community Service, Office of the Department of Evaluation and Effective Practices, Attn. William Bentley, 9th Floor, 1201 New York Avenue, N.W., Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Dill (202) 606–5000, ext. 292.

SUPPLEMENTARY INFORMATION:

I. Background

The Performance Standards Assessment Form was developed in consultation with State Commissions. State Commissions collectively asked for clearly stated performance standards by which the Corporation would assess the adequacy of their administrative systems. Indicators of both competency and excellence were developed for each performance standard. A process is being developed for using these Performance Standards for both self and external assessment purposes.

The Corporation seeks approval of its new Performance Standards Assessment Form. The information that is collected will help the Corporation determine the extent to which each State Commission has in place the administrative systems for effective operation. The form will be used for both self and external assessments of grantees. Assessment results will be used by grantees for continuous improvement and by the Corporation for guiding training and technical assistance resources, determining appropriate levels of grantee oversight, and determining eligibility for access to competitive funding and multi-year administrative awards.

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: Performance Standards Assessment Form.

OMB Number: None.

Agency Number: None.

Affected Public: State Commissions of the Corporation for National Service.

Total Respondents: 40 State Commissions.

Frequency: 14 State Commissions Annually.

Average Time Per Response: 340 hours per State Commission.

Estimated Total Burden Hours: 4760 hours per 14 State Commissions.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 14, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–1235 Filed 1–19–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on February 2, 1999, February 9, 1999, February 16, 1999, and February 23, 1999, at 10 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Pub. L. 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: January 13, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–1153 Filed 1–19–99; 8:45 am]

BILLING CODE 5000–04–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, January 27, 1999. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 9:30 a.m. at the same location and will include discussions of drought status; 1999 DRBC meeting schedule; Phase 1 TMDLs for the Delaware Estuary and a Flow Management Technical Advisory Committee status report.

In addition to the subjects summarized below which are scheduled for public hearing at the business meeting, the Commission will also address the following: Minutes of the December 9, 1998 and January 5, 1999 business meetings; announcements; report on Basin hydrologic conditions; reports by the Executive Director and General Counsel; and public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Pennsylvania Fish & Boat Commission D–80–32 CP RENEWAL 2.* An application for the renewal of a ground water withdrawal project to supply up to 20.7 million gallons (mg)/30 days of water to the applicant's Pleasant Mount Fish Cultural Station from Well Nos. 1, 2 and 3. Commission

approval on January 25, 1989 was limited to 10 years. The applicant requests that the total withdrawal from all wells remain limited to 20.7 mg/30 days. The project is located in Mount Pleasant Township, Wayne County, Pennsylvania.

2. *Vineland Kosher Poultry Company, Inc. D–92–43 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 7.2 mg/30 days of water to the applicant's poultry processing facility from Well Nos. 1, 2 and 3. Commission approval on November 4, 1992 was limited to five years. The applicant requests that the total withdrawal from all wells be increased from 3.5 mg/30 days to 7.2 mg/30 days. The project is located in the City of Vineland, Cumberland County, New Jersey.

3. *Oley Township Municipal Authority D–97–35 CP.* A project to upgrade and expand the applicant's existing 250,000 gallons per day (gpd) extended aeration sewage treatment plant (STP) to a 500,000 gpd advanced secondary sequencing batch reactor process. The STP is situated near the eastern boundary of Oley Township in Berks County, Pennsylvania and will continue to serve portions of Oley and Earl Townships, Berks County. The STP will continue to discharge treated effluent to Manatawny Creek just west of the plant.

4. *Downingtown Area Regional Authority D–98–33 CP.* A project to increase the rated capacity of the applicant's existing Downingtown Regional Water Pollution Control Center from a yearly average 7 million gallons per day (mgd) to 7.134 mgd, with a maximum monthly flow of 10.5 mgd. The increases are necessary to handle future connections and hydraulic loading. The treatment plant will continue to serve the Borough of Downingtown; portions of the Townships of Caln, East Caln, Uwchlan and West Whiteland; and Marsh Creek State Park which is located in Upper Uwchlan Township, all in Chester County, Pennsylvania. The plant is situated just west of U.S. Route 322 and southeast of the Downingtown corporate boundary in East Caln Township, and will continue to provide tertiary treatment prior to discharge via the existing outfall to the East Branch Brandywine Creek.

5. *City of Delaware City D–98–46 CP.* An application for approval of a ground water withdrawal project to supply up to 15 mg/30 days of water to the applicant's distribution system from existing Well Nos. 4 and 5, and to increase the existing withdrawal limit of 8 mg/30 days from all wells to 15 mg/30 days. The project is located in the City of Delaware City, New Castle County, Delaware.

6. *Florida Power & Light Energy MH50, L.P. D–98–53.* An application for approval of the operation of the existing Sunoco, Inc. (Sun) 50 megawatt cogeneration facility under the new ownership of Florida Power & Light Energy, Inc. The new operator plans to provide electrical power primarily to the Pennsylvania-Maryland-New Jersey power grid via PECO, or wheel power to others in the future, and will continue to provide steam to Sun. Process water for the cogeneration facilities will continue to be provided by Sun's intake in the Delaware River. Make-up water is provided by the Chester Water Authority. The applicant requests an allocation of 30 mg/30 days, and the average consumptive use is expected to be 0.16 mgd. The cogeneration facility is located on the Sun refinery plant site in the Borough of Marcus Hook, Delaware County, Pennsylvania, approximately 2,000 feet west of the Delaware River and 500 feet north of the Delaware state boundary.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Dated: January 11, 1999.

Susan M. Weisman,

Secretary.

[FR Doc. 99–1220 Filed 1–19–99; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, February 3, 1999, 6:00 p.m.—9:30 p.m.

ADDRESSES: Garden Plaza 215 S. Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Federal Coordinator/Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (423) 576–0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: A presentation on the ''Oak Ridge Reservation Annual Site Environmental Report,'' dated 1997, will be given by Bob Poe, Assistant Manager for Environment, Safety, and Quality.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (423) 576–0314.

Issued at Washington, DC on January 13, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–1218 Filed 1–19–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. FE C&E 98–12—Certification Notice—167]

Office of Fossil Energy; Pasadena Cogeneration Project, Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On December 26, 1998, Pasadena Cogeneration L.P. submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of the proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

Owner: Pasadena Cogeneration L.P.

Operator: Calpine Central, L.P.

Location: Pasadena, TX.

Plant Configuration: Combined cycle, topping-cycle cogeneration facility.

Capacity: 750 megawatts.

Fuel: Natural gas.

Purchasing Entities: Phillips Petroleum, Houston Lighting & Power Company and other customers.

In-Service Date: June 2000.

Issued in Washington, DC, January 13, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–1217 Filed 1–19–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–143–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

January 13, 1999.

Take notice that on January 7, 1999, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed a prior notice request with the Commission in Docket No. CP99–143–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate a delivery point in Cibola County, New Mexico, originally installed under Section 311 of the Natural Gas Policy Act of 1978, as a jurisdictional facility under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

El Paso proposes to operate the Colorado Greenhouse delivery point as a delivery point for natural gas transportation services under Subpart G of Part 284 of the Commission's Regulations. El Paso states that it placed the delivery point in service for transportation services under Subpart B of Part 284 of the Regulations on December 4, 1998, to serve Colorado Greenhouse Holdings (Colorado Greenhouse), a subsidiary of Colorado Greenhouse, on behalf of Westar Gas Transmission Company, an intrastate pipeline. El Paso further states that it would deliver up to 1,700 McF of natural gas per peak day and up to 434,000 McF of natural gas yearly on a firm basis to satisfy the fuel requirements for the greenhouse boilers. El Paso states that the Colorado Greenhouse delivery point consists of one 2-inch tap and value assembly, with appurtenances and were constructed at a cost of $44,400 for which Colorado Greenhouse reimbursed El Paso.

El Paso states that it has sufficient capacity to accomplish the deliveries of the requested gas volumes without detriment or disadvantage to El Paso's other existing customers and that El Paso's FERC Gas Tariff does prohibit the construction of new delivery points.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1164 Filed 1–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–57–000, et al.]

New York State Electric & Gas Corporation, et al.; Electric Rate and Corporate Regulation Filings

January 12, 1999.

Take notice that the following filings have been made with the Commission:

1. New York State Electric & Gas Corporation, NGE Generation, Inc., AES NY, L.L.C.

[Docket Nos. EC98–57–000 and ER98–4406–000]

Take notice that on January 4, 1999, New York State Electric & Gas Corporation, NGE Generation, Inc., and AES NY, L.L.C. tendered for filing a supplement to their application under Section 203 of the Federal Power Act for approval to transfer certain jurisdictional facilities associated with the sale of six coal-fired plants located in New York State and currently owned by NGE Generation, Inc. The supplement addresses ministerial/clerical changes only.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Montaup Electric Company

[Docket No. EC99–24–000]

Take notice that on January 7, 1999, Montaup Electric Company (Montaup)

submitted for filing, pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations, an application for the proposed sale by Montaup of facilities and other assets consisting of its interests in the Seabrook Station located in Seabrook, New Hampshire to Little Bay Power Corporation, a wholly owned subsidiary of Great Bay Power Corporation, pursuant to an agreement dated June 24, 1998.

Copies of the filing have been served on the regulatory agencies of the Commonwealth of Massachusetts and the States of Rhode Island and Connecticut.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc., as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc.

[Docket Nos. ER99–231–000, ER99–232–000, ER99–487–000, (Not consolidated)]

Take notice that on January 7, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing an amended filing in the above-captioned proceedings regarding six Letter Agreements between Entergy Services, Inc. and Sam Rayburn G&T Electric Cooperative, Inc. for construction to the Long John, Peach Creek, Hightower, Onalaska and Bold Springs Substations.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company Of New York, Inc.

[Docket No. ER99–1189–000]

Take notice that on January 7, 1999 Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for NGE Generation, Inc., to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon NGE Generation, Inc.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–1190–000]

Take notice that on January 7, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for Central Hudson Enterprises Corporation to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon Central Hudson Enterprises Corporation.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. PECO Energy Company

[Docket No. ER99–1191–000]

Take notice that on January 7, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. 792 et seq., an Agreement dated October 14, 1998 with Delmarva Power & Light Company (DELMARVA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to DELMARVA and to the Pennsylvania Public Utility Commission.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. PECO Energy Company

[Docket No. ER99–1192–000]

Take notice that on January 7, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated December 8, 1998 with DukeSolutions, Inc. (DUKESOLUTIONS), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds DUKESOLUTIONS as a customer under the Tariff.

PECO requests an effective date of January 6, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to DUKESOLUTIONS and to the Pennsylvania Public Utility Commission.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER99–1193–000]

Take notice that on January 7, 1999, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and West Penn Power d/b/a Allegheny Energy (West Penn).

Cinergy and West Penn are requesting an effective date of December 14, 1998.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER99–1194–000]

Take notice that on January 7, 1999, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and West Penn Power d/b/a Allegheny Energy (West Penn).

Cinergy and West Penn are requesting an effective date of December 14, 1998.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. PP&L, Inc.

[Docket No. ER99–1195–000]

Take notice that on January 7, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated December 15, 1998, with Williams Energy Marketing & Trading Company (WEMTC), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds WEMTC as an eligible customer under the Tariff.

PP&L requests an effective date of January 7, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to WEMTC and to the Pennsylvania Public Utility Commission.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Indiana Gas and Electric Company

[Docket No. ER99–1196–000]

Take notice that on January 7, 1999, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing one (1) service agreement for firm transmission service under Part II of its Transmission Services Tariff with PG&E Energy Trading-Power, L.P.

Copies of the filing were served upon each of the parties to each service agreement.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Tampa Electric Company

[Docket No. ER99–1200–000]

Take notice that on January 7, 1999, Tampa Electric Company (Tampa Electric) tendered for filing an amendment to its contract with Tenaska Power Services Co. (Tenaska) for the purchase and sale of power and energy.

Tampa Electric proposes an effective date of January 8, 1999, for the contract amendment, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Tenaska and the Florida Public Service Commission.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Tampa Electric Company

[Docket No. ER99–1201–000]

Take notice that on January 7, 1999, Tampa Electric Company (Tampa Electric) tendered for filing an amendment to its contract with Virginia Electric and Power Company (VEPCO) for the purchase and sale of power and energy.

Tampa Electric proposes an effective date of January 8, 1999, for the contract amendment, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on VEPCO and the Florida Public Service Commission.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Houston Lighting & Power Company

[Docket No. ER99–1202–000]

Take notice that on January 7, 1999, Houston Lighting & Power Company (HL&P) tendered for filing an executed transmission service agreement (TSA) with Sonat Power Marketing L.P. (Sonat) for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections.

HL&P has requested an effective date of January 7, 1999.

Copies of the filing were served on Sonat and the Public Utility Commission of Texas.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Ameren Services Company as agent for Central Illinois Public Service Company

[Docket No. ER99–1203–000]

Take notice that on January 7, 1999, Ameren Services Company (Ameren), as agent for Central Illinois Public Service Company (CIPS) tendered for filing a proposed service agreement under the Market Based Rate Power Sales Tariff of the Ameren Companies for the sale of power by CIPS to Union Electric Company.

CIPS has asked that the revision be permitted to become effective on March 9, 1999.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Mobile Energy Services Company

[Docket No. ER99–1204–000]

Take notice that on January 7, 1999, Mobile Energy Services Company, L.L.C. (Mobile Energy) filed an application requesting acceptance of its proposed Market Rate Tariff, waiver of certain regulations, and blanket approvals. The proposed tariff would authorize Mobile Energy to engage in wholesale sales of capacity and energy to eligible customers at market rates.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Niagara Mohawk Power Corporation

[Docket No. ER99–1205–000]

Take notice that on January 7, 1999, Niagara Mohawk Power Corporation tendered for filing a Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff executed by PECO Energy Company—Power Team. This Service Agreement implements the terms of the proposed Tariff, which establishes a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon PECO Energy Company and the New York Public Service Commission.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Niagara Mohawk Power Corporation

[Docket No. ER99–1206–000]

Take notice that on January 17, 1999, Niagara Mohawk Power Corporation tendered for filing a Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff executed by Central Hudson Gas & Electric. This Service Agreement implements the terms of the proposed Tariff, which establishes a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Central Hudson Gas & Electric and the New York Public Service Commission.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Idaho Power Company

[Docket No. ER99–1207–000]

Take notice that on January 7, 1999, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and Colorado River Commission of Nevada.

IPC requests an effective date of December 21, 1998.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Idaho Power Company

[Docket No. ER99–1208–000]

Take notice that on January 7, 1999, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission Service Agreements for: (1) Non-Firm Point-to-Point Transmission Service between Idaho Power Company, TransAlta Energy Marketing (U.S.) Inc. and Public Service Company of New Mexico; and (2) Firm Point-to-Point Transmission Service between Idaho Power Company and Public Service Company of New Mexico. Both are under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff.

IPC requests an effective date of December 30, 1998 for the first agreement and January 4, 1999 for the second agreement.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Rochester Gas and Electric Corporation

[Docket No. ER99–1209–000]

Take notice that on January 7, 1999, Rochester Gas and Electric Corporation

(RG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission), an executed Service Agreement between RG&E and FPL Energy Services, Inc. (Customer) for service pursuant to RG&E's Market-Based Power Sales Tariff and its retail access program.

RG&E requests waiver of the Commission's notice requirements for good cause shown and an effective date of December 8, 1998.

A copy of this Application has been served on the Customer and the New York Public Service Commission.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Rochester Gas and Electric Corporation

[Docket No. ER99–1210–000]

Take notice that on January 7, 1999, Rochester Gas and Electric Corporation (RG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Service Agreement between RG&E and FPL Energy Services, Inc. (Customer) for service pursuant to RG&E's Market-Based Power Sales Tariff and its retail access pilot program.

RG&E requests waiver of the Commission's notice requirements for good cause shown and an effective date of December 8, 1998.

A copy of this Application has been served on the New York Public Service Commission and the Customer.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Florida Power Corporation

[Docket No. ER99–1211–000]

Take notice that on January 6, 1999, Florida Power Corporation tendered for filing changes in the rates for transmission service and ancillary services in compliance with the Settlement Agreement in Docket No. ER97–4573–000. Florida Power states that it is modifying its charges for service to reflect the exclusion of the costs of generator step-up transformers (GSUs) from the rates for transmission service and the inclusion of the costs of the GSUs in the development of charges for certain ancillary services, consistent with the settlement agreement.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. MidCon Power Services Corp.

[Docket No. ER99–1212–000]

Take notice that on January 7, 1999, MidCon Power Services Corp. (MPS), a marketer of electric power, filed a notice of cancellation of its Rate Schedule FERC No. 1, pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 824d (1994), and Section 35.15 of the Commission's Regulations (18 CFR 35.15).

MPS proposes for its cancellation to be effective on March 8, 1999.

Comment date: January 27, 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.

David P. Boergers,

Secretary.

[FR Doc. 99–1214 Filed 1–19–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM93–20–000]

Public Access to Information and Electronic Filing; Notice of Intent To Provide Upgraded Windows Software for FERC Form No. 1: Annual Report of Major Electric Utilities, Licensees and Others

January 13, 1999.

The Federal Energy Regulatory Commission hereby gives notice that it is updating the software that it provides public utilities, licensees and others to complete the FERC Form No. 1. The new software will be available by the end of January, 1999. The software will be used for the report due on or before April 30, 1999, for the year ending December 31, 1998. The Commission has not modified the form itself and the data requirements have not changed.

The upgraded software is a Windows 95/98/NT version which replaces the DOS version previously used. The submission format has been changed to facilitate data entry and data base loading, improve data integrity, and provide Year 2000 compliance. The current DOS version of the software is not compatible with the new Windows version and can no longer be used.

Software distribution, set-up, updates, and submission of the electronic filing will be via the Internet. The Commission will also provide access to the Form No. 1 filings for viewing and printing via the Internet. In order to disseminate information on the new software and to keep interested parties aware of development status, we're creating a point-of-contact list for companies that file FERC Form No. 1, other federal agencies, and state commissions. Persons who submit FERC Form No. 1, either for their company, or as an agent for another company, must register to get an Access Number(s) in order to file using the new software.

Federal and state agencies and others who access or use the data do not need an Access Number, but may complete the same form to provide point of contact information (name, company/agency, address, phone number, and e-mail address).

The information may be submitted interactively via the Internet by accessing a form on the Commission's web site at http://rimsweb1.ferc.fed.us/form1. If you provide the information via the web site, you do not need to file a paper copy of the point of contact information. If you have questions about the new software, please e-mail them to Bolton Pierce at bpierce@ferc.fed.us. Respondents without readily available access to the Internet can call James Baird at (202) 219–2613 for further information.

The new software provides enhancements which resolve most user complaints about the DOS software, including:

Imports prior-year data: Allows respondents to retrieve ending balances from previous year's filing as beginning balances for the current year by page or for a range of rows within a page. The prior year's data are to be imported from a database maintained by FERC and placed in the proper field even if a row(s) was added or deleted from a page since the last filing.

Copy/cut and paste text: respondents can import ASCII from other sources to a text entry on the form or to a footnote.

Save work: respondents can save work in progress for update later or for higher-level review prior to submission.

Work on different pages concurrently: different users within the respondent may complete or revise multiple pages concurrently; other users have read-only

access to the last saved version of an ''open'' page.

Simplified footnote entry: respondents can add footnotes via a ''right-click'' menu; system denotes footnoted fields by a yellow background and retains applicable footnotes when importing prior year data.

Auto-calculation: software automatically enters ''totals'' and other calculated entries.

Validation checks: respondents can run a validation report that shows any differences for fields within a page or entries on different pages that should agree.

Status reports: respondents can run a report to determine if data have been entered for particular pages.

For the filing due April 30, 1999, respondents still have to submit an original and six conformed paper copies of the submission, but do not have to submit the two diskettes referenced in the Form No. 1 filing instructions.

Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues in this notice.

The original and 14 copies of such comments must be received by the Commission before 5:00 p.m. February 19, 1999. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 and should refer to Docket No. RM93–20–000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WorkPerfect 6.1 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM93–20–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be sent to ''Comment.rm@ferc.fed.us'' in the following format. On the subject line, specify Docket No. RM93–20–000. In the body of the E-Mail message, include the name of the filing entity, the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington, D.C. 20426, during regular business hours. Additionally, comments may be viewed and printed remotely via the Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 99–1169 Filed 1–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing; Application Ready for Environmental Analysis; and Soliciting Motions To Intervene, Protests, Comments, Final Terms and Conditions, Recommendations and Prescriptions

January 13, 1999.

Take notice that the following hydroelectric application, including applicant prepared draft environmental assessment, has been filed with the Commission and is available for public inspection:

a. Type of Application: New Major License.

b. Project No.: 420–009.

c. Date filed: June 30, 1998.

d. Applicant: City of Ketchikan, Ketchikan Public Utilities.

e. Name of Project: Ketchikan Lakes Hydroelectric Project.

f. Location: On Ketchikan Lakes and Ketchikan Creek in Ketchikan Gateway Borough and the City of Ketchikan, Alaska. The project is partially located within Tongass National Forest.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Mr. Ron Settje, Administrative Manager, Ketchikan Public Utilities, 2930 Tongass Avenue, Ketchikan, AK 99901, (907) 225–1000 (ext. 388).

i. FERC Contact: Any questions on this notice should be addressed to Charles Hall, E-mail address, charles.hall@ferc.fed.us, or telephone 202–219–2853.

j. Deadline for filing motions to intervene and protest; comments, recommendations, terms and conditions; and prescriptions: 60 days from the issuance date of this notice. 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 document on that resource agency.

k. Status of environmental analysis: This application has been accepted for filing and is ready for environmental analysis at this time.

l. Description of the Project: The project consists of the following existing facilities: (1) a 1,163 foot-long, 30-foot-high rock-fill dam on Ketchikan Lakes with a spillway crest elevation of 348 feet mean sea level (msl); (2) the Ketchikan Lakes with a surface area of 632 acres and a useable storage volume of 13,800 acre-feet; (3) Fawn Lake, a 3.1 acre forebay impoundment with a useable storage volume of 27 acre-feet; (4) a 30-foot-long, 12-foot-high concrete diversion dam with no useable storage on Granite Creek; (5) over 10,000 feet of interconnecting tunnels and pipelines; (6) a powerhouse containing four turbine-generator units with a total installed capacity of 4,200 kilowatts; and (7) appurtenant facilities.

m. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the 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. This notice also consists of the following standard paragraphs: B1 and D6.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

D6. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1165 Filed 1–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: New Major License.

b. Project No.: 2659–011.

c. Date filed: February 25, 1998.

d. Applicant: PacifiCorp.

e. Name of Project: Powerdale Hydroelectric Project.

f. Location: On the Hood River, near the town of Hood River, in Hood River County, Oregon. The project boundary does not occupy any federal lands of the United States.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)—825(r).

h. Applicant Contact: Randy Landolt, Director, Hydro Resources, PacifiCorp, 825 N.E. Multnomah, Portland, OR 97232, (503) 813–5000.

i. FERC Contact: Any questions on this notice should be addressed to Bob Easton, E-mail address robert.easton@ferc.fed.us, or telephone 202–219–2782.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 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 document on that resource agency.

k. Status of environmental analysis: This application has been accepted for filing and is ready for environmental analysis at this time.

l. Description of the Project: The existing project consists of: (1) A 206-foot-long and 10-foot-high diversion dam; (2) an 80-foot by 60-foot concrete intake structure; (3) an approximately 16,000-foot-long water conveyance system; (4) an 86-foot-wide by 51-foot-long concrete powerhouse; (5) one turbine generator unit with a rated capacity of 6.35 megawatts; (6) a 135-foot-long rock-lined tailrace; and (7) other appurtenances.

m. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the 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. This notice also consists of the following standard paragraph: D10.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'',

''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1166 Filed 1–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meeting and Soliciting Scoping Comments for an Applicant Prepared Environmental Assessment Using the Alternative Licensing Process

January 13, 1999.

a. Type of Application: Alternative Licensing Process.

b. Project No.: 2852.

c. Applicant: New York State Electric & Gas Corporation.

d. Name of Project: Keuka Hydroelectric Project.

e. Location: Between the Waneta and Lamoka Lakes impoundment and Keuka Lake in the Counties of Schuyler and Steuben, New York.

f. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

g. Applicant Contact: Carol Howland, New York State Electric & Gas Corp., Corporate Dr., Kirkwood Ind. Park, P.O. Box 5224, Binghamton, NY 13902–5224, (607) 762–8881.

h. FERC Contact: Any questions on this notice should be addressed to William Guey-Lee, E-mail address william.gueylee@ferc.fed.us, or telephone (202) 219–2808; or John Costello, E-mail john.costello@ferc.fed.us, or telephone (202) 219–2914.

i. Deadline for filing scoping comments: April 19, 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 document on that resource agency.

j. Description of the Project: The project consists of: (1) The Bradford Dam with an overall length of about 580 feet and crest elevation of 1,099 feet msl, consisting of a concrete section, earthen embankments, outlet works, and spillway; (2) Waneta and Lamoka Lakes with surface areas of 781 acres and 826 acres at elevation 1,099 feet msl, and total storage of 27,200 acre-feet; (3) a 9,300-foot-long power canal; (4) a twin gated concrete box culvert, known as Wayne Gates, measuring 8 feet high by 6 feet wide; (5) a 70-foot-long by 16-foot-high headgate structure; (6) a 3,450-foot-long, 4-foot-diameter concrete penstock; (7) an 835-foot-long, 42-inch-diameter steel penstock; (8) a powerhouse with one 2.0-MW generating unit; (9) and appurtenant equipment connecting the project generation to a 34.5 kV subtransmission system.

k. Scoping Process:

New York State Electric & Gas Corporation (NYSEG) intends to utilize the Federal Energy Regulatory Commission's (Commission) alternative licensing process (ALP). Under the ALP, NYSEG will prepare an Applicant Prepared Environmental Assessment (APEA) and license application for the Keuka Hydroelectric Project.

On November 27,1998, NYSEG made a request to use the ALP, and on December 8, 1998, notice of the ALP request was issued by the Commission.

NYSEG expects to file with the Commission, the APEA and the license application for the Keuka Hydroelectric Project by February 2001.

The purpose of this notice is to inform you of the opportunity to participate in the upcoming scoping meetings identified below, and to solicit your scoping comments.

Scoping Meetings

NYSEG and the Commission staff will hold two scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the APEA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the environmental issues that should be analyzed in the APEA. The times and locations of these meetings are as follows:

Daytime Meeting

Tuesday, February 16, 1999, 1 p.m. to 3 p.m., Town Hall, Wayne, New York.

Evening Meeting

Tuesday, February 16, 1999, 7 p.m. to 9 p.m., Town Hall, Wayne, New York.

To help focus discussions, SDI was mailed in December 1998, outlining the subject areas to be addressed in the APEA to the parties on the mailing list. Copies of the SDI also will be available at the scoping meetings.

Based on all written comments received, a Scoping Document II (SDII) may be issued. SDII will include a revised list of issues, based on the scoping sessions.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the APEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the APEA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the APEA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the

meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental, expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the APEA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1167 Filed 1–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11643–000.

c. Date Filed: December 3, 1998.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Muskingum L&D 11 Hydroelectric Project.

f. Location: On the Muskingum River at river mile 85.9 in Muskingum County, Ohio.

g. Filed Pursuant to: Federal Power Act, 15 U.S.C. 791(a)–825(r).

h. Applicant Contact: Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. Deadline for filing comments, motions to intervene, and protests: 60 days from the issuance date of this notice.

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 Procedures require all intervenors filing documents with the Commission to serve a copy of the 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 affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of the Project: The project would consist of the following facilities: (1) the existing 15.3-foot-high, 340-foot-long Muskingum Lock and Dam No. 11; (2) an existing 352-acre reservoir at normal pool elevation of 690.34 feet msl; (3) a new powerhouse on the tailrace side of the dam with a total installed capacity of 2,400 kW; (4) a new 12.7 or 14.7 kV transmission line; and (5) other appurtenances. The lock and dam is owned by the Ohio Department of Natural Resources, Division of Parks and Recreation.

Applicant estimates that the average annual generation would be 15,000 MWh and that the cost of the studies under the permit would be $1,750,000.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the 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.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. 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.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the

Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1168 Filed 1–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11644–000.

c. Date Filed: December 3, 1998.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Muskingum L&D #3 Hydroelectric Project.

f. Location: On the Muskingum River at river mile 14.2 in Washington, County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. Deadline for filing comments, motions to intervene, and protests: 60 days from the issuance date of this notice.

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 Procedures require all intervenors filing documents with the Commission to serve a copy of the 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 affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of the Project: The project would consist of the following facilities: (1) The existing 17.6-foot-high, 840-foot-long Muskingum Lock and Dam No. 3; (2) an existing 628-acre reservoir at normal pool elevation of 607.64 feet msl; (3) a new powerhouse on the tailrace side of the dam with a total installed capacity of 3,000 kW; (4) a new 12.7 or 14.7 kV transmission line; and (5) other appurtenances. The lock and dam is owned by the Ohio Department of Natural Resources, Division of Parks and Recreation.

Applicant estimates that the average annual generation would be 20,000 MWh and that the cost of the studies under the permit would be $1,250,000.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the 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.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. 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.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division

of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1170 Filed 1–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11647–000.

c. Date Filed: December 10, 1998.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Muskingum L&D #4 Hydroelectric Project.

f. Location: On the Muskingum River at river mile 25.1 in Washington County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. Deadline for filing comments, motions to intervene, and protests: 60 days from the issuance date of this notice.

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 Procedures require all intervenors filing documents with the Commission to serve a copy of the 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 affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of the Project: The project would consist of the following facilities: (1) the existing 17-foot-high, 535-foot-long Muskingum Lock and Dam No. 4; (2) an existing 490-acre reservoir at normal pool elevation of 616.96 feet msl; (3) a new powerhouse on the tailrace side of the dam with a total installed capacity of 1,800 kW; (4) a new 12.7 or 14.7 kV transmission line; and (5) other appurtenances. The lock and dam is owned by the Ohio Department of Natural Resources, Division of Parks and Recreation.

Applicant estimates that the average annual generation would be 11,000 MWh and that the cost of the studies under the permit would be $1,000,000.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the 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.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development application desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. 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.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original

and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1171 Filed 1–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11648–000.

c. Date Filed: December 10, 1998.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Muskingum L&D # Hydroelectric Project.

f. Location: On the Muskingum River at river mile 40.2 in Morgan County, Ohio.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. Deadline for filing comments, motions to intervene, and protests: 60 days from the issuance date of this notice.

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 Procedures require all intervenors filing documents with the Commission to serve a copy of the 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 affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of the Project: The project would consist of the following facilities: (1) the existing 20-foot-high, 482-foot-long Muskingum Lock and Dam No. 6: (2) an existing 476-acre reservoir at normal pool elevation of 634.05 feet msl; (3) a new powerhouse on the tailrace side of the dam with a total installed capacity of 3,500 kW; (4) a new 12.7 or 14.7 kV transmission line; and (5) other appurtenances. The lock and dam is owned by the Ohio Department of Natural Resources, Division of Parks and Recreation.

Applicant estimates that the average annual generation would be 22,000 MWh and that the cost of the studies under the permit would be $1,000,000.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the 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.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. 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.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'',

''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D. 2 Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1172 Filed 1–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Temporary Variance

January 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Request for Temporary Variance.

b. Project No.: 2210–019.

c. Date Filed: January 8, 1999.

d. Applicant: Appalachian Power Company.

e. Name of Project: Smith Mountain Project.

f. Location: On the Roanoke River in Bedford, Franklin, Campbell, Pittsylvania and Roanoke Counties, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Frank M. Simms, American Electric Power, 1 Riverside Plaza, Columbus, OH 43215–2372, (509) 754–3451.

i. FERC Contact: Robert J. Fletcher, (202) 219–1206.

j. Comment Date: January 25, 1999.

k. Description of Request: On December 17, 1998, the Commission approved an emergency 45-day variance (which will expire on January 31, 1999) to reduce the minimum flow requirements of article 29 during the drought conditions occurring at the Smith Mountain Project. While forecasts are for a return to normal rainfall patterns, the continuing effects of the drought remain a concern. Therefore, another temporary variance is being requested. The licensee is requesting that the term of this second temporary variance be extended until such time that the normal operating level for the Smith Mountain Development (elevation 795 feet NGVD) is obtained and the discharges required under article 29 can be maintained. The determination of the actual time to terminate the variance would be done in consultation with the resource agencies and the downstream stakeholders. As an alternative, the licensee requests that the termination date, at a minimum be extended for an additional 45 days, or March 17, 1999.

l. This notice also consists 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 Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. 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'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1173 Filed 1–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM99–2–000]

Regional Transmission Organizations; Notice of Dates and Locations for Consultation Sessions With State Commissions

January 13, 1999.

On November 24, 1998, the Commission issued notice in this docket if its intent to consult with State commissions pursuant to section 202(a) of the Federal Power Act (FPA), 16 U.S.C. 824a(a) 1994).[1] The Commission stated that the purpose of this initial consultation is to afford State commissions a reasonable opportunity to present their views and recommendations with respect to the potential implementation of section 202(a) as part of a broader initiative involving the establishment of regional transmission organizations (RTOs).

The Commission has now identified three dates and locations for the initial consultations announced in the November 24 notice. The consultation sessions will be:

- February 11, 1999 in St. Louis, Missouri.
- February 12, 1999 in Las Vegas, Nevada.
- February 17, 1999 in Washington, DC.

Any State commission that wishes to participate in one of the consultation sessions should advise the Commission, by no later than January 28, 1999, as to which one of the sessions it wishes to send a representative(s). It is the Commission's preference that State commissions participate in the session

[1] *See* Notice of Intent to Consult Under Section 202(a), 63 FR 66,158, December 1, 1998.

nearest their geographic location. The contact person at the Commission for this purpose is James Apperson, (202) 208–0004. The Commission will issue another notice prior to the consultation sessions with further details about the participants and format of the sessions.

As we stated in our November 24 notice, after these initial consultation sessions, there will be additional opportunities for consultation during which the Commission will solicit and consider the views of the States, and others, in a rulemaking or other generic proceeding on RTOs.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1215 Filed 1–19–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00567; FRL–6047–5]

Renewal of Pesticide Information Collection Activities; Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides; Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment and information on the following Information Collection Request (ICR): ''Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides'' [EPA ICR No. 0161.08, OMB No. 2070–0027]. This ICR involves a collection activity that is currently approved and scheduled to expire on March 31, 1999. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments must be received on or before March 22, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of this document.

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Office of Pesticide Programs, Mail Code (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 703–305–5454, fax: 703–305–5884, e-mail: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply To Me?

You may be potentially affected by this notice if you manufacture, reformulate, or repackage pesticide products for export that are not registered (see section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or sold (see section 6(a)(1) of FIFRA) in the United States. You must submit and obtain a signed statement from the foreign purchaser acknowledging that the purchaser is aware that the pesticide is not registered for use in the United States and cannot be sold in the United States. A copy of this statement must be transmitted to an appropriate official of the government in the importing country and a copy must be submitted to EPA within 7 days of the export shipment.

Potentially affected categories and entities may include, but are not limited to the following:

Category	NAICS Code	SIC Codes	Examples of Potentially Affected Entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Exporters of pesticide products Reformulators for export of unregistered pesticides Repackagers for export of unregistered pesticides

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in the table above or refer to section 17 of FIFRA. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. Electronic Availability

Electronic copies of this document and the ICR are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/). You can easily follow the menu to find this **Federal Register** notice using the publication date or the **Federal Register** citation for this notice. Although a copy of the ICR is posted with the **Federal Register** notice, you can also access a copy of the ICR by going directly to http://www.epa.gov/icr/. You can then easily follow the menu to locate this ICR by the EPA ICR number, the OMB control number, or the title of the ICR.

B. Fax-on-Demand

Using a faxphone call 202–401–0527 and select item 6058 for a copy of the ICR.

C. In Person or By Phone

If you have any questions or need additional information about this notice or the ICR referenced, please contact the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

In addition, the official record for this notice, including the public version, has been established for this notice under docket control number OPP–00567 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the Office of Pesticide Programs (OPP) Public Docket, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through

Friday, excluding legal holidays. The OPP Public Docket telephone number is 703–305–5805.

III. How Can I Respond To This Notice?

A. How and To Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number, OPP–00567, in your correspondence.

1. *By mail.* Submit written comments to: OPP Public Docket, 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.

2. *In person or by courier.* Deliver written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: 703–305–5805.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00567. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit To the Agency?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Tell us what you support, as well as what you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the ''Subject'' heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the notice, along with the name, date, and **Federal Register** citation, or by using the appropriate EPA or OMB ICR number.

IV. What Information Collection Activity or ICR Does This Notice Apply To?

EPA is seeking comments on the following ICR:

Title: Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides.

ICR numbers: EPA ICR No. 0161.08, OMB No. 2070–0027.

ICR status: This ICR is currently scheduled to expire on March 31, 1999. 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 information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: EPA is responsible for the regulation of pesticides as mandated by FIFRA. However, FIFRA section 17 requires an exporter of any pesticide not registered under FIFRA section 3 or sold under FIFRA section 6(a)(1) to obtain a signed statement from the foreign purchaser acknowledging that the purchaser is aware that the pesticide is not registered for use in the United States and cannot be sold in the United States. A copy of this statement must be transmitted to an appropriate official of the government in the importing country. The purpose of the purchaser acknowledgment statement requirement is to notify the government of the importing country that a pesticide judged hazardous to human health or the environment, or for which no such hazard assessment has been made, will be imported into that country.

The typical exporter must ascertain the registration status of the product that is being produced for export. After determining that an exported product is not registered in the United States, the exporter must obtain a statement from the foreign purchaser of the pesticide acknowledging the name and address of the exporter and the purchaser, the name of the product and the active ingredient, a statement that the foreign purchaser is aware that the product is not registered in the United States and cannot be sold for use in the United States, and if known, the final destination of the shipment and the signature of the foreign purchaser. This will normally require that the exporter provide the purchaser with a prepared statement for signature or with instructions that are adequate to ensure that the purchaser can prepare the statement.

There are no required forms for the Foreign Purchaser Acknowledgment Statement (FPAS). In preparing the statement, the exporter is free to format

the document in any manner as long as it includes all the required information. The exporter must obtain the signed statement from the foreign purchaser before the pesticide can be shipped.

If the exporter anticipates making more than one shipment of the product to the purchaser in a given year, the exporter may elect to notify EPA only at the time of the first shipment, and to choose to comply with the annual reporting option, which requires the submission of a annual summary of shipments of pesticides shipped to each purchaser.

The exporter is required to send a copy of the purchaser acknowledgment statement to EPA within 7 days of having shipped the pesticide, along with a signed statement that the shipment did not occur prior to receipt of the purchaser acknowledgment statement. In addition, if the exporter chooses to comply with the annual reporting option, he or she must include a statement that the FPAS is for the first shipment of a pesticide to a particular purchaser in a specific country and that the exporter will comply with the annual summary reporting option. Where an exporter chooses to comply with the annual summary reporting option, a summary must be sent after the end of the calendar year which lists all shipments of a particular pesticide shipped to a particular foreign purchaser.

It is not required for the statement to be shipped in time for EPA to notify the importing country prior to arrival of the pesticide.

Submission of a purchaser acknowledgment statement does not require the maintenance of any records unique to this section. All records needed to ensure and verify compliance with this requirement are required under section 8 of FIFRA.

A. Exemption of Research and Development Pesticides

Persons claiming an exemption from the FPAS requirement for the export of research and development products must maintain records which support the R D claim for each shipment so claimed. In its policy, EPA has limited research claims only to shipments where it is unlikely that the quantity shipped could have a significant commercial use. Thus, the records must be sufficient to support the claim that the quantity shipped is only sufficient for use within the overall application constraints (e.g., less than 10 acres of terrestrial use) described in the policy.

When a person exports a pesticide for research purposes, that person may support the claim of research intent/purpose by first securing confirmatory documentation that the recipient/purchaser understands that the exportation is for testing purposes only within the limits of the policy. This can be either in the form of communications received from the purchaser before or on the date of export or in the form of instructions sent to the purchaser before or on the date of export.

Alternatively, the exporter may retain records which indicate that the quantity shipped is compatible with the claim that the amount sent is not enough to be used in applications exceeding those provided as exempt under the policy. Such information could include results of tests, citations of literature, or other information which supports the claim.

At the time of shipment, the exporter must produce a record of the identity, amount, and date that the pesticide was shipped, the destination and purchaser, and the intended research use. Most of this information is provided in copies of or original invoice/shipping records normally maintained for such products. Note that records of shipment of pesticides are already required to be maintained under FIFRA section 8. Other documentation supporting research use is generally available as typical business practice and should not impose additional burden to maintain with shipping records.

The records of shipment and confirmation of research intent must be maintained and made available for inspection and copying by EPA for 2 years following the exportation of the pesticide.

B. Export Labeling

Every exported pesticide, device and active ingredient used in producing a pesticide must bear a label or labeling which meets the requirements of FIFRA section 17(a)(1). This requirement applies to all such pesticides, devices, or active ingredients, regardless of whether the export is for commercial or research and development use.

Compliance with the label requirements can be met by labeling either individual containers, or using supplemental labeling, or through a combination of the two. To ease the compliance burden of this requirement, EPA allows you to use a supplemental label as an option. This option allows the exporter to attach a paper with the labeling information to the shipping container, rather than prepare individual product labels.

Exporters are also required to keep records of the product labeling used, including the EPA registered labeling, any foreign labeling on or attached to the product when shipped, and as applicable, any supplemental labeling used. The records shall be maintained in a manner that shows exactly which labels and labeling accompanied each shipment of a pesticide product to a foreign country.

V. What are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, ''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. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 6 hours per response, and the following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Exporters of unregistered pesticides.

Estimated total number of potential respondents: 2,500.

Frequency of response: As determined by exporter.

Estimated total annual burden hours: 24,753.

Estimated total annual burden costs: $1,952,960.

VI. Are There Changes in the Estimates From the Last Approval?

There was a slight increase in the respondent total since the last 1995 ICR, from 2000 to 2500. Labor costs have been adjusted to reflect the current labor rates. EPA is particularly interested in receiving comments on these changes.

VII. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the

opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

List of Subjects

Environmental protection, Information collection requests.

Dated: January 6, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–1026 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00566; FRL–6046–5]

Renewal of Pesticide Information Collection Activities; Notice of Pesticide Registration By States To Meet A Special Local Need; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that the Environmental Protection Agency (EPA) is seeking public comment on the following Information Collection Request (ICR): ''Notice of Pesticide Registration by States to Meet a Special Local Need, Section 24(c)'' (EPA ICR No. 0595.07; OMB No. 2070–0055). This ICR involves a collection activity that is currently approved and scheduled to expire on March 31, 1999. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments must be received on or before March 22, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of this document.

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Office of Pesticide Programs, Mail Code (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 703–305–5454, fax: 703–305–5884, e-mail: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply To Me?

This notice applies to any state exercising authority to register additional uses of federally registered pesticides for distribution and use within the state to meet a special local need pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 24(c). The term ''state'' includes a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands and American Samoa.

Potentially affected categories include:

Category	NAICS Code	SIC Code	Example of Potentially Affected Entity
State agencies/governments	923120	9431	State Agencies issuing state registration for additional uses of federally registered pesticides to be used within the state.

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. Electronic Availability

Electronic copies of this document and the ICR are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/). You can easily follow the menu to find this **Federal Register** notice using the publication date or the **Federal Register** citation for this notice. Although a copy of the ICR is posted with the **Federal Register** notice, you can also access a copy of the ICR by going directly to http://www.epa.gov/icr/. You can then easily follow the menu to locate this ICR by the EPA ICR number, the OMB control number, or the title of the ICR.

B. Fax-on-Demand

Using a faxphone call 202–401–0527 and select item 6057 for a copy of the ICR.

C. In Person or By Phone

If you have any questions or need additional information about this notice or the ICR referenced, please contact the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

In addition, the official record for this notice, including the public version, has been established for this notice under docket control number OPP–00566 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the Office of Pesticide Programs (OPP) Public Docket, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OPP Public Docket telephone number is 703–305–5805.

III. How Can I Respond To This Notice?

A. How and To Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number, OPP–00566, in your correspondence.

1. *By mail.* Submit written comments to: OPP Public Docket, 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.

2. *In person or by courier.* Deliver written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: 703–305–5805.

3. *Electronically.* Submit your comments and/or data electronically by e–mail to: opp-docket@epa.gov. Please note that you should not submit any

information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00566. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit To the Agency?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Tell us what you support, as well as what you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the ''Subject'' heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the notice, along with the name, date, and **Federal Register** citation, or by using the appropriate EPA or OMB ICR number.

IV. What Information Collection Activity or ICR Does This Notice Apply To?

EPA is seeking comments on the following ICR:

Title: Renewal of Pesticide Information Collection Activities; Notice of Pesticide Registration by States to Meet a Special Local Need, Section 24(c).

ICR numbers: EPA ICR No. 0595.07; OMB No. 2070–0055.

ICR status: This ICR is currently scheduled to expire on March 31, 1999. 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 information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: EPA is responsible for the regulation of pesticides as mandated by FIFRA. However, FIFRA section 24(c) also authorizes States to register additional uses of federally registered pesticides for distribution and use within their boarders to meet a special local need (SNL). A state-issued registration under FIFRA section 24(c) is deemed a federal registration for the purposes of the pesticide's use within the state's boundaries. A state must notify EPA, in writing, of any action it takes, i.e., issues, amends, or revokes, a state-registration. To support a special need registration all applicants must submit to the state basic pesticide product information including:

1. Name and address of the applicant and any other person whose name will appear on the labeling or in the directions for use.
2. The name of the pesticide product, and, if the application is for an amendment to a federally registered product, the EPA registration number of that product.
3. A copy of the proposed labeling, including all claims made for the product as well as directions for its use to meet the special local need consisting of:
   i. For a new product, a copy of the complete proposed labeling.
   ii. For an additional use of a federally registered product, a copy of proposed supplemental labeling and a copy of the labeling for the federally registered product.
   iii. If a state classifies for restricted use of a product or use, which is not required to be so classified under FIFRA, supplemental labeling for the product or use containing additional appropriate precautions, and a statement that the product or use is for restricted use within the state may be required.
4. The complete formula of the product, if the application is for a new product registration.
5. Any other information that is required to be reviewed prior to registration.

Once a state issues a SLN registration, the label of the pesticide product must contain:

1. A statement identifying the state where registration is to be valid.
2. The special local need registration number assigned by the state.
3. For an additional use of a federally registered product, the state must require that at the time of sale, labeling from the federally registered product be accompanied by supplemental labeling.

To ensure that the states do not issue any registrations that might conflict with other requirements in FIFRA, or with section 408 or 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) which requires that a tolerance exist for any pesticide used on a food or feed commodity. FIFRA section 24(c)(3) allows the EPA to determine whether or not a state issued registration is inconsistent with the FFDCA or if the use of a pesticide registered by the state

constitutes an imminent hazard. To make such a determination the EPA requires states to submit EPA Form 8570–25:

1. Within 10 working days from the date a state issues, amends or revokes a registration, the state is required to notify the EPA, in writing, of the action. Notification of state registrations, or amendments thereto, shall include:

i. Effective date of the registration or amendment.

ii. Confidential statement of the formula of any new product.

iii. A copy of the draft labeling reviewed and approved by the state, provided that labeling previously approved by the Administrator as part of a federal registration need not be submitted.

2. Notification of state registrations or amendments shall be supplemented by the state sending to the EPA a copy of the final printed labeling approved by the state within 60 days after the effective date of the registration or amendment.

3. Notification of revocation of a registration by a state shall indicate the effective date of revocation and shall state the reasons for revocation.

4. The Agency may request, when appropriate, that a state submit any data used by the state to determine that unreasonable adverse effects will not be caused.

The Agency has 90 days to determine whether the SLN registration should be disapproved. If the SLN is disapproved, the state is responsible for notifying the affected registrant.

V. What are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, ''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. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 12.5 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: States.

Estimated total number of potential respondents: 550.

Frequency of response: Determined by the state.

Estimated total/average number of responses for each respondent: 9.8.

Estimated total annual burden hours: 6,875.

Estimated total annual burden costs: $521,950.

VI. Are There Changes in the Estimates From the Last Approval?

The number of applications made by the states since the renewal of the last ICR has not changed, and no changes have been made in the requirements for section 24(c) applications.

VII. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

List of Subjects

Environmental protection, Information collection requests.

Dated: January 6, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–1028 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6221–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Construction Grants Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Construction Grants Program Information Collection Request, EPA ICR No. 0827.05, OMB Control Number 2040–0027, Expiration: 02/28/99. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 19, 1999.

FOR FURTHER INFORMATION OR A COPY: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0827.05.

SUPPLEMENTARY INFORMATION:

Title: Construction Grants Program Information Collection Request, OMB Control No. 2040–0027, EPA ICR No. 0827.05, expiring 02/28/99. This is a request for an extension of a currently approved collection.

Abstract: The purpose of this ICR is to revise and extend the current clearance for the collection of information under the EPA Construction Grants Program, 40 CFR Part 35, Subpart 1, and Title II of the Clean Water Act (CWA). The program includes reporting requirements for municipalities, Indian Tribes, and States. In this ICR, the reporting requirements for the Construction Grants Program are divided into three categories:

1. Requirements associated with new grant awards;
2. Requirements associated with project completions; and
3. Requirements imposed on States.

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. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on May 1, 1998 (63 FR 24174); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4.7 hours per response. 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 systems 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.

Respondents/Affected Entities: State, Local, or Tribal Governments.

Estimated Number of Respondents: 60.

Frequency of Response: Periodic, variable.

Estimated Total Annual Hour Burden: 76,752 hours.

Estimated Total Annualized Cost Burden: $0.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to the EPA ICR No. and OMB Control No. in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: January 13, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–1257 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00581; FRL–6057–1]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with the following issues:

• Aggregate exposure assessment guidance for combining exposure from multiple sources and routes.

• Review of studies on partitioning, toxicity, and bio-availability of synthetic pyrethroids in sediments.

• Time-sensitive reversibility of Aldicarb-induced Cholinesterase inhibition as a factor in acute dietary risk assessment.

DATES: The meeting will be held on Tuesday and Wednesday, February 23 and 24 from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at: Ballston Holiday Inn, I-66 and Glebe Road, Arlington, VA 22203 The telephone number for the hotel is: (703) 243–9800.

By mail, submit written comments (one original and 20 copies) to: Larry Dorsey, Designated Federal Official for the FIFRA/Scientific Advisory Panel (7101C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by delivery service, bring comments to: Rm. 117S, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit III of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Larry Dorsey, Designated Federal Official, FIFRA Scientific Advisory Panel (7101C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Rm. 117S, Crystal Mall (CM #2), 1921 Jefferson Davis Highway, Arlington, VA 22202; telephone: (703) 305–5369; e-mail: dorsey.larry@epamail.epa.gov.

A meeting agenda is currently available and copies of EPA primary background documents for the meeting will be available no later than February 1, 1999. The meeting agenda and EPA primary background documents may be obtained by contacting the 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; Office location: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202; telephone: (703) 305–5805.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Electronic copies of this document and various support documents are available from the EPA home page at the Federal Register-Environmental Documents entry for this document under ''Laws and Regulations'' (http: // www.epa.gov/fedrgstr/).

The meeting agenda and EPA primary background documents are also available on the EPA web site http:// www.epa.gov/pesticides/SAP/.

II. Procedures for Participation

Any member of the public wishing to submit written comments should contact Larry Dorsey at the address or the phone number given above to confirm that the meeting is still scheduled and that the agenda has not been modified or changed. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advanced written request to the Designated Federal Official, interested persons may be permitted by the Chair of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit 35 copies of the summary information. The Agency encourages that written statements be submitted in advance of the meeting to provide adequate time for the Panel Members to consider and review the comments before the meeting.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

An edited copy of the comment that does not contain the CBI material must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket. All comments and materials received will be made part of the public record and will be considered by the Panel.

III. Public Record and Submission of Electronic Comments

A public record has been established for this notice under docket control number ''OPP–00581'' (including comments and data submitted electronically). A public version of this record, including printed versions of electronic comments, which does not include information claimed as CBI, is available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

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

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

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

Copies of the Panel's report of their recommendations will be available approximately 30 working days after the meeting and may be obtained by contacting the Public Information and Records Integrity Branch, at the address or telephone number given above.

Dated: January 13, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–1247 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6222–3]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the Winter meeting of the Ozone Transport Commission to be held on February 11, 1999.

This meeting is for the Ozone Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on February 11, 1999 from 9:00 a.m. to 3:00 p.m.

PLACE: The meeting will be held at: The Hershey Hotel, Hotel Road, Hershey, PA 17033, (717) 533–2171.

FOR FURTHER INFORMATION CONTACT:

EPA

Susan Studlien, U.S. Environmental Protection Agency—Region I, John F. Kennedy Federal Building, Boston, MA 02203, (617) 918–1510.

FOR DOCUMENTS AND PRESS INQUIRIES CONTACT: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street, N.W., Suite 638, Washington, DC 20001, (202) 508–3840, e-mail: ozone@sso.org, website: http://www.sso.org/otc.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with ground level oxone formation, transport, and control within the transport region.

The purpose of this notice is to announce that this Commission will meet on February 11, 1999. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of the Ozone Transport Commission are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

TYPE OF MEETING: Open.

AGENDA: Copies of the final agenda will be available from Stephanie Cooper of the OTC office (202) 508–3840 (by e-mail: ozone@sso.org or via our website at http://www.sso.org/otc) on Thursday, February 4, 1999. The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, including reduction of motor vehicle and stationary source air pollution. The OTC is also expected to address issues related to the transport of ozone into its region, including actions by EPA under Sections 110 of the Clean Air Act, to evaluate the potential for additional emission reductions through new motor vehicle emission standards, and to discuss market-based programs to reduce pollutants that cause ozone. The OTC will also hold a special election to elect its new Vice Chair.

Dated: January 11, 1999.

John DeVillars,

Regional Administrator, EPA Region I.

[FR Doc. 99–1258 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 6221–5]

Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), will hold its Executive Committee Meeting.

DATES: The meeting will be held on February 8–9, 1999.

ADDRESSES: The meeting will be held at the Key Bridge Marriott Hotel, Arlington, Virginia 22209. On Monday, February 8, the meeting will begin at 1:00 p.m. and will recess at 4:30 p.m., and on Tuesday, February 9, the meeting will begin at 8:30 a.m. and will

adjourn at 4:00 p.m. All times noted are Eastern Time.

SUPPLEMENTARY INFORMATION: Agenda items will include, but not be limited to: State of ORD, Laboratory and Center Reviews—Next Steps, Particulate Matter Research Program—BOSC Charge. Anyone desiring a draft BOSC agenda may fax their request to Shirley R. Hamilton, (202) 565–2444. The meeting is open to the Public. Any member of the public wishing to make a presentation at the meeting should contact Shirley Hamilton, Designated Federal Officer, Office of Research and Development (8701R), 401 M Street, S.W., Washington, D.C. 20460; or by telephone at (202) 564–6853. In general, each individual making an oral presentation will be limited to a total of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCERQA (MC 8701R), 401 M Street, S.W., Washington, D.C. 20460, (202) 564–6853.

Dated: January 12, 1999.

Stephen Lingle,

Acting Assistant Administrator for Research and Development (8101R).

[FR Doc. 99–1256 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34162; FRL–6053–2]

Chlorfenapyr; Availability of Risk and Benefit Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of risk and benefit assessments.

SUMMARY: This document announces the availability of risk and benefit assessments related to EPA's consideration of American Cyanamid's application for registration of the pesticide Chlorfenapyr (Pirate®, Alert®) on cotton. The Agency is issuing this Notice of Availability of Risk and Benefit Assessments to (1) present its assessment of the risks posed by chlorfenapyr residues in the environment; (2) present its assessment of the benefits arising from use on cotton; and (3) request public comment on key scientific and policy questions raised by this application for registration.

DATES: Written comments must be submitted by February 19, 1999.

ADDRESSES: By mail, submit written comments identified by the docket control number [OPP–34162] to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to Environmental Protection Agency, Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy. Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions under Unit II of this document.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

Paper copies of the risk and benefit assessments will be made available in the OPP docket at the address listed below.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Chemical Review Manager, PM Team 10, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 212, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 305–6502, e-mail: sibold.ann@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Electronic copies of this document are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/).

Within a week after publication of this Notice in the **Federal Register**, the risk and benefit assessments will be posted on the EPA-Office of Pesticide Program (OPP) homepage at the following address: www.epa.gov/pesticides/reg__assessment.

EPA is making available the risk and benefit assessments for the pesticide chlorfenapyr, which has not been included in any previously registered products. The information in these risk and benefit assessments supplements the information provided in the notice of receipt of application for registration of a pesticide (63 FR 66534, December 2, 1998) (FRL–6046–6) issued pursuant to section 3(c)(4) of the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). The Agency is making the risk and benefit assessments available for public notice and comment prior to making a regulatory decision on this compound. Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying the regulatory decision.

II. Public Record and Submission of Electronic Comments

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–34162] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The office notice record is located at the address in **ADDRESSES** at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–34162]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. XXXX.

List of Subjects

Environmental protection, Pesticides and Pest, Product registration.

Dated: January 12, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–1246 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–F–M

ENVIRONMENTAL PROTECTION AGENCY

[PF–847A; FRL–6056–8]

Notice of Filing of a Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amendment of pesticide petition (PP 7F4870), proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF-847A, must be received on or before February 19, 1999.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM-23) Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location/telephone and e-mail address: Rm. 237, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA, 703–305–6224, e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–847A] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–847A] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 8, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

Petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Amended Petition

PP 7F4870. In the **Federal Register** of December 2, 1998 (63 FR 66535) (FRL–6043–2), EPA issued a notice that BASF Corporation, P.O. Box 13528, Research Triangle Park, North Carolina 27709-3528 proposed pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide quinclorac (3,7-dichloro-8-quinoline carboxylic acid) in or on the raw agricultural commodities wheat and sorghum as follows: 0.5 parts per million (ppm) (wheat grain), 0.1 ppm (wheat straw), 1.0 ppm (wheat forage), 0.5 ppm (wheat hay), 1.0 ppm (wheat bran), 1.5 ppm (wheat germ), 0.75 ppm (wheat shorts), 0.5 ppm (sorghum grain), 0.2 ppm (sorghum forage) and 0.05 ppm (sorghum fodder).

BASF Corporation has submitted to EPA an amended petition proposing to amend 40 CFR part 180 by establishing a tolerance for residues of quinclorac (3,7-dichloro-8-quinoline carboxylic acid) in or on the raw agricultural commodities wheat and sorghum as follows:, 0.5 ppm (wheat grain), 0.1 ppm (wheat straw), 1.0 ppm (wheat forage), 0.5 ppm (wheat hay), 0.75 ppm (wheat germ), 6.0 ppm (grain sorghum, grain), 3.0 ppm (grain sorghum, forage), 1.0 ppm (grain sorghum, stover) and 1200 ppm (aspirated grain fractions). Based on the estimated dietary burden from the established and the proposed uses in this petition, increased tolerances are proposed in the established fat tolerances for cattle, goats, hogs, horses and sheep to 0.7 ppm, and the meat byproducts for cattle, goats, hogs, horses and sheep to 1.5 ppm.

[FR Doc. 99–1249 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–845; FRL–6043–8]

Kuraray America, Inc.; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by the docket control number PF–845, must be received on or before February 19, 1999.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Bipin Gandhi, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 707A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8380; e-mail: gandhi.bipin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–845] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–845) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 12, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the 9analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Kuraray America, Inc.

PP 8E4949

EPA has received a pesticide petition (PP 8E4949) from Kuraray America, Inc., 200 Park Avenue, New York, N.Y. 10166-3098, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.1001(c) and (e) to establish an exemption from the requirement of a tolerance as a pesticide inert ingredient in or on raw agricultural commodities for polyvinyl acetate, sulfoxyl group modified sodium salt (Vinylon VF-HP-2) in or on the raw agricultural commodities. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Toxicological Profile

Polyvinyl acetate, sulfoxyl group modified, sodium salt conforms to the definition of polymer given in 40 CFR 723.250(b), except that it is biodegradable under the stability test conditions and is water soluble.

1. Polyvinyl acetate, sulfoxyl group modified, sodium salt is not cationic or potentially cationic.

2. Polyvinyl acetate, sulfoxyl group modified, sodium salt contains as an integral part of it's composition at least two of the required atomic elements, and does not contain elements above permitted levels or any elements not permitted by the atomic element limitation.

3. Polyvinyl acetate, sulfoxyl group modified, sodium salt is not manufactured or imported from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory.

4. Polyvinyl acetate, sulfoxyl group modified, sodium salt has a number average molecular weight ≥10,000 Dalton (typical number average molecular weight of 62,800 Dalton) and maximum oligomer contents of 0.00% <500 and 0.0% < 1,000.

5. Stability: Polymers cannot be manufactured under the amended TSCA exemption if they substantially degrade, decompose, or depolymerize, or are designed (or can be reasonably anticipated) to substantially degrade, decompose or depolymerize prior to, during or after use. This exclusion includes polymers with such properties after disposal. A similar exclusion was made a part of the original TSCA

exemption rule because it is not feasible for EPA to anticipate all possible breakdown products that could result from polymers otherwise eligible, and it is therefore not possible for EPA to define precisely in advance which polymers with this property are intrisically safe. Polymers that otherwise satisfy all the criteria of the TSCA exemption may still be intrinsically safe even if they are designed or reasonably anticipated to break down prior to, during, or after use, depending upon the extent to which they break down and the nature of any persistent break-down products. Kurary America, Inc. conducted tests on the stability of the polyvinyl acetate, sulfoxyl group modified, sodium salt polymer and found it to be biodegradable under the test conditions.

Polyvinyl acetate, sulfoxyl group modified, sodium salt is not a water-absorbing polymer, and therefore is not excluded from eligibility for the amended TSCA exemption. The exclusion in the amended polymer exemption rule is intended primarily to address concerns for ''super absorbent'' polymers or ''super slurpers'', which have the capacity to absorb 60 to 100 times their own mass of water, yet not dissolve. Polyvinyl acetate, sulfoxyl group modified, sodium salt does not fall within this exclusion because it dissolves in water rather than absorbing it.

Based on conformance to the criteria for TSCA polymer exemption, polymers can be anticipated to have no mammalian toxicity from dietary, inhalation or dermal exposure. The polyvinyl acetate, sulfoxyl group modified, sodium salt polymer conforms with all the criteria except that it is biodegradable. This characteristic of biodegradability is not anticipated to have any impact on mammalian toxicity from dietary, inhalation or dermal exposure, but rather is a factor which serves to diminish the possibility of exposure.

B. Aggregate Exposure

The Agency has maintained that polymers meeting the polymer exemption criteria (as described previously for polyvinyl acetate, sulfoxyl group modified, sodium salt), will present minimal risk to human health when used as inert ingredients in pesticide products applied to food crops. EPA has also established exemptions from tolerance for polymeric materials used as pesticide inert ingredients that it considers to be intrinsically safe based on the fact that they are listed on the TSCA Inventory or meet the requirements of the amended TSCA polymer exemption and are thereby not subject to the requirements of pre-manufacturing notification.

Non-dietary exposure. Based on the conformance of polyvinyl acetate, sulfoxyl group modified, sodium salt to the definition of a polymer given in 40 CFR 723.250(b), as well as the criteria that are used to identify low risk polymers, EPA can conclude that there is a reasonable certainty that no harm to the U.S. population will result from non-dietary exposures to it.

C. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity''. In the case of the polyvinyl acetate, sulfoxyl group modified, sodium salt, the lack of expected toxicity of this substances based on its conformance to the definition of polymers as given in 40 CFR 723.250(b), as well as the criteria that identify low risk polymers, results in no expected cumulative effects. A cumulative risk assessment is therefore not necessary.

D. Safety Determination

1. *U.S. population*. As a matter of policy, EPA has in the past established exemptions from tolerance for polymeric materials used as pesticide inert ingredients that it considers to be intrinsically safe based on the fact that they are listed on the TSCA Inventory or meet the requirements of the amended TSCA polymer exemption and are thereby not subject to the requirements of pre-manufacturing notification. The Agency has maintained that polymers meeting the polymer exemption criteria will present minimal risk to human health when used as inert ingredients in pesticide products applied to food crops.

2. *Infants and childen*. FFDCA section 408 provides that EPA shall supply an additional tenfold margin of safety for infants and children in the case of threshold effects where pre- and/or postnatal toxicity are found or there is incompleteness of the data base, unless EPA concludes 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 the use of margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

Due to the low expected toxicity of polyvinyl acetate, sulfoxyl group modified, sodium salt, a safety factor analysis is not required in assessing the risk. For the same reasons the additional safety factor is unnecessary.

E. Analysis of TSCA Polymer Exemption Applicability

1. *Polymer definition*. In order to apply the criteria of the polymer exemption, it is essential that the chemical identity of polymer be established precisely, if possible. In the case of polyvinyl acetate, hydrolyzed, sulfonate-modified sodium salt (Vinylon VF-HP-2), the precursors are simple chemicals that can be fully characterized and their reaction products are clearly defined.

Under the amended TSCA polymer exemption, a substance must meet the definition of a polymer, which is: A chemical substance that consists of not less than 50.0% (a simple majority) of polymer molecules and less than 50.0% of molecules with the same molecular weight, wherein the polymer molecules are distributed over a range of molecular weights and the differences among polymer molecules are primarily due to differences in the number of internal monomer units. Polyvinyl acetate, sulfoxyl group modified, sodium salt satisfies the polymer definition.

2. *Exclusions: 40 CFR 723.250(d)*—i. *Unreviewed reactants*. Under the amended TSCA polymer exemption, a manufacturer or importer is not allowed to commercialize a polymer if any one or more of the reactants used or incorporated at two weight percent or more are not listed on the TSCA Inventory or manufactured under an applicable exemption to section 5 of TSCA. All monomers and other reactants involved in manufacturing polyvinyl acetate, sulfoxyl group modified, sodium salt are listed on the TSCA Inventory.

ii. *Positively charged polymers*. Cationic or potentially cationic polymers are excluded under paragraph (d)(1) from the TSCA polymer exemption unless the charge density is sufficiently low or the polymer is a non-dispersible, non-soluble solid. Polyvinyl acetate, sulfoxyl group modified, sodium salt is not cationic or potentially cationic.

iii. *Atomic element limitations*. The exclusion at (d)(2) limits the identities of atomic elements in the composition of polymers eligible for the TSCA exemption. All such polymers must contain as an integral part of their composition two or more of the atomic

elements, carbon, hydrogen, nitrogen, oxygen, silicon and sulfur. The specific monatomic counter ions, Na^{+}, Mg^{+2}, Al^{+3}, K^{+} and Ca^{+2} are permitted. Chlorine, bromine, and iodine are permitted whether they are covalently bonded to carbon or as the specific monatomic counter ions, Cl-, Br- and I-. Fluorine must be covalently bound to carbon. Lithium, boron, phosphorus, titanium, manganese, iron, nickel, copper, zinc, tin, or zirconium are permitted at less than 0.20 weight percent alone or in any combination. No other atomic elements are permitted and other exclusions may apply.

Polyvinyl acetate, sulfoxyl group modified, sodium salt contains at least two of the required atomic elements, and it does not contain elements above permitted levels or any elements not permitted by this limitation.

iv. *Instability*. Polymers cannot be manufactured under the amended TSCA exemption if they substantially degrade, decompose, or depolymerize, or are designed (or can be reasonably anticipated) to substantially degrade, decompose or depolymerize prior to, during or after use. This exclusion includes polymers with such properties after disposal, for example, in a waste water treatment plant. A similar exclusion was made a part of the original TSCA exemption rule[1]. This provision is present in the amended rule, because it is not feasible for EPA to anticipate all possible breakdown products that could result from polymers otherwise eligible, and it is therefore not possible for EPA to define precisely in advance which polymers with this property are intrinsically safe. Polymers that otherwise satisfy all the criteria of the TSCA exemption, may still be intrinsically safe even if they are designed or reasonably anticipated to break down prior to, during, or after use, depending upon the extent to which they break down and the nature of any persistent bread-down products.

Kuraray America, Inc. conducted tests on the stability of the VF-HP-2 polymer and found it to be biodegradable under the test conditions. In a study using aerobic soil microorganisms from a municipal water treatment plant, the VF-HP-2 polymer, the polyvinyl acetate, hydrolyzed, sulfonate-modified sodium salt, was found to biodegrade with a half life of 30 days. For comparison in the same study, the degradation of closely related WSP material, hydrolyzed polyvinyl acetate, for which an exemption from tolerance is already established, was determined. This polymer was found to degrade with a half life of 12 days. Aniline was used as a reference (positive control) and found to degrade with a half life of around 5 days.

In the study, biological oxygen demand (B.O.D.) of a water solution of the polymer was used as a measure of the extent of degradation. This assay measures the total degradation of organic matter in solution. There was no indication in the study that the biodegradation of the VF-HP-2 polymer would be less than complete (C CO_2, H H_2O, N NO_2, S SO_3, Na Na_2O), leading to the persistence of any breakdown products. Complete biodegradation in the environment is a desirable property for any ingredient in pesticide formulations. After an acclimation period, the rate of degradation of VF-HP-2 polymer appeared the same as hydrolyzed polyvinyl acetate, which EPA has already judged to be safe. It is therefore reasonable to establish an exemption from tolerance for the VF-HP-2 polymer as WSP for pesticides on the basis that it otherwise qualifies for the TSCA exemption and is intrinsically safe.

v. *High molecular weight, water-absorbing polymers*. Water-absorbing polymers are excluded from eligibility for the amended TSCA exemption. A water-absorbing polymer is defined as one ''that is capable of absorbing its own weight of water'' and has a number-average molecular weight (NAMW) equal to or greater than 10,000. As discussed in the preamble of the amended polymer exemption rule[2], the exclusion is intended primarily to address concerns for ''super absorbent'' polymers or ''super slurpers.'' The exclusion responds to information received under section 8(e) of TSCA for a water-absorbing polyacrylate. The polymer in question had a NAMW of about 1,000,000 and could absorb about 100 times its own mass of water. EPA set the exclusion two orders of magnitude below these levels. ''Super slurpers'' have the capacity to absorb 60 to 100 times their own mass of water, yet not dissolve. Clearly, polyvinyl acetate, sulfoxyl group modified, sodium salt does not fall within this exclusion because it dissolves in water rather than absorbing it[3].

3. Conditions: 40 CFR 723.250(e)—i. *Polymers of 1,000 < molecular weight <10,000*. To qualify for the exemption, polymers in the molecular weight range, 1,000 < MW <10,000 must also always have a molecular weight distribution such that there is less than 25 weight percent with molecular weights below 1,000 and less than 10 weight percent with molecular weights below 500. Both criteria must be simultaneously met. In addition, polymers that meet the molecular weight conditions of 40 CFR 723.250(e)(1) are subject to important reactive functional group limitations.

Polyvinyl acetate, sulfoxyl group modified, sodium salt has a number average molecular weights above 10,000 and does not fall within the condition in 40 CFR 723.250(e)(1).

ii. *Polymers with molecular weight > 10,000*. Polymers with molecular weights of 10,000 or greater must have oligomer contents of less than five weight percent with molecular weights less than 1,000 and less than two weight percent with molecular weights less than 500. The properties of polyvinyl acetate, sulfoxyl group modified, sodium salt, supported by GPC molecular weight data, satisfies this condition, as summarized below:

Typical number-average molecular weight = 62,800

Maximum oligomer contents = 0.0% < 500, 0.0% < 1,000

F. Conclusions on the TSCA Polymer Exemption Criteria

Based on conformance to the criteria described above for TSCA polymer exemption, a chemical can be anticipated to have no mammalian toxicity from dietary, inhalation or dermal exposure. The polyvinyl acetate, sulfoxyl group modified, sodium salt polymer, polyvinyl acetate, hydrolyzed, sulfonate-modified sodium salt, conforms with all the criteria except that is biodegradable. This characteristic of biodegradability is not anticipated to have any impact on mammalian toxicity from dietary, inhalation or dermal exposure, but rather is a factor which serves to diminish the possibility of exposure. It is noted that a closely related WSP polymer for which an exemption from tolerance has already been established, polyvinyl acetate, hydrolyzed[4], CASRN 25213-24-5, is also biodegradable.

Based on the conformance of polyvinyl acetate, sulfoxyl group modified, sodium salt to the definition of a polymer given in 40 CFR 723.250(b), as well as the criteria that

[1] 49 FR 46066 November 21, 1984.

[2] 60 FR 16319-16320 March 29, 1995.

[3] In the **Federal Register** notice that established a broad generic exemption from tolerance for acrylate polymers, described earlier in this volumn, EPA'S Office of Pesticide Programs stated: ''Water soluble (sic) polymers in this molecular weight range >10,000 daltons are excluded from the exemption under Sec. 723.250(d)....'' 61 FR 6550-6551. The second time in the same notice that EPA/OPP mentions these polymers, they are called ''highly water-obsorbing'', a correct interpretation of the exclusion. Water-obsorbing polymers are not water-soluble.

[4] 49 FR 46066 November 21, 1984.

are used to identify low risk polymers, EPA can conclude that there is a reasonable certainty that no harm to the U.S. population will result from non-dietary exposures to it.

G. International Tolerances

There are no Codex Alimentarius Commission (Codex), Canadian or Mexican residue limits for polyvinyl acetate, sulfoxyl group modified, sodium salt.

[FR Doc. 99–1250 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–839; FRL–6038–2]

Kuraray America, Inc.; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by the docket control number PF–839, must be received on or before February 19, 1999.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Bipin Gandhi, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 707A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8380; e-mail: gandhi.bipin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–839] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–839) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 12, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Kuraray America, Inc.

PP 8E4944

EPA has received a pesticide petition (PP 8E4944) from Kuraray America, Inc., 200 Park Avenue, New York, N.Y. 10166-3098, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.1001(c) and to establish an exemption from the requirement of a tolerance as a pesticide inert ingredient in or on raw agricultural commodities for polyvinyl acetate, carboxyl-modified, sodium salt (Vinylon VF-HH-4) in or on the raw agricultural commodities. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Toxicological Profile

Polyvinyl acetate, carboxyl-modified, sodium salt conforms to the definition of polymer given in 40 CFR 723.250(b).

1. Polyvinyl acetate, carboxyl-modified, sodium salt is not cationic or potentially cationic.

2. Polyvinyl acetate, carboxyl-modified, sodium salt contains as an intergral part of it's composition at least two of the required atomic elements, and does not contain elements above permitted levels or any elements not permitted by the atomic element limitation.

3. Polyvinyl acetate, carboxyl-modified, sodium salt is not manufactured or imported from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory.

4. Polyvinyl acetate, carboxyl-modified, sodium salt has a number average molecular weight ≥10,000 Dalton (typical number average molecular weight of 62,800 Dalton) and maximum oligomer contents of 0.00% <500 and 0.0% < 1,000.

Polyvinyl acetate, carboxyl-modified, sodium salt is not a water-absorbing polymer, and therefore is not excluded from eligibility for the amended TSCA exemption. The exclusion in the amended polymer exemption rule is intended to address concerns for ''super absorbent'' polymers or ''super slurpers'', which have the capacity to absorb 60 to 100 times their own mass of water, yet not dissolve. Polyvinyl acetate, carboxyl-modified, sodium salt does not fall within this exclusion because it dissolves in water rather than absorbing it.

B. Aggregate Exposure

The Agency has maintained that polymers meeting the polymer exemption criteria (as described previously for polyvinyl acetate, carboxyl-modified, sodium salt), will present minimal risk to human health when used as inert ingredients in pesticide products applied to food crops. EPA has also established exemptions from tolerance for polymeric materials used as pesticide inert ingredients that it considers to be intrinsically safe based on the fact that they are listed on the TSCA Inventory or meet the requirements of the amended TSCA polymer exemption and are thereby not subject to the requirements of pre-manufacturing notification.

Non-dietary exposure. Based on the conformance of polyvinyl acetate, carboxyl-modified, sodium salt to the definition of a polymer given in 40 CFR 723.250(b), as well as the criteria that are used to identify low risk polymers, EPA can conclude that there is a reasonable certainty that no harm to the U.S. population will result from non-dietary exposures to it.

Based on conformance to the criteria for TSCA polymer exemption, a chemical can be anticipated to have no mammalian toxicity from dietary, inhalation or dermal exposure. The polymer, polyvinyl acetate, hydolyzed, carboxyl-modified, sodium salt, conforms with all the criteria.

C. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity''. In the case of the polyvinyl acetate, carboxyl-modified, sodium salt, the lack of expected toxicity of this substances based on its conformance to the definition of polymers as given in 40 CFR 723.250(b), as well as the criteria that identify low risk polymers, results in no expected cumulative effects. A cumulative risk assessment is therefore not necessary.

D. Safety Determination

1. *U.S. population*. As a matter of policy, EPA has in the past established exemptions from tolerance for polymeric materials used as pesticide inert ingredients that it considers to be intrinsically safe based on the fact that they are listed on the TSCA Inventory or meet the requirements of the amended TSCA polymer exemption and are thereby not subject to the requirements of premanufacturing notification. The Agency has maintained that polymers meeting the polymer exemption criteria will present minimal risk to human health when used as inert ingredients in pesticide products applied to food crops.

2. *Infants and childen*. FFDCA section 408 provides that EPA shall supply an additional tenfold margin of safety for infants and children in the case of threshold effects where pre- and/or postnatal toxicity are found or there is incompleteness of the data base, unless EPA concludes 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 the use of margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

Due to the low expected toxicity of polyvinyl acetate, carboxyl-modified, sodium salt, a safety factor analysis is not required in assessing the risk. For the same reasons the additional safety factor is unnecessary.

E. Analysis of TSCA Polymer Exemption Applicability

1. *Polymer definition*. In order to apply the criteria of the polymer exemption, it is essential that the chemical identity of polymer be established precisely, if possible. In the case of polyvinyl acetate, hydrolyzed, carboxylate-modified sodium salt (polyvinyl acetate, carboxyl-modified, sodium salt, the precursors are simple chemicals that can be fully characterized and their reaction products are clearly defined.

Under the amended TSCA polymer exemption, a substance must meet the definition of a polymer, which is: A chemical substance that consists of not less than 50.0% (a simple majority) of polymer molecules and less than 50.0% of molecules with the same molecular weight, wherein the polymer molecules are distributed over a range of molecular weights and the differences among polymer molecules are primarily due to differences in the number of internal monomer units. Polyvinyl acetate, carboxyl-modified, sodium salt satisfies the polymer definition.

2. *Exclusions: 40 CFR 723.250(d)*—i. *Unreviewed reactants*. Under the amended TSCA polymer exemption, a manufacturer or importer is not allowed to commercialize a polymer if any one or more of the reactants used or incorporated at 2% or more are not listed on the TSCA Inventory or manufactured under an applicable exemption to section 5 of TSCA. All monomers and other reactants involved in manufacturing polyvinyl acetate, carboxyl-modified, sodium salt are listed on the TSCA Inventory.

ii. *Positively charged polymers*. Cationic or potentially cationic polymers are excluded under paragraph (d)(1) from the TSCA polymer exemption unless the charge density is sufficiently low or the polymer is a non-dispersible, non-soluble solid. Polyvinyl acetate, carboxyl-modified, sodium salt is not cationic or potentially cationic.

iii. *Atomic element limitations*. The exclusion at 40 CFR 723.250 (d)(2) limits the identities of atomic elements in the composition of polymers eligible for the TSCA exemption. All such polymers must contain as an integral part of their composition two or mor zirconium are permitted at less than 0.20 weight percent alone or in any combination. No other atomic elements are permitted and other exclusions may apply.

Polyvinyl acetate, carboxyl-modified, sodium salt contains at least two of the required atomic elements, and it does not contain elements above permitted levels or any elements not permitted by this limitation.

iv. *Instability*. Polymers cannot be manufactured under the amended TSCA exemption if they substantially degrade, decompose, or depolymerize, or are designed (or can be reasonably

anticipated) to substantially degrade, decompose or depolymerize prior to, during or after use. This exclusion includes polymers with such properties after disposal, for example, in a waste water treatment plant. A similar exclusion was made a part of the original TSCA exemption rule[1]. This provision is present in the amended rule, because it is not feasible for EPA to anticipate all possible breakdown products that could result from polymers otherwise eligible, and it is therefore not possible for EPA to define precisely in advance which polymers with this property are intrinsically safe. Polymers that otherwise satisfy all the criteria of the TSCA exemption, may still be intrinsically safe even if they are designed or reasonably anticipated to break down prior to, during, or after use, depending upon the extent to which they break down and the nature of any persistent bread-down products.

Kuraray America, Inc. conducted tests on the stability of the VF-HH-4 polymer and it was found not to biodegradable under the test conditions.

v. *High molecular weight, water-absorbing polymers*. Water-absorbing polymers are excluded from eligibility for the amended TSCA exemption. A water-absorbing polymer is defined as one ''that is capable of absorbing its own weight of water'' and has a number-average molecular weight (NAMW) equal to or greater than 10,000. As discussed in the preamble of the amended polymer exemption rule[2], the exclusion is intended primarily to address concerns for ''super absorbent'' polymers or ''super slurpers''. The exclusion responds to information received under section 8(e) of TSCA for a water-absorbing polyacrylate. The polymer in question had a NAMW of about 1,000,000 and could absorb about 100 times its own mass of water. EPA set the exclusion two orders of magnitude below these levels. ''Super slurpers'' have the capacity to absorb 60 to 100 times their own mass of water, yet not dissolve. Clearly, polyvinyl acetate, carboxyl-modified, sodium salt does not fall within this exclusion because it dissolves in water rather than absorbing it[3].

3. *Conditions: 40 CFR 723.250(e)*—i. *Polymers of 1,000 > molecular weight >10,000*. To qualify for the exemption, polymers in the molecular weight range, 1,000 > MW >10,000 must also always have a molecular weight distribution such that there is less than 25% with molecular weights below 1,000 and less than 10% with molecular weights below 500. Both criteria must be simultaneously met. In addition, polymers that meet the molecular weight conditions of (e)(1) are subject to important reactive functional group limitations.

Polyvinyl acetate, carboxyl-modified, sodium salt has a number average molecular weights above 10,000 and does not fall within condition (e)(1).

ii. *Polymers with molecular weight ≤ 10,000*. Under conditions (e)(2), polymers with molecular weights of 10,000 or greater must have oligomer contents of less than 5% with molecular weights less than 1,000 and less than 2% with molecular weights less than 500. The properties of polyvinyl acetate, carboxyl-modified, sodium salt, supported by GPC molecular weight data, satisfies this condition, as summarized below:

Typical number-average molecular weight = 52,260

Maximum oligomer contents = 0.0% > 500, 0.0% > 1,000

F. Conclusions on the TSCA Polymer Exemption Criteria

Based on conformance to the criteria described above for TSCA polymer exemption, a chemical can be anticipated to have no mammalian toxicity from dietary, inhalation or dermal exposure. In the case of polyvinyl acetate, carboxyl-modified, sodium salt, polyvinyl acetate, hydrolyzed, carboxylate-modified sodium salt, conformance with all the criteria can be demonstrated. Additionally, this substance has been through the PMN review process and is listed on the TSCA Inventory. It is noted that an exemption from tolerance has already been established for a closely related WSP polymer, polyvinyl acetate, hydrolyzed, CASRN 25213-24-5.

Based on the conformance of polyvinyl acetate, carboxyl-modified, sodium salt to the definition of a polymer given in 40 CFR 723.250(b), as well as the criteria that are used to identify low risk polymers, EPA can conclude that there is a reasonable certainty that no harm to the U.S. population will result from non-dietary exposures to it.

G. International Tolerances

There are no Codex Alimentarius Commission (Codex), Canadian or Mexican residue limits for polyvinyl acetate, carboxyl-modified, sodium salt.

[FR Doc. 99–1251 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–U

[1] 49 FR 46066 (November 21, 1984)

[2] 60 FR 16319-16320 (March 29, 1995).

[3] In the **Federal Register** notice that established a broad generic exemption from tolerance for acrylate polymers, described earlier in this volume. EPA's Office of Pesticide Programs stated: ''Water soluble (sic) polymers in this molecular weight range [≥10,000 daltons] are excluded from the exemption under Sec. 723.250(d)....'' 61 FR 6550-6551. The second time in the same notice that EPA/OPP mentions these polymers, they are called ''highly water-absorbing,'' a correct interpretation of the exclusion. Water-absorbing polymers are not water-soluble.

ENVIRONMENTAL PROTECTION AGENCY

[PF–828A; FRL–6054–9]

Rohm & Haas Co.; Correction of Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a correction.

SUMMARY: EPA is correcting a pesticide petition (PP 7F4894) from Rohm and Haas Company which was published in the **Federal Register** of September 30, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: Mark Dow, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Rm. 214, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 305–5533; e-mail: Dow.mark@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 30, 1998 (63 FR 52260)(FRL 6023–7), EPA issued a notice of filing of a pesticide petition (PP 7F4894) from Rohm and Haas Company. The notice of filing inadvertently proposed a tolerance for residues of triazamate; ethyl (3-tert-butyl-1-dimethylcarbamoyl–1*H*–1,2,4-triazol-5-ylthio) acetate in or on the raw agricultural commodity apples at 0.1 parts per million (ppm). The petition that Rohm and Haas Company submitted requested a tolerance for pome fruits at 0.1 ppm. Therefore all references to apples in ''PF–828'', should be changed to read ''pome fruits''.

List of Subjects

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

Dated: January 8, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–1248 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–852; FRL–6053–5]

Notice of Filing of a Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–852, must be received on or before February 19, 1999.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–5697; e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–852] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–852] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 23, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

Petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Zeneca Ag. Products

PP 5F4554

EPA has received a pesticide petition (PP 5F4554) from Zeneca Ag. Products, 1800 Concord Pike, P. O. Box 15458, Wilmington, DE 19850-5458, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of sulfosate (the trimethylsulfonium salt of glyphosate, also known as glyphosate-trimesium in or on the raw agricultural commodity (RAC) wheat bran at 2.5 parts per million (ppm) (of which no more than 0.75 ppm is trimethylsulfonium (TMS)), wheat grain at 0.75 ppm (of which no more than 0.25 ppm is TMS), wheat forage at 35 ppm (of which no more than 30 ppm is TMS), wheat hay at 85 ppm (of which no more than 80 ppm is TMS), wheat shorts at 1.5 ppm (of which no more than 0.5 ppm is TMS), wheat straw at 1.0 ppm (of which no more than 0.5 ppm is TMS), the pome fruit group at 0.05 ppm; in cattle, goat, hog, sheep, and horse liver at 0.5 ppm, in cattle, goat, hog, sheep, and horse meat by-products, except liver at 2.5 ppm; to increase the tolerance in cattle, goat, hog, sheep, and horse meat from 0.2 to 0.4 ppm and in milk from 0.2 to 0.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of sulfosate has been studied in corn, grapes, and soybeans. EPA has concluded that the nature of the residue is adequately understood and that the residues of concern are the parentions only *N*-(phosphonomethyl)-glycine anion (PMG) and trimethylsulfonium cation (TMS).

2. *Analytical method*. Gas chromatography/mass selective detector methods have been developed for PMG analysis in crops, animal tissues, milk, and eggs. Gas chromatography detection

methods have been developed for TMS in crops, animal tissues, milk, and eggs.

3. *Magnitude of residues in crops*— i. *Wheat.* A total of 15 field residue trials were conducted in 14 different states accounting for 77% of the total U.S. wheat acreage. These trials were located in Regions 2 (1 trial), 4 (1 trial), 5 (6 trials), 8 (3 trials), 10 (1 trial) and 11 (3 trials). Applications in the trials were consistent with the requested label directions for use. Analysis of the treated samples showed that the maximum PMG residue was 1.47 ppm in forage, 0.34 ppm in grain, and 0.38 ppm in straw. The maximum TMS residue was 25.1 ppm in forage, 0.21 ppm in grain and 0.4 ppm in straw. Residue data are not available for wheat hay, but can be estimated using the forage residue data and a dry-down factor of 3.

Wheat grain for processing was obtained and samples were processed into bran, middlings, shorts, flour and aspirated grain fractions. Analysis of the treated samples showed that residue of both TMS and PMG concentrated in bran and shorts. The appropriate concentration factors for bran are 3.1x (PMG), and 2.1x (TMS); and for shorts are 2.0x (PMG), and 1.8x (TMS). The residues in the wheat aspirated grain fraction are less than the tolerance already established for aspirated grain fractions, so no tolerance action is required.

ii. *Pome fruit group.* A total of 15 field residue trials (nine apple and six pear) were conducted in seven different States, accounting for 78 and 99% of the total U.S. apple, and pear production, respectively. Harvested fruit had residues of PMG and TMS that were <0.05 ppm in all samples. The residue data support the proposed tolerance of 0.05 ppm for pome fruit.

Apples were processed from a trial treated at an exagerrated rate. The samples were processed into wet pomace, dry pomace and juice. Analysis of the treated samples showed that residues of both TMS and PMG were <0.05 ppm in the RAC and all processed fractions. No tolerance action for apple processed products is required.

4. *Magnitude of residue in animals*— i. *Ruminants.* The maximum dietary burden in dairy cows results from a diet comprised of 20% aspirated grain fractions, 60% wheat forage, and 20% soybean seed/meal for a total dietary burden of 134 ppm. The maximum dietary burden in beef cows results from a diet comprised of 20% aspirated grain fractions, 25% wheat forage, 25% wheat hay, 10% wheat straw, and 20% soybean seed/meal for a total dietary burden of 122 ppm. Comparison to a ruminant feeding study at a dosing level of 300 ppm indicates that the appropriate tolerance levels would be 0.5 ppm in cattle, goat, hog, sheep, and horse liver; 2.5ppm in cattle, goat, hog, sheep, and horse meat by-products, except liver; 0.4 ppm in cattle, goat, hog, sheep, and horse meat; 0.5 ppm in milk; and 0.1 ppm in cattle, goat, hog, sheep, and horse fat. All of these tolerances exceed existing tolerances in 40 CFR 180.489, except fat.

ii. *Poultry.* The maximum poultry dietary burden results from a diet comprised of 80% wheat grain and 20% wheat milled by-products for a total dietary burden of 1.5 ppm. Comparison to a poultry feeding study at a dosing level of 5 ppm indicates that the appropriate tolerance levels would be below the established tolerances for poultry meat, meat by-products, fat, and eggs.

B. Toxicological Profile

1. *Acute toxicity.* Several acute toxicology studies have been conducted placing technical grade sulfosate in Toxicity Category III and IV.

2. *Genotoxicity.* Mutagenicity data includes two Ames tests with *Salmonella typhimurium*; a sex linked recessive lethal test with Drosophila melanoga; a forward mutation (mouse lymphoma) test; an *in vivo* bone marrow cytogenetics test in rats; a micronucleus assay in mice; an *in vitro* chromosomal aberration test in Chinese hamster ovary cells (CHO) (no aberrations were observed either with or without *S9* activation and there were no increases in sister chromatid exchanges); and a morphological transformation test in mice (all negative). A chronic feeding/carcinogenicity study was conducted in male and female rats fed dose levels of 0, 100, 500 and 1,000 ppm (0, 4.20, 21.2 or 41.8 milligram/kilogram/day (mg/kg/day) in males and 0, 5.4, 27.0 or 55.7 mg/kg/day in females). No carcinogenic effects were observed under the conditions of the study. The systemic no-observed adverse effect level (NOAEL) of 1,000 ppm (41.1/55.7 mg/kg/day for males and females, respectively) was based on decreased body weight gains (considered secondary to reduced food consumption) and increased incidences of chronic laryngeal and nasopharyngeal inflammation (males). A chronic feeding/carcinogenicity study was conducted in male and female mice fed dosage levels of 0, 100, 1,000, and 8,000 ppm (0, 11.7, 118 or 991 mg/kg/day in males and 0, 16, 159 or 1,341 mg/kg/day in females). No carcinogenic effects were observed under the conditions of the study at dose levels up to and including the 8,000 ppm highest dose tested (HDT) may have been excessive). The systemic NOAEL was 1,000 ppm based on decreases in body weight and feed consumption (both sexes) and increased incidences of duodenal epithelial hyperplasia (females only). Sulfosate is classified as a Group E carcinogen based on no evidence of carcinogenicity in rat, and mouse studies.

3. *Reproductive and developmental toxicity.* A developmental toxicity study in rats was conducted at doses of 0, 30, 100 and 333 mg/kg/day. The maternal (systemic) NOAEL was 100 mg/kg/day, based on decreased body weight gain and food consumption, and clinical signs (salivation, chromorhinorrhea, and lethargy) seen at 333 mg/kg/day. The reproductive NOAEL was 100 mg/kg/day, based on decreased mean pup weight. The decreased pup weight is a direct result of the maternal toxicity. A developmental toxicity study was conducted in rabbits at doses of 0, 10, 40 and 100 mg/kg/day with developmental and maternal toxicity NOAELs of 40 mg/kg/day based on the following: (i) Maternal effects: 6 of 17 dams died (2 of the 4 non-gravid dams); 4 of 11 dams aborted; clinical signs - higher incidence and earlier onset of diarrhea, anorexia, decreased body weight gain and food consumption; and (ii) Fetal effects: decreased litter sizes due to increased post-implantation loss, seen at 100 mg/kg/day HDT. The fetal effects were clearly a result of significant maternal toxicity. A 2-generation reproduction study in rats fed dosage rates of 0, 150, 800 and 2,000 ppm (equivalent to calculated doses of 0, 7.5, 40, and 100 mg/kg/day for males and females, based on a factor of 20). The maternal (systemic) NOAEL was 150 ppm (7.5 mg/kg/day), based on decreases in body weight and body weight gains accompanied by decreased food consumption, and reduced absolute and sometimes relative organ (thymus, heart, kidney & liver) weights seen at 800 and 2,000 ppm (40 and 100 mg/kg/day). The reproductive NOAEL was 150 ppm (7.5 mg/kg/day), based on decreased mean pup weights during lactation (after day 7) in the second litters at 800 ppm (40 mg/kg/day) and in all litters at 2,000 ppm (100 mg/kg/day), and decreased litter size in the F0a and F1b litters at 2,000 ppm (100 mg/kg/day). The statistically significant decreases in pup weights at the 800 ppm level were borderline biologically significant because at no time were either the body weights or body weight gains less than 90% of the control values and because the effect was not

apparent in all litters. Both the slight reductions in litter size at 2,000 ppm and the reductions in pup weights at 800 and 2,000 ppm appear to be secondary to the health of the dams. There was no evidence of altered intrauterine development, increased stillborns, or pup anomalies. The effects are a result of feed palatability leading to reduced food consumption and decreases in body weight gains in the dams.

4. *Subchronic toxicity*. Two subchronic 90 day feeding studies with dogs and a 1-year feeding study in dogs have been conducted. In the 1-year study dogs were fed 0, 2, 10 or 50 mg/kg/day. The NOAEL was determined to be 10 mg/kg/day based on decreases in lactate dehydrogenase (LDH) at 50 mg/kg/day. In the first 90 day study, dogs were fed dosage levels of 0, 2, 10 and 50 mg/kg/day. The NOAEL in this study was 10 mg/kg/day based on transient salivation, and increased frequency and earlier onset of emesis in both sexes at 50 mg/kg/day. A second 90 day feeding study with dogs dosed at 0, 10, 25 and 50 mg/kg/day was conducted to refine the threshold of effects. There was evidence of toxicity at the top dose of 50 mg/kg/day with a NOAEL of 25 mg/kg/day. Adverse effects from oral exposure to sulfosate occur at or above 50 mg/kg/day. These effects consist primarily of transient salivation, which is regarded as a pharmacological rather than toxicological effect, emesis and non-biologically significant hematological changes. Exposures at or below 25 mg/kg/day have not resulted in significant biological adverse effects. In addition, a comparison of data from the 90 day and 1-year studies indicates that there is no evidence for increased toxicity with time. The overall NOAEL in the dog is 25 mg/kg/day.

5. *Chronic toxicity*. A chronic feeding/carcinogenicity study was conducted in male and female rats fed dose levels of 0, 100, 500 and 1,000 ppm (0, 4.20, 21.2 or 41.8 mg/kg/day in males, and 0, 5.4, 27.0 or 55.7 mg/kg day in females). No carcinogenic effects were observed under the conditions of the study. The systemic NOAEL of 1,000 ppm (41.1/55.7 mg/kg/day for males, and females, respectively) was based on decreased body weight gains (considered secondary to reduced food consumption) and increased incidences of chronic laryngeal and nasopharyngeal inflammation (males). A chronic feeding/carcinogenicity study was conducted in male and female mice fed dosage levels of 0, 100, 1,000 and 8,000 ppm (0, 11.7, 118 or 991 mg/kg/day in males and 0, 16,159 or 1,341 mg/kg/day in females). No carcinogenic effects were observed under the conditions of the study at dose levels up to and including the 8,000 ppm (HDT may have been excessive). The systemic NOAEL was 1,000 ppm based on decreases in body weight and feed consumption (both sexes) and increased incidences of duodenal epithelial hyperplasia (females only). Sulfosate is classified as a Group E carcinogen based on no evidence of carcinogenicity in rat and mouse studies.

6. *Animal metabolism*. The metabolism of sulfosate has been studied in animals. The residues of concern for sulfosate in meat, milk, and eggs are the parent ions PMG and TMS only.

7. *Metabolite toxicology*. There are no metabolites of toxicological concern. Only the parent ions, PMG and TMS are of toxicological concern.

8. *Endocrine disruption*. Current data suggest that sulfosate is not an endocrine disruptor.

C. Aggregate Exposure

1. *Dietary exposure*— i.*Food*. For the purposes of assessing the potential dietary exposure, Zeneca has utilized the tolerance level for all existing and pending tolerances; and the proposed maximum permissible levels of 0.75 ppm for wheat grain; 2.5 ppm for wheat bran; 1.5 ppm for wheat shorts; 0.05 ppm for the pome fruit group; 0.5 ppm for cattle, goat, hog, sheep, and horse liver; 2.5 ppm for cattle, goat, hog, sheep, and horse meat by-products, except liver; 0.4 ppm for cattle, goat, hog, sheep, and horse meat; 0.5 ppm in milk, and 100% crop treated acreage for all commodities. Assuming that 100% of foods, meat, eggs, and milk products will contain sulfosate residues and those residues will be at the level of the tolerance results in an over estimate of human exposure. This is a very conservative approach to exposure assessment.

ii. *Chronic exposure*. For all existing tolerances and pending tolerances; and the proposed maximum permissible levels proposed in this notice of filing, the potential exposure for the U.S. population is 0.018 milligram/kilogram body weight/day (mg/kg/bwt/day) (7.4% of reference dose (RfD)). Potential exposure for children's population subgroups range from 0.015 mg/kg bwt/day (6.1% of RfD) for nursing infants (<1 year old) to 0.076 mg/kg bwt/day (30.5%) for non-nursing infants. The chronic dietary risk due to food does not exceed the level of concern (100%).

iii. *Acute exposure*. The exposure to the most sensitive population subgroup, in this instance non-nursing infants, was 23.2% of the acute RfD. The acute dietary risk due to food does not exceed the level of concern (100%).

2. *Drinking water*. Results from computer modeling indicate that sulfosate in groundwater will not contribute significant residues in drinking water as a result of sulfosate use at the recommended maximum annual application rate (4.00 lbs. a.i. acre $^{-1}$). The computer model uses conservative numbers, therefore it is unlikely that groundwater concentrations would exceed the estimated concentration of 0.00224 parts per billion (ppb), and sulfosate should not pose a threat to ground water.

The surface water estimates are based on an exposure modeling procedure called GENEEC (Generic Expected Environmental Concentration). The assumptions of 1 application of 4.00 lbs. a.i. acre $^{-1}$ resulted in calculated estimated maximum concentrations of 64 ppb (acute, based on the highest 56 day value) and 43 ppb (chronic, average). GENEEC modeling procedures assumed that sulfosate was applied to a 10-hectare field that drained into a 1-hectare pond, 2-meters deep with no outlet.

As a conservative assumption, because sulfosate residues in ground water are expected to be insignificant compared to surface water, it has been assumed that 100% of drinking water consumed was derived from surface water in all drinking water exposure and risk calculations.

To calculate the maximum acceptable acute and chronic exposures to sulfosate in drinking water, the dietary food exposure (acute or chronic) was subtracted from the appropriate (acute or chronic) RfD. DWLOCs were then calculated using the maximum acceptable acute or chronic exposure, default body weights (70 kg - adult, 10 kg - child), and drinking water consumption figures (2 liters - adult, 1 liter - child).

The maximum concentration of sulfosate in surface water is 64 ppb. The acute DWLOCs for sulfosate in surface water were all greater than 7700 ppb. The estimated average concentration of sulfosate in surface water is 43 ppb which is much less than the calculated levels of concern (>1,700) in drinking water as a contribution to chronic aggregate exposure. Therefore, for current and proposed uses of sulfosate, Zeneca concludes with reasonable certainty that residues of sulfosate in drinking water would not result in unacceptable levels of aggregate human health risk.

3. *Non-dietary exposure*. Sulfosate is currently not registered for use on any residential non-food sites. Therefore,

residential exposure to sulfosate residues will be through dietary exposure only.

D. Cumulative Effects

There is no information to indicate that toxic effects produced by sulfosate are cumulative with those of any other chemical compound.

E. Safety Determination

1. *U.S. population*— i. *Acute risk*. Since there are no residential uses for sulfosate, the acute aggregate exposure only includes food and water. Using the conservative assumptions of 100% of all crops treated and assuming all residues are at the tolerance level for all established and proposed tolerances, the aggregate exposure to sulfosate will utilize 17.3% of the acute RfD for the US population. The estimated peak concentrations of sulfosate in surface and ground water are less than DWLOCs for sulfosate in drinking water as a contribution to acute aggregate exposure. Residues of sulfosate in drinking water do not contribute significantly to the aggregate acute human health risk considering the present uses and uses proposed in this action.

ii. *Chronic risk*. Using the conservative exposure assumptions described above, the aggregate exposure to sulfosate from food will utilize 7.4% of the chronic RfD for the US population. The estimated average concentrations of sulfosate in surface and ground water are less than DWLOCs for sulfosate in drinking water as a contribution to chronic aggregate exposure. Residues of sulfosate in drinking water do not contribute significantly to the aggregate chronic human health risk considering the present uses and uses proposed in this action.

2. *Infants and children*. The database on sulfosate relative to pre- and post-natal toxicity is complete. Because the developmental and reproductive effects occurred in the presence of parental (systemic) toxicity, these data do not suggest an increased pre- or post-natal sensitivity of children and infants to sulfosate exposure. Therefore, Zeneca concludes, upon the basis of reliable data, that a 100-fold uncertainty factor is adequate to protect the safety of infants and children and an additional safety factor is unwarranted.

i. *Acute risk*. Using the conservative exposure assumptions described above, the aggregate exposure to sulfosate from food will utilize 23.2% of the acute RfD for the most highly exposed group, non-nursing infants. The estimated peak concentrations of sulfosate in surface and ground water are less than DWLOCs for sulfosate in drinking water as a contribution to acute aggregate exposure. Residues of sulfosate in drinking water do not contribute significantly to the aggregate acute human health risk considering the present uses and uses proposed in this action.

ii. *Chronic risk*. Using the conservative exposure assumptions described above, we conclude that the percent of the RfD that will be utilized by aggregate exposure to residues of sulfosate is 30.5% for non-nursing infants, the most highly exposed group. The estimated average concentrations of sulfosate in surface and ground water are less than DWLOCs for sulfosate in drinking water as a contribution to chronic aggregate exposure. Residues of sulfosate in drinking water do not contribute significantly to the aggregate chronic human health risk considering the present uses and uses proposed in this action.

F. International Tolerances

There are no Codex Maximum Residue Levels established for sulfosate.

[FR Doc. 99–1120 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6219–7]

Proposed Amendment to CERCLA Administrative De Micromis Settlement; Waste, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed amendment to an administrative de micormis settlement concerning the Waste, Inc. Superfund site in Michigan City, Indiana, which will add National Tea Company as a settling party. The amended settlement is designed to resolve fully National Tea Company's liability at the site through a covenant not to sue under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the amended settlement. The Agency will consider all comments received and may modify or withdraw its consent to the amended settlement if comments received disclose facts or considerations which indicate that the amended settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at

Michigan City Public Library, 100 E. 4th Street, Michigan City, Indiana

and

U.S. Environmental Protection Agency, Region 5 Records Center, 77 West Jackson Boulevard (7–HJ), Chicago, IL 60604, TEL: (312) 886–0900, Mon-Fri: 7:30 a.m.–5:00 p.m.

Commenters may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be submitted on or before February 19, 1999.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at:

Michigan City Public Library, 100 E. 4th Street, Michigan City, Indiana

La Porte County Health Department, 104 Brinckmann Avenue, Michigan City, Indiana

Bethany Baptist Church, 215 Miller Street, Michigan City, Indiana

U.S. Environmental Protection Agency, Region 5 Records Center, 77 West Jackson Boulevard (7–HJ), Chicago, IL 60604, TEL: (312) 886–0900, Mon-Fri: 7:30 a.m.–5:00 p.m.

A copy of the proposed settlement may be obtained from John Tielsch, Assistant Regional Counsel, 77 W. Jackson Blvd., Chicago, Illinois 60604, Mail Code C–14J, 312/353–7447.

Comments should reference the Waste, Inc. site, Michigan City, Indiana, and EPA Docket No. V–W–98–C–438 and should be addressed to: Sonja Brooks, Regional Hearing Clerk, U.S. Environmental Protection Agency, Mail Code R–19J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John H. Tielsch, Assistant Regional Counsel, United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604, Mail Code C–14J, 312/353–7447.

Wendy L. Carney,

Acting Director, Superfund Division, U.S. Environmental Protection Agency, Region 5.

[FR Doc. 99–1126 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6219–8]

Proposed Amendment to CERCLA Administrative De Minimis Settlement; Waste, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed amendment to an administrative de minimis settlement concerning the Waste, Inc. Superfund site in Michigan City, Indiana, which will add Filter Specialists, Inc. as a settling party. The amended settlement is designed to resolve fully Filter Specialists, Inc.'s liability at the site through a covenant not to sue under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973. Filter Specialists, Inc. will pay $113,592.89 into a Waste, Inc. Special Account within the EPA Hazardous Substances Superfund which shall be used to finance the response action being implemented by the major PRPs under a Unilateral Order for the Site. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the amended settlement. The Agency will consider all comments received and may modify or withdraw its consent to the amended settlement if comments received disclose facts or considerations which indicate that the amended settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at:

Michigan City Public Library, 100 E. 4th Street, Michigan City, Indiana.

and

U.S. Environmental Protection Agency, Region 5 Records Center, 77 West Jackson Boulevard (7–HJ), Chicago, IL 60604, TEL: (312) 886–0900, Mon–Fri: 7:30 a.m.–5:00 p.m.

Commenters may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be submitted on or before February 19, 1999.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at:

Michigan City Public Library, 100 E. 4th Street, Michigan City, Indian.

La Porte County Health Department, 104 Brickmann Avenue, Michigan City, Indiana.

Bethany Baptist Church, 215 Miller Street, Michigan City, Indiana.

U.S. Environmental Protection Agency, Region 5 Records Center, 77 West Jackson Boulevard (7–HJ), Chicago, IL 60604, TEL: (312) 886–0900, Mon–Fri: 7:30 a.m.–5:00 p.m.

A copy of the proposed settlement may be obtained from John Tielsch, Assistant Regional Counsel, 77 W. Jackson Blvd., Chicago, Illinois 60604, Mail Code C–14J, 312/353–7447.

Comments should reference the Waste, Inc. site, Michigan City, Indiana, and EPA Docket No. V–W–98–C–439 and should be addressed to Sonja Brooks, Regional Hearing Clerk, U.S. Environmental Protection Agency, Mail Code R–19J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John H. Tielsch, Assistant Regional Counsel, United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604, Mail Code C–14J, 312/353–7447.

Wendy L. Carney,

Acting Director, Superfund Division, U.S. Environmental Protection Agency, Region 5.

[FR Doc. 99–1127 Filed 1–19–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–106]

Commonwealth of Pennsylvania and GPU Energy To Permit Sharing of a Statewide 800 MHz System

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau invited the public to comment on a request for waiver by the Commonwealth of Pennsylvania and GPU Energy to permit sharing of a statewide 800 MHz system by Public Safety and Industrial/Land Transportation eligibles. This action was taken to provide the public, as well as the Commission's licensees, with an opportunity to comment on the waiver request. Release of the Public Notice will ensure that interested parties have an opportunity to participate in the Commission decision on whether to grant the subject waiver request.

DATES: Comments must be filed on or before February 4, 1999, and reply comments on or before February 19, 1999.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680 or via E-Mail to fthyden@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Safety and Private Wireless Division's Public Notice, DA 99–106, adopted January 5, 1999, and released January 5, 1999. The full text of this Public Notice is available for inspection and copying during normal business hours in the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, 2025 M Street, N.W., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, D.C. 20037, telephone (202) 857–3800. This will impose no paperwork burden on the public.

Summary of Order

1. On August 17, 1998, Metropolitan Edison Company, Pennsylvania Electric Company and Jersey Central Power & Light Company, collectively trading as GPU Energy (GPU), and the Commonwealth of Pennsylvania (Commonwealth) filed a Request for Waiver of 47 CFR 90.179(a). The request seeks permission for eligibles in the Public Safety Pool and in the Industrial/Land Transportation (I/LT) Category to operate and utilize a statewide, 800 MHz conventional and trunked Public Safety/Power Radio Service radio system on a non-profit, cost shared basis.

2. GPU is currently licensed to operate 800 MHz I/LT facilities under the call signs WPDC939, WPDC922, WPDC935 and WPDC931. The Commonwealth has been issued licenses for conventional and trunked channels in the Public Safety Radio Pool. GPU and the Commonwealth request a waiver in order to share a Power Radio Service system, which is in the I/LT category, with a Public Safety Radio system. They request this waiver because 47 CFR 90.179(a) provides that a licensee may share its radio station only with users that would be eligible for a separate authorization to use those frequencies. Public safety entities are not eligible to be licensed on 800 MHz I/LT Category spectrum. Similarly, I/LT licensees are not eligible to be licensed

on 800 MHz Public Safety Radio Pool spectrum.

3. In their waiver request, GPU and the Commonwealth submit that the benefits of sharing this 800 MHz radio system will include rapid deployment of a Public Safety/Industrial/Business system that will transmit reliable communications between state and local agencies throughout Pennsylvania. Also, they assert that a unified system will achieve significant spectrum efficiencies.

4. Requests for waiver of the Commission's rules are subject, unless otherwise provided, to treatment by the Commission as restricted proceedings for *ex parte* purposes under 47 CFR 1.1208. Because of the policy implications and potential impact of this proceeding on persons not parties to the waiver request, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. *See* 47 CFR 1.1200(a), 1.1206. Therefore, any *ex parte* presentations that are made with respect to the issues involved in the subject Request for Waiver, subsequent to the release of this Public Notice, will be permissible but must be disclosed in accordance with the requirements of 47 CFR 1206(b).

Federal Communications Commission.

D'wana R. Terry,

Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–1157 Filed 1–19–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2311]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

January 12, 1999.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by February 4, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Parts 1, 21, and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions (MM Docket No. 97–217, RM–9060).

Number of Petitions Filed: 11

Subject: Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717 (NSD File No. L–97–42). Implementation of the Local Competition Provision of the Telecommunications Act of 1996 (CC Docket No. 96–98).

Number of Petitions Filed: 12

Subject: Implementation of Section 207 of the Telecommunications Act of 1996 Restrictions on Over-the-Air Reception Devices: Television Broadcast and Multichannel Multipoint Distribution Service (CS Docket No. 96–83).

Number of Petitions Filed: 1

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–1159 Filed 1–19–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Flood Insurance Program; Standard Flood Hazard Determination Form

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability and effective date.

SUMMARY: FEMA gives notice of the availability of the revised Standard Flood Hazard Determination Form.

EFFECTIVE DATE: Janaury 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, Director, Technical Services Division, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2756, (telefax) (202) 646–4596.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) has reviewed and cleared the Standard Flood Hazard Determination form under the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and under the National Flood Insurance Reform Act of 1994. OMB approved the form for use, with an effective date of October 1998, expiring October 31, 2001. Because the revised form made no changes in the information collected, a transition period of 90 days from the date of this publication will be provided for users to update automated applications.

Title: Standard Flood Hazard Determination form (FEMA form 81–93).

OMB Number: 3067–0264.

Availability: The Standard Flood Hazard Determination form is available on FEMA's Web Site at *www.fema.gov/library/fform.htm*. The form is also available through FEMA's Fax-on-Demand at (202) 646–FEMA, request document #23103, or by mail after December 15, 1998, from the FEMA publications office at (800) 480–2520. Requests for large quantities of the form will not be honored. The form should be locally reproduced.

On May 21, 1998, we published a Notice with request for comments on revisions to the Standard Flood Hazard Determination Form, 63 FR 27969. We received comments from three banking organizations, one real estate broker, and one flood determination firm.

The majority of respondents asked us to reconsider revising the form, since the proposed changes did not substantially alter the meaning or requirements of the form. They noted further that the changes will give rise to added costs for automated systems and printed stock, which must be upgraded and reprinted, and for requisite notification to users.

FEMA is revising the Standard Flood Hazard Determination form to comply with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and the Office of Management and Budget. In order to comply with these requirements, we clarified the instructions and made minor editorial changes to the form based on comments and questions received from users during the first iteration of the form.

Comments about specific items on the form included the need for additional space in some boxes, requests for deletion of some items and the addition of others, including borrower's name and base flood elevation.

Because the form is property-specific we did not include the borrower's name. We did not add the base flood elevation to the form because it is not a determining factor in the requirement of flood insurance; in addition, its procurement would add considerable expense.

We received other comments concerning the mandatory flood insurance purchase requirement and the application process for Letters of Map Change. Because these comments are not pertinent to the Standard Flood

Hazard Determination form, they are not addressed here.

INFORMATION COLLECTION: The Standard Flood Hazard Determination form must be completed by federally regulated lending institutions and federal agency lenders when making, increasing, extending or renewing any loan secured by improved real estate, for the purpose of documenting the factors considered as to whether flood insurance is required and available. When purchasing loans Government sponsored enterprises must require this form to document the factors they consider when they determine whether flood insurance is required and available. The Federal Emergency Management Agency does not collect this information.

Dated: January 13, 1999.

Michael J. Armstrong,

Associate Director, Mitigation Directorate.

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

STANDARD FLOOD HAZARD DETERMINATION

See The Attached Instructions

O.M.B. No. 3067-0264 Expires October 31, 2001

SECTION I - LOAN INFORMATION

1. LENDER NAME AND ADDRESS	2. COLLATERAL *(Building/Mobile Home/Personal Property)* PROPERTY ADDRESS *(Legal Description may be attached)*	
3. LENDER ID. NO.	4. LOAN IDENTIFIER	5. AMOUNT OF FLOOD INSURANCE REQUIRED $

SECTION II

A. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) COMMUNITY JURISDICTION

1. NFIP Community Name	2. County(ies)	3. State	4. NFIP Community Number

B. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) DATA AFFECTING BUILDING/MOBILE HOME

1. NFIP Map Number or Community-Panel Number (Community name, if not the same as "A")	2. NFIP Map Panel Effective/ Revised Date	3. LOMA/LOMR	4. Flood Zone	5. No NFIP Map
		☐ yes _____ Date		

C. FEDERAL FLOOD INSURANCE AVAILABILITY ***(Check all that apply)***

1. ☐ Federal Flood insurance is available *(community participates in NFIP)*. ☐ Regular Program ☐ Emergency Program of NFIP
2. ☐ Federal Flood insurance is not available because community is not participating in the NFIP.
3. ☐ Building/Mobile Home is in a Coastal Barrier Resources Area (CBRA) or Otherwise Protected Area (OPA), Federal Flood insurance may not be available.

CBRA/OPA designation date: _____

D. DETERMINATION

IS BUILDING/MOBILE HOME IN SPECIAL FLOOD HAZARD AREA (ZONES CONTAINING THE LETTERS "A" OR "V")? ☐ YES ☐ NO

If yes, flood insurance is required by the Flood Disaster Protection Act of 1973.
If no, flood insurance is not required by the Flood Disaster Protection Act of 1973.

E. COMMENTS ***(Optional)***:

This determination is based on examining the NFIP map, any Federal Emergency Management Agency revisions to it, and any other information needed to locate the building/mobile home on the NFIP map.

F. PREPARER'S INFORMATION

NAME, ADDRESS, TELEPHONE NUMBER *(If other than Lender)*	DATE OF DETERMINATION

FEMA Form 81-93, OCT 98 **This form may be locally reproduced.**

2. NFIP Map Panel Effective/Revised Date. Enter the map effective date or the map revised date shown on the NFIP map. (Example: 6/15/93.) this will be the latest of all dates shown on the map.

3. LOMA/LOMR. If a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) has been issued by FEMA since the current Map Panel Effective/Revised Date that revises the flood hazards affecting the building or mobile home, check "yes" and specify the date of the letter; otherwise, no entry is required. Information on LOMAs and LOMRs is available form the following sources:

* The community's official copy of its NFIP map should have a copy of all subsequently-issued LOMAs and LOMRs attached to it.
* For LOMAs and LOMRs issued on or after October 1, 1994, FEMA publishes a list of these letters twice a year as a compendium in the Federal Register; This information is also available on FEMA's website at http://www.fema.gov.
* A subscription service providing digitized copies of these letters on CD-ROM is also available by calling 1-800-358-9616.

4. Flood Zone. Enter the flood zone(s) covering the building or mobile home. (Examples: A, AE, A4, AR, AR/A, AR/AE, AR/AO, V, VE, V12, AH, AO, B, C, X, D.) If any part of the building or mobile home is within the Special Flood Hazard Area (SFHA), the entire building or mobile home is considered to be in the SFHA. All flood zones beginning with the letter "A" or "V" are considered Special Flood Hazard Areas (SFHAs). Each flood zone is defined in the legend of the NFIP map on which it appears. If there is no NFIP map for the subject area, enter "none."

5. No NFIP Map. If no NFIP map covers the area where the building or mobile home is located, check this box.

C. **FEDERAL FLOOD INSURANCE AVAILABILITY**. Check all boxes that apply; however, note that boxes 1 (Federal Flood Insurance is available...) and 2 (Federal Flood Insurance is not available...) are mutually exclusive. Federal flood insurance is available to all residents of a community that participates in the NFIP. Community participation status can be determined by consulting the NFIP Community Status Book, which is available from FEMA and at http://www.fema.gov. The NFIP Community Status Book will indicate whether or not the community is participating in the NFIP and whether participation is in the Emergency or Regular Program. If the community participates in the NFIP, check either Regular Program or Emergency Program. To obtain Federal flood insurance, a copy of this completed form may be provided to an insurance agent.

Federal flood insurance is prohibited in designated Coastal Barrier Resources Areas (CBRA) and Otherwise Protected Areas (OPAs) for buildings or mobile homes built or substantially improved after the date of the CBRA or OPA designation. An information sheet explaining the Coastal Barrier Resources System may be obtained from FEMA by calling 1-800-611-6125.

D. DETERMINATION: If any portion of the building/mobile home is in an identified Special Flood Hazard Area (SFHA), check yes (flood insurance is required). If no portion of the building/mobile home is in an identified SFHA, check no. If no NFIP map exists for the community, check no. If no NFIP map exists, Section B5 should also be checked.

F. PREPARER'S INFORMATION: If other than the lender, enter the name, address, and telephone number of the company or organization performing the flood hazard determination. An individual's name may be included, but is not required.

Date of Determination. Enter date on which flood hazard determination was completed.

OTHER INFORMATION

MULTIPLE BUILDINGS: If the loan collateral includes more than one building, a schedule for the additional building(s)/mobile home(s) indicating the determination for each may be attached. Otherwise, a separate form must be completed for each building or mobile home. Any attachment(s) should be noted in the comment section. A separate flood insurance policy is required for each building or mobile home.

GUARANTEES REGARDING INFORMATION: Determinations on this form made by persons other than the lender are acceptable only to the extent that the accuracy of the information is guaranteed.

FORM AVAILABILITY: Copies of this form are available from the FEMA fax-on-demand line by calling (202) 646-FEMA and requesting form #23103. Guidance on using the form in a printed, computerized, or electronic format is contained in form #23110. This information is also available on FEMA's website http://www.fema.gov.

STANDARD FLOOD HAZARD DETERMINATION FORM INSTRUCTIONS
PAPERWORK BURDEN DISCLOSURE NOTICE

Public reporting burden for FEMA Form 81-93 form is estimated to average 20 minutes per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the form. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20742; and to the Office of Management and Budget, Paperwork Reduction Project (30676- 0264), Washington, DC 20503.

SECTION 1

1. **LENDER NAME**: Enter lender name and address.

2. COLLATERAL (Building/Mobile Home/Personal Property) PROPERTY ADDRESS: Enter property address for the insurable collateral. In rural areas, a postal address may not be sufficient to locate the property. In these cases, legal property descriptions may be used and may be attached to the form if space provided is insufficient.

3. LENDER ID. NO.: The lender funding the loan should identify itself as follows: FDIC-insured lenders should indicate their FDIC Insurance Certificate Number; Federally-insured credit unions should indicate their charter/insurance number; Farm Credit institutions should indicate their UNINUM number. Other lenders who fund loans sold to or securitized by FNMA or FHLMC should enter the FNMA or FHLMC seller/servicer number.

4. LOAN IDENTIFIER: Optional. May be used by lenders to conform with their individual method of identifying loans.

5. AMOUNT OF FLOOD INSURANCE REQUIRED: Optional. The minimum federal requirement for this amount is the lesser of: the outstanding principal loan balance; the value of the improved property, mobile home and/or personal property used to secure the loan; or the maximum statutory limit of flood insurance coverage. Lenders may exceed the minimum federal requirements. National Flood Insurance Program (NFIP) policies do not provide coverage in excess of the value of the building/mobile home/personal property.

SECTION 2

A. **NATIONAL FLOOD INSURANCE PROGRAM (NFIP) COMMUNITY JURISDICTION**

1. NFIP Community Name. Enter the complete name of the community (as indicated on the NFIP map) in which the building or mobile home is located. Under the NFIP, a community is the political unit that has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction. A community may be any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization. (Examples: Brewer, City of; Washington, Borough of; Worchester, Township of; Baldwin County; Jefferson Parish.) For a building or mobile home that may have been annexed by one community but is shown on another community's NFIP map, enter the Community Name for the community with land-use jurisdiction over the building or mobile home.

2. County(ies). Enter the name of the county or counties in which the community is located. For unicorporated areas of a county, enter "unincorporated areas". For independent cities, enter "independent city."

3. State. Enter the two-digit state abbreviation. (Examples: VA, TX, CA.)

4. NFIP Community Number. Enter the 6-digit NFIP community number. This number can be determined by consulting the NFIP Community Status Book or can be found on the NFIP map; copies of either can be obtained from FEMA's Website http://www.fema.gov or by calling 1-800-611-6125. If not NFIP Community Number exists for the community, enter "none".

B. NFIP DATA AFFECTING BUILDING/MOBILE HOME

The information in this section (excluding the LOMA/LOMR information) is obtained by reviewing the NFIP map on which the building/mobile home is located. The current NFIP map, and a pamphlet titled "Guide to Flood Maps," may be obtained from FEMA by calling 1-800-611-6125. Note that even when an NFIP map panel is not printed, it may be reflected on a community's NFIP map index with its proper number, date, and flood zone indicated; enter these data accordingly.

1. NFIP Map Number or Community-Panel Number. Enter the 11-digit number shown on the NFIP map that covers the building or mobile home. (Examples: 480214 0022C; 58103C0075 F.) Some older maps will have a 9-digit number (Example: 12345601A.) Note that the first six digits will not match the NFIP Community Number when the sixth digit is a "C" or when one community has annexed land from another but the NFIP map has not yet been updated to reflect this annexation. When the sixth digit is a "C", the NFIP map is in countywide format and shows the flood hazards for the geographic areas of the county on one map, including flood hazards for incorporated communities and for any unincorporated county contained within the county's geographic limits. Such countywide maps will list an NFIP Map Number. For maps not in such countywide format, the NFIP map will list a Community-Panel Number on each panel. If no NFIP map is in effect for the location of the building or mobile home, enter "none".

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FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Uniform Rating System for Information Technology

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) revised the Uniform Interagency Rating System for Data Processing Operations, commonly referred to as the Information Systems (IS) rating system. The revision changed the name of the rating system to the Uniform Rating System for Information Technology (URSIT) and reflects changes that have occurred in the data processing services industry and in supervisory policies and procedures since the rating system was first adopted in 1978. The revised numerical ratings conform to the language and tone of the Uniform Financial Institution Rating System (UFIRS) rating definitions, commonly referred to as the CAMELS rating system; reformatted and clarified the component rating descriptions; emphasized the quality of risk management processes in each of the rating components; added two new component categories, ''Development and Acquisition'', and ''Support and Delivery'' as replacements for ''Systems Development and Programming'', and ''Operations''; and explicitly identified the risk types that are considered in assigning component ratings.

The term ''financial institution'' refers to those FDIC insured depository institutions whose primary Federal supervisory agency is represented on the FFIEC, Bank Holding Companies, Branches and Agencies of Foreign Banking Organizations, and Thrifts. The term ''service provider'' refers to organizations that provide data processing services to financial institutions. Uninsured trust companies that are chartered by the Office of the Comptroller of the Currency (OCC), members of the Federal Reserve System, or subsidiaries of registered bank holding companies or insured depository institutions are also covered by this action.

FOR FURTHER INFORMATION CONTACT:

FRB: Charles Blaine Jones, Supervisory EDP Analyst, Specialized Activities, (202) 452–3759, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Mail Stop 175, 20th and C Streets, NW, Washington, D.C. 20551.

FDIC: Stephen A. White, Review Examiner (Information Systems), (202) 898–6923, Division of Supervision, Federal Deposit Insurance Corporation, Room F–6010, 550 17th Street, NW, Washington, D.C. 20429.

OCC: Robert J. Hemming, National Bank Examiner, (202) 874–4929, Bank Technology Unit, Office of the Comptroller of the Currency, Mail Stop 7–8, 250 E Street, SW, Washington, D.C. 20219.

OTS: Jennifer Dickerson, Program Manager, Information System Examinations, Compliance Policy, (202) 906–5631, Office of Thrift Supervision, 1700 G Street, NW, Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Background Information

On June 9, 1998, the FFIEC published a notice in the **Federal Register** (June Notice), 63 FR 31468–31475, requesting comment on proposed revisions to the Uniform Interagency Rating System for Data Processing Operations. This rating system is an internal supervisory examination rating system used by federal and state regulators to assess uniformly financial institution and service provider risks introduced by information technology and for identifying those institutions and service providers requiring special supervisory attention. The current rating system was adopted in 1978 by the OCC, OTS, FDIC and FRB, and is commonly referred to as the IS rating system. Under the IS rating system, each financial institution or service provider is assigned a composite rating based on an evaluation and rating of four essential components of an institution's information technology activities. These components address the following: the adequacy of the information technology audit function; the capability of information technology management; the adequacy of systems development and programming; and the quality, reliability, availability and integrity of information technology operations. The composite and component ratings are assigned on a ''1'' to ''5'' numerical scale. A rating of ''1'' indicates the strongest performance and management practices and the least degree of supervisory concern, while a rating of ''5'' indicates the weakest performance and management practices and, therefore, the highest degree of supervisory concern.

The IS rating system has proven to be an effective means for the federal and state supervisory agencies to assist examiners in determining the condition of an institution's or service provider's information technology function. A number of changes, however, have occurred in information technology and in supervisory policies and procedures since the rating system was first adopted. As a result the FFIEC is renaming the rating system to the Uniform Rating System for Information Technology (URSIT) and making certain enhancements to the rating system, while retaining its basic framework. The URSIT enhancements:

☐ Realign the URSIT rating definitions to bring them in line with UFIRS.

☐ Replace the current ''Systems Development and Programming'' and ''Operations'' components with two new component categories, ''Development and Acquisition'' and ''Support and Delivery''.

☐ Reinforce the importance of risk management processes with language in each of the rating components emphasizing the consideration of processes to identify, measure, monitor, and control risks.

Comments Received and Changes Made

The FFIEC received eight comments regarding the proposed revisions to the URSIT. Three of the comments were from banks and credit unions, two from third party service providers, two from financial institution trade associations, and one from a technology vendor.

Examiners field-tested the revised rating system during bank and thrift information system examinations conducted between June and August 1998. The examiners provided comments regarding the revised rating system. Examiner responses were generally favorable, and no significant problems or unanticipated rating differences were encountered between the former and updated rating system.

The FFIEC carefully considered each comment and examiner response and made certain changes. The following discussion describes the comments received (both through public comment and agency field-testing) and changes made to the URSIT in response to those comments. The updated URSIT is included at the end of this Notice.

June Notice Specific Questions

In addition to requesting general comments regarding the proposed system, the FFIEC invited comments on six specific questions:

1. Does the proposal capture the essential risk areas of information technology?

The majority of the responses to this question were positive, and no changes were made. One commenter expressed concerns that the significance of contingency planning in maintaining

mission-critical applications in the event of a computer system failure was not adequately addressed. This concern is addressed later in this Notice under Contingency Planning.

2. Does the proposal adequately address distributed processing environments, as well as centralized processing environments?

The majority of the responses to this question were positive. Two commenters expressed concerns that the proposal did not adequately address distributed processing environments. One commenter recommended that specific language be used to emphasize network security issues, electronic commerce, and Internet controls. The FFIEC has added language to the Support and Delivery component to explicitly include electronic commerce and the Internet. One commenter expressed concerns that the proposal does not address the complexities and risks of contingency planning and data recovery in a distributed processing environment. This concern is addressed later in this Notice under Data Processing Service Providers and Contingency Planning.

3. Does the proposal adequately address risks to financial institutions that process their data in-house as well as to data processing service providers?

The majority of responses to this question were positive. Three commenters noted concerns regarding the proposal's adequacy to address risks to data processing service providers. This concern is addressed later in this Notice under Data Processing Service Providers.

4. Are the definitions for the individual components and the composite numerical ratings in the proposal consistent with the language and tone of the UFIRS definitions?

The majority of responses to this question were positive. Two commenters recommended revisions in the language of the proposal to make it more consistent with UFIRS. The FFIEC made additional changes in the language of the URSIT to make it more consistent with UFIRS.

5. Are there any components which should be added to or deleted from the proposal?

The majority of the responses to this question were negative. One commenter recommended that a fifth component entitled ''Contingency Planning'' be added to the URSIT. This recommendation is addressed later in this Notice under Contingency Planning.

6. Given the trend toward the integration of safety and soundness and information technology examination functions by the federal supervisory agencies, does a separate rating system for information technology continue to be useful?

The majority of the responses to this question were positive, and no changes were made. One commenter suggested that the integration of the examination functions deserve more study. This commenter expressed a concern that the convergence of information technology applications to the operation of the payments system is likely to result in considerable duplication in the examination process and an inconsistent evaluation of risk management procedures for information technology activities and payments system risk. The FFIEC is working toward the integration of the safety and soundness and information technology examination functions. This concern is addressed later in this notice under Risk Management.

Data Processing Service Providers

Two commenters expressed concerns that the URSIT provides little guidance regarding the differentiation of data processing service providers whose operations vary by size and complexity. The FFIEC designed the rating system so that examiners could adapt its concepts to entities of various size and complexity. Examination strategies and objectives are written based on the guidelines in the FFIEC Information Systems Examination Handbook [1] (IS Handbook). Specifically for data processing service providers this guidance is contained in Chapter 22 of the IS Handbook and generally for all entities in Chapters 2 through 5. The FFIEC oversees the application of the URSIT through its Information Systems Subcommittee. Future editions of the FFIEC IS Handbook will be reviewed and edited to ensure it continues to provide appropriate guidance for the application of the URSIT to all data processing service providers.

One commenter expressed a concern that the URSIT does not adequately address what banks, who use data processing service providers, should do in situations where their control is limited. Guidance for banks who receive data processing services is available from Chapter 22 of the FFIEC IS Handbook. This chapter specifically addresses control and administration issues in contracting with and monitoring service providers. The FFIEC designed the URSIT so that examiners could apply the concepts of the rating system to institutions who perform their data processing in-house as well as to those institutions who outsource this function to a third-party. The flexibility of the URSIT allows an examiner to include, within the scope of examination, the appropriate requirements and exclude those requirements that do not apply.

Risk Management

The revised rating system reflects an increased emphasis on risk management processes. One commenter expressed concern about whether the increased emphasis on risk management in the URSIT will be implemented and applied in a manner that is consistent with risk management principles articulated in other bank supervision initiatives, particularly those dealing with payments system risk. The FFIEC is working toward the integration of the safety and soundness and information technology examination functions. The future implementation of an integrated examination process by the FFIEC will need to address the consistent application of risk management principles and oversight of information technology activities and other operational areas. Accordingly, the FFIEC will review the URSIT periodically to ensure its compatibility with the evolving examination process. In the interim, the assessment of information technology risk management is guided by Chapter 2 of the FFIEC IS Handbook and other policy statements deemed appropriate.

Contingency Planning

One commenter suggested that the URSIT should formally address contingency planning guidelines under a separate rating to assess an institution's ability to quickly recover from a major disruption without risking a loss of its data. The commenter suggested the URSIT should include ratings that reflect a more comprehensive assessment of an institution's contingency plan and that they should define the time needed for an institution to resume core applications.

The FFIEC agrees that contingency planning and business resumption is important to the viability of any financial institution. To supervise and assess these activities, the FFIEC's revised interagency policy on Corporate Business Resumption and Contingency Planning (SP–5) provides general policies for financial institutions. This policy establishes goals and accountability for contingency planning and defines a financial institution's responsibilities regarding contingency

[1] Federal Financial Institutions Examination Council, Information Systems Examination Handbook, 1996.

planning if they have outsourced information processing. The FFIEC IS Handbook, which provides general control and verification procedures for examiners, supplements this policy. The IS Handbook also provides reference information that supports the contingency planning procedures. The IS Handbook guidance is considered sufficient to assess the adequacy of the financial institution's contingency planning efforts.

The rating system includes contingency planning as part of the assessment of the support and delivery component. The FFIEC considered stratification of the rating system components based on functional controls, e.g., contingency planning or security, and chose to use the model created by the Information Systems Audit and Control Foundation, COBIT.[2] The FFIEC concluded that further breakdown was not necessary or beneficial to the examiners or financial institutions.

Implementation Date

The FFIEC recommends that the Federal supervisory agencies implement the updated URSIT no later than April 1, 1999.

Uniform Rating System for Information Technology

Introduction

The quality, reliability, and integrity of a financial institution or service provider's information technology (IT) affects all aspects of its performance. An assessment of the technology risk management framework is necessary whether or not the institution or a third-party service provider manages these operations. The Uniform Rating System for Information Technology (URSIT) is an internal rating system used by federal and state regulators to uniformly assess financial institution and service provider risks introduced by IT. It also allows the regulators to identify those insured institutions and service providers whose information technology risk exposure or performance requires special supervisory attention. The rating system includes component and composite rating descriptions and the explicit identification of risks and assessment factors that examiners consider in assigning component ratings. Additionally, information technology can affect the risks associated with financial institutions. The effect on credit, operational, market, reputation, strategic, liquidity, interest rate, and compliance risks should be considered for each IT rating component.

The primary purpose of the rating system is to identify those entities whose condition or performance of information technology functions requires special supervisory attention. This rating system assists examiners in making an assessment of risk and compiling examination findings. However, the rating system does not drive the scope of an examination. Examiners should use the rating system to help evaluate the entity's overall risk exposure and risk management performance, and determine the degree of supervisory attention believed necessary to ensure that weaknesses are addressed and that risk is properly managed.

Overview

The URSIT is based on a risk evaluation of four critical components: Audit, Management, Development and Acquisition, and Support and Delivery (AMDS). These components are used to assess the overall performance of IT within an organization. Examiners evaluate the functions identified within each component to assess the institution's ability to identify, measure, monitor and control information technology risks. Each organization examined for IT is assigned a summary or composite rating based on the overall results of the evaluation. The IT composite rating and each component rating are based on a scale of ''1'' through ''5'' in ascending order of supervisory concern; ''1'' representing the highest rating and least degree of concern, and ''5'' representing the lowest rating and highest degree of concern.

The first step in developing an IT composite rating for an organization is the assignment of a performance rating to the individual AMDS components. The evaluation of each of these components, their interrelationships, and relative importance is the basis for the composite rating. The composite rating is derived by making a qualitative summarization of all of the AMDS components. A direct relationship exists between the composite rating and the individual AMDS component performance ratings. However, the composite rating is not an arithmetic average of the individual components. An arithmetic approach does not reflect the actual condition of IT when using a risk-focused approach. A poor rating in one component may heavily influence the overall composite rating for an institution. For example, if the audit function is viewed as inadequate, the overall integrity of the IT systems is not readily verifiable. Thus, a composite rating of less than satisfactory (''3''–''5'') would normally be appropriate.

A principal purpose of the composite rating is to identify those financial institutions and service providers that pose an inordinate amount of information technology risk and merit special supervisory attention. Thus, individual risk exposures that more explicitly affect the viability of the organization and/or its customers should be given more weight in the composite rating.

The FFIEC recognizes that management practices, particularly as they relate to risk management, vary considerably among financial institutions and service bureaus depending on their size and sophistication, the nature and complexity of their business activities and their risk profile. Accordingly, the FFIEC also recognizes that for less complex information systems environments, detailed or highly formalized systems and controls are not required to receive the higher composite and component ratings.

The following two sections contain the URSIT composite rating definitions, the assessment factors, and definitions for the four component ratings. These assessment factors and definitions outline various IT functions and controls that may be evaluated as part of the examination.

Composite Ratings[3]

Composite 1

Financial institutions and service providers rated composite ''1'' exhibit strong performance in every respect and generally have components rated 1 or 2. Weaknesses in IT are minor in nature and are easily corrected during the normal course of business. Risk management processes provide a comprehensive program to identify and monitor risk relative to the size, complexity and risk profile of the entity. Strategic plans are well defined and fully integrated throughout the organization. This allows management to quickly adapt to changing market, business and technology needs of the entity. Management identifies weaknesses promptly and takes appropriate corrective action to resolve audit and regulatory concerns. The

[2] Information Systems Audit and Control Foundation, COBIT—Governance, Control and Audit for Information and Related Technology, Second Edition.

[3] The descriptive examples in the numeric composite rating definitions are intended to provide guidance to examiners as they evaluate the overall condition of Information Technology. Examiners must use professional judgement when making this assessment and assigning the numeric rating.

financial condition of the service provider is strong and overall performance shows no cause for supervisory concern.

Composite 2

Financial institutions and service providers rated composite ''2'' exhibit safe and sound performance but may demonstrate modest weaknesses in operating performance, monitoring, management processes or system development. Generally, senior management corrects weaknesses in the normal course of business. Risk management processes adequately identify and monitor risk relative to the size, complexity and risk profile of the entity. Strategic plans are defined but may require clarification, better coordination or improved communication throughout the organization. As a result, management anticipates, but responds less quickly to changes in market, business, and technological needs of the entity. Management normally identifies weaknesses and takes appropriate corrective action. However, greater reliance is placed on audit and regulatory intervention to identify and resolve concerns. The financial condition of the service provider is acceptable and while internal control weaknesses may exist, there are no significant supervisory concerns. As a result, supervisory action is informal and limited.

Composite 3

Financial institutions and service providers rated composite ''3'' exhibit some degree of supervisory concern due to a combination of weaknesses that may range from moderate to severe. If weaknesses persist, further deterioration in the condition and performance of the institution or service provider is likely. Risk management processes may not effectively identify risks and may not be appropriate for the size, complexity, or risk profile of the entity. Strategic plans are vaguely defined and may not provide adequate direction for IT initiatives. As a result, management often has difficulty responding to changes in business, market, and technological needs of the entity. Self-assessment practices are weak and are generally reactive to audit and regulatory exceptions. Repeat concerns may exist, indicating that management may lack the ability or willingness to resolve concerns. The financial condition of the service provider may be weak and/or negative trends may be evident. While financial or operational failure is unlikely, increased supervision is necessary. Formal or informal supervisory action may be necessary to secure corrective action.

Composite 4

Financial institutions and service providers rated composite ''4'' operate in an unsafe and unsound environment that may impair the future viability of the entity. Operating weaknesses are indicative of serious managerial deficiencies. Risk management processes inadequately identify and monitor risk, and practices are not appropriate given the size, complexity, and risk profile of the entity. Strategic plans are poorly defined and not coordinated or communicated throughout the organization. As a result, management and the board are not committed to, or may be incapable of ensuring that technological needs are met. Management does not perform self-assessments and demonstrates an inability or unwillingness to correct audit and regulatory concerns. The financial condition of the service provider is severely impaired and/or deteriorating. Failure of the financial institution or service provider may be likely unless IT problems are remedied. Close supervisory attention is necessary and, in most cases, formal enforcement action is warranted.

Composite 5

Financial institutions and service providers rated composite ''5'' exhibit critically deficient operating performance and are in need of immediate remedial action. Operational problems and serious weaknesses may exist throughout the organization. Risk management processes are severely deficient and provide management little or no perception of risk relative to the size, complexity, and risk profile of the entity. Strategic plans do not exist or are ineffective, and management and the board provide little or no direction for IT initiatives. As a result, management is unaware of, or inattentive to technological needs of the entity. Management is unwilling or incapable of correcting audit and regulatory concerns. The financial condition of the service provider is poor and failure is highly probable due to poor operating performance or financial instability. Ongoing supervisory attention is necessary.

Component Ratings [4]

Audit

Financial institutions and service providers are expected to provide independent assessments of their exposure to risks and the quality of internal controls associated with the acquisition, implementation and use of information technology.[5] Audit practices should address the IT risk exposures throughout the institution and its service provider(s) in the areas of user and data center operations, client/server architecture, local and wide area networks, telecommunications, information security, electronic data interchange, systems development, and contingency planning. This rating should reflect the adequacy of the organization's overall IT audit program, including the internal and external auditor's abilities to detect and report significant risks to management and the board of directors on a timely basis. It should also reflect the internal and external auditor's capability to promote a safe, sound, and effective operation.

The performance of audit is rated based upon an assessment of factors such as:

☐ The level of independence maintained by audit and the quality of the oversight and support provided by the board of directors and management.

☐ The adequacy of audit's risk analysis methodology used to prioritize the allocation of audit resources and to formulate the audit schedule.

☐ The scope, frequency, accuracy, and timeliness of internal and external audit reports.

☐ The extent of audit participation in application development, acquisition, and testing, to ensure the effectiveness of internal controls and audit trails.

☐ The adequacy of the overall audit plan in providing appropriate coverage of IT risks.

☐ The auditor's adherence to codes of ethics and professional audit standards.

☐ The qualifications of the auditor, staff succession, and continued development through training.

☐ The existence of timely and formal follow-up and reporting on management's resolution of identified problems or weaknesses.

☐ The quality and effectiveness of internal and external audit activity as it relates to IT controls.

[4] The descriptive examples in the numeric component rating definitions are intended to provide guidance to examiners as they evaluate the individual components. Examiners must use professional judgement when assessing a component area and assigning a numeric rating value as it is likely that examiners will encounter conditions that correspond to descriptive examples in two or more numeric rating value definitions.

[5] Financial institutions that outsource their data processing operations should obtain copies of internal audit reports, SAS 70 reviews, and/or regulatory examination reports of their service providers.

Ratings

1. A rating of ''1'' indicates strong audit performance. Audit independently identifies and reports weaknesses and risks to the board of directors or its audit committee in a thorough and timely manner. Outstanding audit issues are monitored until resolved. Risk analysis ensures that audit plans address all significant IT operations, procurement, and development activities with appropriate scope and frequency. Audit work is performed in accordance with professional auditing standards and report content is timely, constructive, accurate, and complete. Because audit is strong, examiners may place substantial reliance on audit results.

2. A rating of ''2'' indicates satisfactory audit performance. Audit independently identifies and reports weaknesses and risks to the board of directors or audit committee, but reports may be less timely. Significant outstanding audit issues are monitored until resolved. Risk analysis ensures that audit plans address all significant IT operations, procurement, and development activities; however, minor concerns may be noted with the scope or frequency. Audit work is performed in accordance with professional auditing standards; however, minor or infrequent problems may arise with the timeliness, completeness and accuracy of reports. Because audit is satisfactory, examiners may rely on audit results but because minor concerns exist, examiners may need to expand verification procedures in certain situations.

3. A rating of ''3'' indicates less than satisfactory audit performance. Audit identifies and reports weaknesses and risks; however, independence may be compromised and reports presented to the board or audit committee may be less than satisfactory in content and timeliness. Outstanding audit issues may not be adequately monitored. Risk analysis is less than satisfactory. As a result, the audit plan may not provide sufficient audit scope or frequency for IT operations, procurement, and development activities. Audit work is generally performed in accordance with professional auditing standards; however, occasional problems may be noted with the timeliness, completeness and/or accuracy of reports. Because audit is less than satisfactory, examiners must use caution if they rely on the audit results.

4. A rating of ''4'' indicates deficient audit performance. Audit may identify weaknesses and risks but it may not independently report to the board or audit committee and report content may be inadequate. Outstanding audit issues may not be adequately monitored and resolved. Risk analysis is deficient. As a result, the audit plan does not provide adequate audit scope or frequency for IT operations, procurement, and development activities. Audit work is often inconsistent with professional auditing standards and the timeliness, accuracy, and completeness of reports is unacceptable. Because audit is deficient, examiners cannot rely on audit results.

5. A rating of ''5'' indicates critically deficient audit performance. If an audit function exists, it lacks sufficient independence and, as a result, does not identify and report weaknesses or risks to the board or audit committee. Outstanding audit issues are not tracked and no follow-up is performed to monitor their resolution. Risk analysis is critically deficient. As a result, the audit plan is ineffective and provides inappropriate audit scope and frequency for IT operations, procurement and development activities. Audit work is not performed in accordance with professional auditing standards and major deficiencies are noted regarding the timeliness, accuracy, and completeness of audit reports. Because audit is critically deficient examiners cannot rely on audit results.

Management

This rating reflects the abilities of the board and management as they apply to all aspects of IT acquisition, development, and operations. Management practices may need to address some or all of the following IT-related risks: strategic planning, quality assurance, project management, risk assessment, infrastructure and architecture, end-user computing, contract administration of third party service providers, organization and human resources, regulatory and legal compliance. Generally, directors need not be actively involved in day-to-day operations; however, they must provide clear guidance regarding acceptable risk exposure levels and ensure that appropriate policies, procedures, and practices have been established. Sound management practices are demonstrated through active oversight by the board of directors and management, competent personnel, sound IT plans, adequate policies and standards, an effective control environment, and risk monitoring. This rating should reflect the board's and management's ability as it applies to all aspects of IT operations.

The performance of management and the quality of risk management are rated based upon an assessment of factors such as:

☐ The level and quality of oversight and support of the IT activities by the board of directors and management.

☐ The ability of management to plan for and initiate new activities or products in response to information needs and to address risks that may arise from changing business conditions.

☐ The ability of management to provide information reports necessary for informed planning and decision making in an effective and efficient manner.

☐ The adequacy of, and conformance with, internal policies and controls addressing the IT operations and risks of significant business activities.

☐ The effectiveness of risk monitoring systems.

☐ The timeliness of corrective action for reported and known problems.

☐ The level of awareness of and compliance with laws and regulations.

☐ The level of planning for management succession.

☐ The ability of management to monitor the services delivered and to measure the organization's progress toward identified goals in an effective and efficient manner.

☐ The adequacy of contracts and management's ability to monitor relationships with third-party servicers.

☐ The adequacy of strategic planning and risk management practices to identify, measure, monitor, and control risks, including management's ability to perform self-assessments.

☐ The ability of management to identify, measure, monitor, and control risks and to address emerging information technology needs and solutions.

In addition to the above, factors such as the following are included in the assessment of management at service providers:

☐ The financial condition and ongoing viability of the entity.

☐ The impact of external and internal trends and other factors on the ability of the entity to support continued servicing of client financial institutions.

☐ The propriety of contractual terms and plans.

Ratings

1. A rating of ''1'' indicates strong performance by management and the board. Effective risk management practices are in place to guide IT activities, and risks are consistently and effectively identified, measured, controlled, and monitored. Management immediately resolves audit and regulatory concerns to ensure sound operations. Written technology plans, policies and procedures, and standards

are thorough and properly reflect the complexity of the IT environment. They have been formally adopted, communicated, and enforced throughout the organization. IT systems provide accurate, timely reports to management. These reports serve as the basis of major decisions and as an effective performance-monitoring tool. Outsourcing arrangements are based on comprehensive planning; routine management supervision sustains an appropriate level of control over vendor contracts, performance, and services provided. Management and the board have demonstrated the ability to promptly and successfully address existing IT problems and potential risks.

2. A rating of ''2'' indicates satisfactory performance by management and the board. Adequate risk management practices are in place and guide IT activities. Significant IT risks are identified, measured, monitored, and controlled; however, risk management processes may be less structured or inconsistently applied and modest weaknesses exist. Management routinely resolves audit and regulatory concerns to ensure effective and sound operations, however, corrective actions may not always be implemented in a timely manner. Technology plans, policies and procedures, and standards are adequate and are formally adopted. However, minor weaknesses may exist in management's ability to communicate and enforce them throughout the organization. IT systems provide quality reports to management which serve as a basis for major decisions and a tool for performance planning and monitoring. Isolated or temporary problems with timeliness, accuracy or consistency of reports may exist. Outsourcing arrangements are adequately planned and controlled by management, and provide for a general understanding of vendor contracts, performance standards and services provided. Management and the board have demonstrated the ability to address existing IT problems and risks successfully.

3. A rating of ''3'' indicates less than satisfactory performance by management and the board. Risk management practices may be weak and offer limited guidance for IT activities. Most IT risks are generally identified; however, processes to measure and monitor risk may be flawed. As a result, management's ability to control risk is less than satisfactory. Regulatory and audit concerns may be addressed, but time frames are often excessive and the corrective action taken may be inappropriate. Management may be unwilling or incapable of addressing deficiencies. Technology plans, policies and procedures, and standards exist, but may be incomplete. They may not be formally adopted, effectively communicated, or enforced throughout the organization. IT systems provide requested reports to management, but periodic problems with accuracy, consistency and timeliness lessen the reliability and usefulness of reports and may adversely affect decision making and performance monitoring. Outsourcing arrangements may be entered into without thorough planning. Management may provide only cursory supervision that limits their understanding of vendor contracts, performance standards, and services provided. Management and the board may not be capable of addressing existing IT problems and risks, evidenced by untimely corrective actions for outstanding IT problems.

4. A rating of ''4'' indicates deficient performance by management and the board. Risk management practices are inadequate and do not provide sufficient guidance for IT activities. Critical IT risk are not properly identified, and processes to measure and monitor risks are deficient. As a result, management may not be aware of and is unable to control risks. Management may be unwilling and/or incapable of addressing audit and regulatory deficiencies in an effective and timely manner. Technology plans, policies and procedures, and standards are inadequate, have not been formally adopted, or effectively communicated throughout the organization, and management does not effectively enforce them. IT systems do not routinely provide management with accurate, consistent, and reliable reports, thus contributing to ineffective performance monitoring and/or flawed decision making. Outstanding arrangements may be entered into without planning or analysis, and management may provide little or no supervision of vendor contracts, performance standards, or services provided. Management and the board are unable to address existing IT problems and risks, as evidenced by ineffective actions and longstanding IT weaknesses. Strengthening of management and its processes is necessary. The financial condition of the service provider may threaten its viability.

5. A rating of ''5'' indicates critically deficient performance by management and the board. Risk management practices are severely flawed and provide inadequate guidance for IT activities. Critical IT risks are not identified, and processes to measure and monitor risks do not exist, or are not effective. Management's inability to control risk may threaten the continued viability of the institution or service provider. Management is unable and/or unwilling to correct audit and regulatory identified deficiencies and immediate action by the board is required to preserve the viability of the institution or service provider. If they exist, technology plans, policies and procedures, and standards are critically deficient. Because of systemic problems, IT systems do not produce management reports which are accurate, timely, or relevant. Outsourcing arrangements may have been entered into without management planning or analysis, resulting in significant losses to the financial institution or ineffective vendor services. The financial condition of the service provider presents an imminent threat to its viability.

Development and Acquisition

This rating reflects an organization's ability to identify, acquire, install, and maintain appropriate information technology solutions. Management practices may need to address all or parts of the business process for implementing any kind of change to the hardware or software used. These business processes include an institution's or service provider's purchase of hardware or software, development and programming performed by the institution or service provider, purchase of services from independent vendors or affiliated data centers, or a combination of these activities. The business process is defined as all phases taken to implement a change including researching alternatives available, choosing an appropriate option for the organization as a whole, and converting to the new system, or integrating the new system with existing systems. This rating reflects the adequacy of the institution's systems development methodology and related risk management practices for acquisition and deployment of information technology. This rating also reflects the boards and management's ability to enhance and replace information technology prudently in a controlled environment,

The performance of systems development and acquisition and related risk management practice is rated based upon an assessment of factors such as:

☐ The level and quality of oversight and support of systems development and acquisition activities by senior management and the board of directors.

☐ The adequacy of the organizational and management structures to establish accountability and responsibility for IT systems and technology initiatives.

☐ The volume, nature, and extent of risk exposure to the financial institution in the area of systems development and acquisition.

☐ The adequacy of the institution's Systems Development Life Cycle (SDLC) and programming standards.

☐ The quality of project management programs and practices which are followed by developers, operators, executive management/owners, independent vendors or affiliated servicers, and end-users.

☐ The independence of the quality assurance function and the adequacy of controls over program changes.

☐ The quality and thoroughness of system documentation.

☐ The integrity and security of the network, system, and application software.

☐ The development of information technology solutions that meet the needs of end users.

☐ The extent of end user involvement in the system development process.

In addition to the above, factors such as the following are included in the assessment of development and acquisition at service providers:

☐ The quality of software releases and documentation.

☐ The adequacy of training provided to clients.

Ratings

1. A rating of ''1'' indicates strong systems development, acquisition, implementation, and change management performance. Management and the board routinely demonstrate successfully the ability to identify and implement appropriate IT solutions while effectively managing risk. Project management techniques and the SDLC are fully effective and supported by written policies, procedures and project controls that consistently result in timely and efficient project completion. An independent quality assurance function provides strong controls over testing and program change management. Technology solutions consistently meet end user needs. No significant weaknesses or problems exist.

2. A rating of ''2'' indicates satisfactory systems development, acquisition, implementation, and change management performance. Management and the board frequently demonstrate the ability to identify and implement appropriate IT solutions while managing risk. Project management and the SDLC are generally effective; however, weaknesses may exist that result in minor project delays or cost overruns. An independent quality assurance function provides adequate supervision of testing and program change management, but minor weaknesses may exist. Technology solutions meet end user needs. However, minor enhancements may be necessary to meet original user expectations. Weaknesses may exist; however, they are not significant and they are easily corrected in the normal course of business.

3. A rating of ''3'' indicates less than satisfactory systems development, acquisition, implementation, and change management performance. Management and the board may often be unsuccessful in identifying and implementing appropriate IT solutions; therefore, unwarranted risk exposure may exist. Project management techniques and the SDLC are weak and may result in frequent project delays, backlogs or significant cost overruns. The quality assurance function may not be independent of the programming function which may adversely impact the integrity of testing and program change management. Technology solutions generally meet end user needs, but often require an inordinate level of change after implementation. Because of weaknesses, significant problems may arise that could result in disruption to operations or significant losses.

4. A rating of ''4'' indicates deficient systems development, acquisition, implementation and change management performance. Management and the board may be unable to identify and implement appropriate IT solutions and do not effectively mange risk. Project management techniques and the SDLC are ineffective and may result in severe project delays and cost overruns. The quality assurance function is not fully effective and may not provide independent or comprehensive review of testing controls or program change management. Technology solutions may not meet the critical needs of the organization. Problems and significant risks exist that require immediate action by the board and management to preserve the soundness of the institution.

5. A rating of ''5'' indicates critically deficient systems development, acquisition, impelementation, and change management performance. Management and the board appear to be incapable of identifying, and implementing appropriate information technology solutions. If they exist, project management techniques and the SDLC are critically deficient and provide little or no direction for development of systems or technology projects. The quality assurance function is severely deficient or not present and unidentified problems in testing and program change management have caused significant IT risks. Technology solutions do not meet the needs of the organization. Serious problems and significant risks exist which raise concern for the financial institution's or service providers's ongoing viability.

Support and Delivery

This rating reflects an organization's ability to provide technology services in a secure environment. It reflects not only the condition of IT operations but also factors such as reliability, security, and integrity, which may affect the quality of the information delivery system. The factors include customer support and training, and the ability to manage problems and incidents, operations, system performance, capacity planning, and facility and data management. Risk management practices should promote effective, safe and sound IT operations that ensure the continuity of operations and the reliability and availability of data. The scope of this component rating includes operational risks throughout the organization and service providers.

The rating of IT support and delivery is based on a review and assessment of requirements such as:

☐ The ability to provide a level of service that meets the requirements of the business.

☐ The adequacy of security policies, procedures, and practices in all units and at all levels of the financial institution and service providers.

☐ The adequacy of data controls over preparation, input, processing, and output.

☐ The adequacy of corporate contingency planning and business resumption for data centers, networks, service providers and business units.

☐ The quality of processes or programs that monitor capacity and performance.

☐ The adequacy of controls and the ability to monitor controls at service providers.

☐ The quality of assistance provided to users, including the ability to handle problems.

☐ The adequacy of operating policies, procedures, and manuals.

☐ The quality of physical and logical security, including the privacy of data.

☐ The adequacy of firewall architectures and the security of connections with public networks.

In addition to the above, factors such as the following are included in the

assessment of support and delivery at service providers:

☐ The adequacy of customer service provided to clients.

☐ The ability of the entity to provide and maintain service level performance that meets the requirements of the client.

1. A rating of ''1'' indicates strong IT support and delivery performance. The organization provides technology services that are reliable and consistent. Service levels adhere to well-defined service level agreements and routinely meet or exceed business requirements. A comprehensive corporate contingency and business resumption plan is in place. Annual contingency plan testing and updating is performed; and, critical systems and applications are recovered within acceptable time frames. A formal written data security policy and awareness program is communicated and enforced throughout the organization. The logical and physical security for all IT platforms is closely monitored and security incidents and weaknesses are identified and quickly corrected. Relationships with third-party service providers are closely monitored. IT operations are highly reliable, and risk exposure is successfully identified and controlled.

2. A rating of ''2'' indicates satisfactory IT support and delivery performance. The organization provides technology services that are generally reliable and consistent, however, minor discrepancies in service levels may occur. Service performance adheres to service agreements and meets business requirements. A corporate contingency and business resumption plan is in place, but minor enhancements may be necessary. Annual plan testing and updating is performed and minor problems may occur when recovering systems or applications. A written data security policy is in place but may require improvement to ensure its adequacy. The policy is generally enforced and communicated throughout the organization, e.g. via a security awareness program. The logical and physical security for critical IT platforms is satisfactory. Systems are monitored, and security incidents and weaknesses are identified and resolved within reasonable time frames. Relationships with third-party service providers are monitored. Critical IT operations are reliable and risk exposure is reasonably identified and controlled.

3. A rating of ''3'' indicates that the performance of IT support and delivery is less than satisfactory and needs improvement. The organization provides technology services that may not be reliable or consistent. As a result, service levels periodically do not adhere to service level agreements or meet business requirements. A corporate contingency and business resumption plan is in place but may not be considered comprehensive. The plan is periodically tested; however, the recovery of critical systems and applications is frequently unsuccessful. A data security policy exists; however, it may not be strictly enforced or communicated throughout the organization. The logical and physical security for critical IT platforms is less than satisfactory. Systems are monitored; however, security incidents and weaknesses may not be resolved in a timely manner. Relationships with third-party service providers may not be adequately monitored. IT operations are not acceptable and unwarranted risk exposures exist. If not corrected, weaknesses could cause performance degradation or disruption to operations.

4. A rating of ''4'' indicates deficient IT support and delivery performance. The organization provides technology services that are unreliable and inconsistent. Service level agreements are poorly defined and service performance usually fails to meet business requirements. A corporate contingency and business resumption plan may exist, but its content is critically deficient. If contingency testing is performed, management is typically unable to recover critical systems and applications. A data security policy may not exist. As a result, serious supervisory concerns over security and the integrity of data exist. The logical and physical security for critical IT platforms is deficient. Systems may be monitored, but security incidents and weaknesses are not successfully identified or resolved. Relationships with third-party service providers are not monitored. IT operations are not reliable and significant risk exposure exists. Degradation in performance is evident and frequent disruption in operations has occurred.

5. A rating of ''5'' indicates critically deficient IT support and delivery performance. The organization provides technology services that are not reliable or consistent. Service level agreements do not exist and service performance does not meet business requirements. A corporate contingency and business resumption plan does not exist. Contingency testing is not performed and management has not demonstrated the ability to recover critical systems and applications. A data security policy does not exist, and a serious threat to the organization's security and data integrity exists. The logical and physical security for critical IT platforms is inadequate, and management does not monitor systems for security incidents and weaknesses. Relationships with third-party service providers are not monitored, and the viability of a service provider may be in jeopardy. IT operations are severely deficient, and the seriousness of weaknesses could cause failure of the financial institution or service provider if not addressed.

Dated: January 13, 1999.

Keith J. Todd,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 99–1175 Filed 1–19–99; 8:45 am]

BILLING CODE 6210–01–P, 6720–01–P, 6714–01–P and 4810–33–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–010689–080.

Title: Transpacific Westbound Rate Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Ltd., Orient Overseas Container Line, Inc., Sea-Land Service, Inc.

Synopsis: The proposed amendment provides that members to individual service contracts subject to the Agreement, which are filed through and by the Agreement staff, may authorize the Agreement Manager to execute such contracts on their behalf.

Dated: January 13, 1999.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–1176 Filed 1–19–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following

agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 232–011648

Title: APL/Crowley/Ivaran/MLL Space Charter and Sailing Agreement

Parties:

American President Lines, Ltd.
APL Co. PTE Ltd.
Crowley American Transport, Inc.
Ivaran Lines Limited Mexican Lines Limited
Transportacion Maritima Grancolombiana, S.A.

Synopsis: The proposed agreement authorizes the parties to discuss and agree upon the vessels to be operated in the trades between the United States Gulf Coast and the Caribbean and the east coast of South America, to charter vessel space to and from one another, and to engage in related cooperative activities. The parties have requested expedited review.

By Order of the Federal Maritime Commission.

Dated: January 13, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–1192 Filed 1–19–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Container Port Services, Inc., 8201 La Porte Freeway, Suite 111, Houston, TX 77012, Officers: Robert W. Lee, President, Russell K. Lee, Vice President

E & M International L.L.C., 5304 West 135th Street, Hawthorne, CA 90250, Marion Krocos, Evelyn Jones, Partnership

Dated: January 13, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–1191 Filed 1–19–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, January 25, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 15, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1380 Filed 1–15–99; 3:30 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies; Report to Congressional Committees

AGENCY: Board of Governors of the Federal Reserve System (FRB).

ACTION: Notice of report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking and Financial Services of the United States House of Representatives.

SUMMARY: This report was prepared by the FRB pursuant to section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1831n(c)). Section 121 requires each Federal banking and thrift agency to report annually to the above specified Congressional Committees regarding any differences between the accounting or capital standards used by such agency and the accounting or capital standards used by other banking and thrift agencies. The report must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Norah Barger, Assistant Director (202/452-2402), Barbara Bouchard, Manager (202/452–3072), Charles Holm, Manager, (202/452–3502), or Ali Emran, Senior Financial Analyst, (202/452–2208), Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW, Washington DC 20551.

SUPPLEMENTARY INFORMATION: The text of the report follows:

Report to the Congressional Committees Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

Introduction and Overview

This is the ninth annual report [1] on the differences in capital standards and accounting practices that currently exist among the three banking agencies (the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC)) and the Office of Thrift Supervision (OTS).[2]

Overview

As stated in the previous reports to Congress, the three bank regulatory agencies have, for a number of years, employed a common regulatory framework that establishes minimum

[1] The first two reports prepared by the FRB were made pursuant to section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The subsequent reports were made pursuant to section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which superseded section 1215 of FIRREA.

[2] At the federal level, the Federal Reserve has primary supervisory responsibility for state-chartered banks that are members of the Federal Reserve System, as well as for all bank holding companies and certain operations of foreign banking organizations. The FDIC has primary responsibility for state nonmember banks and FDIC-supervised savings banks. National banks are supervised by the OCC. The OTS has primary responsibility for savings and loan associations.

capital adequacy ratios for commercial banking organizations. In 1989, all three banking agencies and the OTS adopted risk-based capital frameworks that were based upon the international capital accord (Basle Accord) developed by the Basle Committee on Banking Regulations and Supervisory Practices (Basle Supervisors Committee) and endorsed by the central bank governors of the G–10 countries.

The risk-based capital framework establishes minimum ratios of capital to risk-weighted assets. The Basle Accord requires banking organizations to have total capital (Tier 1 plus Tier 2) equal to at least 8 percent, and Tier 1 capital equal to at least 4 percent, of risk-weighted assets. Tier 1 capital includes common stock and surplus, retained earnings, qualifying perpetual preferred stock and surplus, and minority interest in consolidated subsidiaries, less disallowed intangibles such as goodwill. Tier 2 capital includes certain supplementary capital items such as general loan loss reserves, subordinated debt, and certain other preferred stock and convertible debt capital instruments, subject to appropriate limitations and conditions. The amount of Tier 2 includable in total regulatory capital is limited to 100 percent of Tier 1. In addition, institutions that incorporate market risk exposure into their risk-based capital requirements may use ''Tier 3'' capital (i.e., short-term subordinated debt with certain restrictions on repayment provisions) to support their exposure to market risk. Tier 3 capital is limited to approximately 70 percent of an institution's measure for market risk. Risk-weighted assets are calculated by assigning risk weights of zero, 20, 50, and 100 percent to broad categories of assets and off-balance sheet items based upon their relative credit risk. The OTS has adopted a risk-based capital standard that in most respects is similar to the framework adopted by the banking agencies. Differences between the OTS capital rules and those of the banking agencies are noted elsewhere in this report.

The measurement of capital adequacy in the present framework is mainly directed toward assessing capital in relation to credit risk. In December 1995, the G–10 Governors endorsed an amendment to the Basle Accord that, in January 1998, required internationally-active banks to measure and hold capital to support their market risk exposure. Specifically, certain banks are required to hold capital against their exposure to general market risk associated with changes in interest rates, equity prices, exchange rates, and commodity prices, as well as for exposure to specific risk associated with equity positions and certain debt positions in the trading portfolio. The FRB, FDIC, and OCC issued in August 1996 amendments to their respective risk-based capital standards that implemented the market risk amendment to the Basle Accord. The banking agencies' amendments generally require institutions with trading assets and liabilities greater than or equal to 10 percent of assets, or trading assets and liabilities greater than or equal to $1 billion, to apply the market risk rules. The OTS did not amend its capital rules in this regard since savings institutions do not have such significant levels of trading activity.

In addition to the risk-based capital requirements, the agencies also have established leverage standards setting forth minimum ratios of capital to total assets. The three banking agencies employ uniform leverage standards, while the OTS has established, pursuant to FIRREA, a somewhat different standard. In October 1997, the agencies issued for public comment a proposal that would eliminate these differences.

All of the agencies view the risk-based capital standards as a minimum supervisory benchmark. In part, this is because the risk-based capital framework focuses primarily on credit risk; it does not take full or explicit account of certain other banking risks, such as exposure to operational risk. The full range of risks to which depository institutions are exposed are reviewed and evaluated carefully during on-site examinations. In view of these risks, most banking organizations are expected to, and generally do, maintain capital levels well above the minimum risk-based and leverage capital requirements.

The staffs of the agencies meet regularly to identify and address differences and inconsistencies in the application of their capital standards. The agencies are committed to continuing this process in an effort to achieve full uniformity in their capital standards. In addition, the agencies have considered the remaining differences as part of a regulatory review undertaken to comply with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act), which specifies that the agencies ''make uniform all regulations and guidelines implementing common statutory or supervisory policies.''

Efforts to Achieve Uniformity

Leverage Capital Ratio

The three banking agencies employ leverage standards based upon the common definition of Tier 1 capital contained in their risk-based capital guidelines. These standards, established in the second half of 1990 and in early 1991, require the most highly-rated institutions to meet a minimum Tier 1 capital leverage ratio of 3.0 percent. For all other institutions, these standards generally require an additional cushion of at least 100 to 200 basis points, i.e., a minimum leverage ratio of at least 4.0 to 5.0 percent, depending upon an organization's financial condition. As required by FIRREA, the OTS has established a 3.0 percent core capital ratio and a 1.5 percent tangible capital leverage ratio requirement for thrift institutions. Certain adjustments discussed in this report apply to the core capital definition used by savings associations.

In October 1997, the agencies issued a proposal to simplify and make uniform their leverage capital standards. Under the proposal, the three banking agencies' rules would require a minimum leverage ratio of 3.0 or 4.0 percent, depending upon a bank's financial condition and the OTS' standards would become more consistent with those of the banking agencies. The agencies are working to develop a rule finalizing the proposal as soon as possible.

Risk-Based Capital Ratio

The agencies worked together on a number of issues in 1998. Part of the agencies' focus was on fulfilling the requirements of section 303 of the Riegle Act, which calls for uniform rules and guidelines. In this regard, the agencies are working to finalize an outstanding proposal that will eliminate interagency differences in the risk-based capital treatment of presold residential properties, junior liens on 1- to 4-family residential properties, and investments in mutual funds.

In addition, the agencies issued two joint final rules in 1998 that amended the agencies' capital standards. The first permitted institutions to include up to 45 percent of unrealized gains on certain equity securities in Tier 2 capital. The second raised the Tier 1 capital limitation for mortgage servicing assets from 50 to 100 percent of Tier 1 capital. The agencies also issued interim guidance on the capital treatment for derivatives to address issues raised by a recent change in accounting standards (Financial Accounting Standard (FAS) No. 133). The agencies continue to work

on outstanding matters such as the 1997 recourse proposal and the 1996 proposal on collateralized transactions.

Construction Loans on Presold Residential Property

The agencies all assign a qualifying loan to a builder to finance the construction of a presold 1- to 4-family residential property to the 50 percent risk category, provided certain conditions are satisfied. The FRB and the FDIC permit a 50 percent risk weight once the residential property is sold, whether the sale occurs before or after the construction loan has been made. The OCC and the OTS permit the 50 percent risk weight only if the property is sold to the prospective property resident before the extension of credit to the builder.

The agencies are working on a final rule that would adopt the FRB's and FDIC's capital treatment of such loans.

Junior Liens on 1- to 4-Family Residential Properties

In some cases, a banking organization may make two loans on a single residential property, one secured by a first lien, the other by a second lien. In such a situation, the FRB views these two transactions as a single loan secured by a first lien, provided there are no intervening liens. The total amount of these transactions is assigned to either the 50 percent or the 100 percent risk category, depending upon whether certain other criteria are met.

One criterion is that the loan must be made in accordance with prudent underwriting standards, including an appropriate ratio of the loan balance to the value of the property (the loan-to-value ratio or LTV). When considering whether a loan is consistent with prudent underwriting standards, the FRB evaluates the LTV ratio based on the combined loan amount. If the combined loan amount satisfies prudent underwriting standards and is considered to be performing adequately, both the first and second lien are assigned to the 50 percent risk category. The FDIC also combines the first and second liens to determine the appropriateness of the LTV ratio, but it applies the risk weights differently than the FRB. If the LTV ratio based on the combined loan amount satisfies prudent underwriting standards and is considered to be performing adequately, the FDIC risk-weights the first lien at 50 percent and the second lien at 100 percent; otherwise, both liens are risk-weighted at 100 percent. The OCC treats all first and second liens separately, with qualifying first liens risk-weighted at 50 percent and non-qualifying first liens and all second liens risk-weighted at 100 percent. The OTS has interpreted its rule to treat first and second liens to a single borrower as a single extension of credit, similar to the FRB.

The agencies are working on a final rule that would adopt the FRB's capital treatment of first and junior liens on 1- to 4-family residential properties.

Mutual Funds

The three banking agencies generally assign all of a bank's holding in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is permitted to hold under its prospectus. The OCC also permits, on a case-by-case basis, an institution's investment to be allocated on a pro rata basis among the risk categories based on a pro rata distribution of allowable investments under the fund's prospectus. The OTS applies a capital charge appropriate to the riskiest asset that a mutual fund is actually holding at a particular time. The OTS also permits, on a case-by-case basis, pro rata allocation among risk categories based on the fund's actual holdings. All of the agencies' rules provide that the minimum risk weight for investment in mutual funds is 20 percent.

The agencies are working on a final rule that would adopt the banking agencies' general treatment of a mutual fund investment and would permit institutions, at their option, to assign such an investment to risk categories on a pro rata basis according to the investment limits in the mutual fund prospectus.

Joint Final Rules To Amend Risk-Based Capital Standards and Changes Reflecting the Impact of Accounting Standards

Two joint final rules were issued by the agencies in the third quarter of 1998. The first pertains to unrealized gains on certain equity securities. The second reflects the capital impact of recent changes to accounting standards.

From time to time, the Financial Accounting Standards Board (FASB) issues new and modified financial accounting standards. The adoption of some of these standards for regulatory reporting purposes has the potential of affecting the definition and calculation of regulatory capital. Accordingly, the staffs of the agencies work together to propose uniform regulatory capital responses to such accounting changes. Over this past year, the agencies dealt with certain capital effects of Statement of Financial Accounting Standard (FAS) No. 125, ''*Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities,*'' which supersedes FAS No. 122, ''*Accounting for Mortgages Servicing Rights*'' and with the impact of FAS No. 133, ''*Accounting for Derivative Instruments and Hedging Activities,*'' on current capital rules.

Unrealized Gains on Certain Equity Securities

On August 26, 1998, the agencies issued a joint final rule that allows banking organizations to include up to 45 percent of net unrealized holding gains on certain available-for-sale equity securities in Tier 2 capital under the agencies' risk-based capital rules. The rule became effective on October 1, 1998. The full amount of net unrealized gains on such securities are included as a component of equity capital under U.S. generally accepted accounting principles (GAAP), but until the adoption of this rule they were not included in regulatory capital. The agencies' capital rules, consistent with GAAP, will continue to require banking organizations to deduct the amount of net unrealized losses on their available-for-sale equity securities from Tier 1 capital. To be consistent with a restriction in the Basle Accord, the agencies have restricted the inclusion of net unrealized gains on equity securities in Tier 2 capital to no more than 45 percent of such net unrealized gains.

FAS 125, ''Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities''

The agencies issued a final rule on August 10, 1998, which amended their capital treatments for servicing assets on both mortgage assets and financial assets other than mortgages. The final rule reflects changes in accounting standards for servicing assets made in FAS 125, which extended the accounting treatment for mortgage servicing to servicing on all financial assets. The amendment raised the capital limitation on the sum of all mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships (PCCRs) from 50 percent of Tier 1 capital to 100 percent of Tier 1 capital. Furthermore, it subjected the sum of nonmortgage servicing assets and PCCRs to a sublimit of 25 percent of Tier 1 capital.

FAS 133, ''Accounting for Derivative Instruments and Hedging Activities''

On December 29, 1998, the agencies issued interim guidance on the regulatory capital treatment of derivatives. The interim guidance clarifies how derivatives should be treated under the agencies' current

capital rules in light of FAS 133 accounting changes. Although FAS 133 does not become effective until fiscal years beginning after June 15, 1999, early adoption is permitted.

Joint Proposal To Amend Risk Based Capital Standards

Recourse

The agencies published in the **Federal Register** on November 5, 1997, uniform, proposed rules that would use credit ratings to match the risk-based capital assessment more closely to an institution's relative risk of loss in certain asset securitizations. The agencies are discussing comments received and are working on developing a revised proposal.

Capital Differences

Remaining differences among the risk-based capital standards of the OTS and the three banking agencies are discussed below.

Certain Collateral Transactions

The FRB permits certain collateralized transactions to be risk-weighted at zero percent. This preferential treatment is available only for claims fully collateralized by cash on deposit in the bank or by securities issued or guaranteed by OECD central governments or U.S. government agencies. A positive margin of collateral must be maintained on a daily basis fully taking into account any change in the banking organization's exposure to the obligor or counterparty under a claim in relation to the market value of the collateral held in support of that claim. Other collateralized claims, or portions thereof, are risk-weighted at 20 percent.

The OCC permits portions of claims collateralized by cash or OECD government securities to receive a zero percent risk weight, provided that the collateral is marked to market daily and a positive margin is maintained. The FDIC's and OTS's rules permit portions of claims collateralized by cash or OECD government securities to receive a 20 percent risk weight.

The four agencies, on August 16, 1996, published a joint proposed rulemaking that would, if implemented, eliminate capital differences among the agencies' risk-based capital treatment for collateralized transactions. Under the proposed rule, portions of claims collateralized by cash or OECD government securities could be assigned a zero percent risk weight, provided the transactions met certain criteria, which would be uniform among the agencies. Agency staffs are working to finalize this outstanding proposal as soon as possible.

FSLIC/FDIC—Covered Assets (assets subject to guarantee arrangements by the FSLIC or FDIC)

The three banking agencies generally place these assets in the 20 percent risk category, the same category to which claims on depository institutions and government-sponsored agencies are assigned. The OTS places these assets in the zero percent risk category.

Limitation of Subordinated Debt and Limited-Life Preferred Stock

The three banking agencies limit the amount of subordinated debt and limited-life preferred stock that may be included in Tier 2 capital to 50 percent of Tier 1 capital. In addition, maturing capital instruments must be discounted by 20 percent in each of the last five years prior to maturity. The OTS has no limitation on the total amount of limited-life preferred stock or maturing capital instruments that may be included within Tier 2 capital. In addition, the OTS allows savings institutions the option of: (1) discounting maturing capital instruments issued on or after November 7, 1989 by 20 percent per year over the last five years of their term; or (2) including the full amount of such instruments, provided that the amount maturing in any of the next seven years does not exceed 20 percent of the thrift's total capital.

Subsidiaries

Consistent with the Basle Accord and long-standing supervisory practices, the three banking agencies generally consolidate all significant majority-owned subsidiaries of the parent organization for capital purposes. This consolidation assures that the capital requirements are related to all of the risks to which the banking organization is exposed. As with most other bank subsidiaries, banking and finance subsidiaries generally are consolidated for regulatory capital purposes. However, in cases where banking and finance subsidiaries are not consolidated, the FRB, consistent with the Basle Accord, generally deducts investments in such subsidiaries in determining the adequacy of the parent bank's capital.

The FRB's risk-based capital guidelines provide a degree of flexibility in the capital treatment of unconsolidated subsidiaries (other than banking and finance subsidiaries) and investments in joint ventures and associated companies. For example, the FRB may deduct investments in such subsidiaries from an organization's capital, may apply an appropriate risk-weighted capital charge against the proportionate share of the assets of the entity, may require a line-by-line consolidation of the entity, or otherwise may require that the parent organization maintain a level of capital above the minimum standard that is sufficient to compensate for any risk associated with the investment.

The guidelines also permit the deduction of investments in subsidiaries that, while consolidated for accounting purposes, are not consolidated for certain specified supervisory or regulatory purposes. The FDIC accords similar treatment to securities subsidiaries of state nonmember banks established pursuant to § 337.4 of the FDIC regulations.

Similarly, in accordance with § 325.5(f) of the FDIC regulations, a state nonmember bank must deduct investments in, and extensions of credit to, certain mortgage banking subsidiaries in computing the parent bank's capital. The FRB does not have a similar requirement with regard to mortgage banking subsidiaries. The OCC does not have requirements dealing specifically with the capital treatment of either mortgage banking or securities subsidiaries. The OCC, however, reserves the right to require a national bank, on a case-by-case basis, to deduct from capital investments in, and extensions of credit to, any nonbanking subsidiary.

The deduction of investments in subsidiaries from the parent's capital is designed to ensure that the capital supporting the subsidiary is not also used as the basis of further leveraging and risk-taking by the parent banking organization. In deducting investments in, and advances to, certain subsidiaries from the parent's capital, the FRB expects the parent banking organization to meet or exceed minimum regulatory capital standards without reliance on the capital invested in the particular subsidiary. In assessing the overall capital adequacy of banking organizations, the FRB also considers the organization's fully consolidated capital position.

Under the OTS capital guidelines, a distinction, mandated by FIRREA, is drawn between subsidiaries that are engaged in activities permissible for national banks and subsidiaries that are engaged in ''impermissible'' activities for national banks. Subsidiaries of thrift institutions that engage only in impermissible activities are consolidated on a line-by-line basis if majority-owned, and on a pro rata basis if ownership is between 5 and 50

percent. As a general rule, investments, including loans, in subsidiaries that engage in impermissible activities are deducted in determining the capital adequacy of the parent.

Mortgage-Backed Securities (MBS)

The three banking agencies generally place privately-issued MBS in a risk category appropriate to the underlying assets, but in no case to the zero percent risk category. In the case of privately-issued MBS where the direct underlying assets are mortgages, this treatment generally results in a risk weight of 50 percent or 100 percent. Privately-issued MBS that have government agency or government-sponsored agency securities as their direct underlying assets are generally assigned to the 20 percent risk category.

The OTS assigns privately-issued, high-quality mortgage-related securities to the 20 percent risk category. These are, generally, privately-issued MBS with AA or better investment ratings.

Both the banking and thrift agencies automatically assign to the 100 percent risk weight category certain MBS, including interest-only strips, residuals, and similar instruments that can absorb more than their pro rata share of loss.

Agricultural Loan Loss Amortization

In the computation of regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to Title VII of the Competitive Equality Banking Act of 1987 are permitted to defer and amortize losses incurred on agricultural loans between January 1, 1984 and December 31, 1991. The program also applies to losses incurred between January 1, 1983 and December 31, 1991, as a result of reappraisals and sales of agricultural Other Real Estate Owned and agricultural personal property. These loans must be fully amortized over a period not to exceed seven years and, in any case, must be fully amortized by year-end 1998. Savings institutions are not eligible to participate in the agricultural loan loss amortization program established by this statute.

Pledged Deposits and Nonwithdrawable Accounts

The capital guidelines of the OTS permit thrift institutions to include in capital certain pledged deposits and nonwithdrawable accounts that meet the criteria of the OTS. Income Capital Certificates and Mutual Capital Certificates held by the OTS may also be included in capital by thrift institutions. These instruments are not relevant to commercial banks, and, therefore, are not addressed in the banking agencies' capital rules.

Accounting Standards

Over the years, the three banking agencies, under the auspices of the FFIEC, have developed Uniform Reports of Condition and Income (Call Reports) for all commercial banks and FDIC-supervised savings banks. The reporting standards followed by the three banking agencies for recognition and measurement purposes are consistent with GAAP. The agencies adopted GAAP as the reporting basis for the Call Report, effective for March 1997 reports. The adoption of GAAP for Call Report purposes eliminated the differences in accounting standards among the agencies that were set forth in previous reports to Congress. Thus, there are no material differences in regulatory accounting standards for regulatory reports filed with the federal banking agencies by commercial banks, savings banks, and savings associations.

By order of the Board of Governors of the Federal Reserve System, January 13, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–1163 Filed 1–19–99; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
07–DEC–98	19990523	G	Applied Magnetics Corporation.
		G	DAS Services, Inc.
		G	DAS Services, Inc.
	19990524	G	Motorola, Inc.
		G	Lucent Technologies, Inc.
		G	Philips Consumer Communications L.P.
	19990539	G	ServiceMaster Company (The).
		G	LandCare USA, Inc.
		G	LandCare USA, Inc.
	19990544	G	Mego Mortgage Corporation.
		G	Patwinder Sidhu.
		G	LL Funding Corp.
	19990545	G	Mego Mortgage Corporation.
		G	Dariush Yazdan-Panah.
		G	LL Funding Corp.
	19990564	G	Hicks, Muse, Tate & Furst Equity Fund III, L.P.
		G	Chancellor Media Corporation.
		G	Chancellor Media Corporation.
	19990571	G	Legato Systems, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	FullTime Software, Inc.
		G	FullTime Software, Inc.
	19990577	G	Enron Corp.
		G	Robert C. McNair.
		G	McNair Energy Services Corporation.
	19990582	G	Pittway Corporation.
		G	American Trading and Production Corporation.
		G	Northern Computers, Inc.
	19990590	G	Capicorn Investors II, L.P.
		G	Capicorn Investors, L.P.
		G	NATCO Group Inc.
	19990602	G	Coca-Cola Enterprises Inc.
		G	Gloria S. Sale.
		G	CSL of Texas, Inc.
	19990609	G	Samuel J. Heyman.
		G	Dexter Corporation.
		G	Life Technologies, Inc.
	19990613	G	El Chico Holding Company, L.P.
		G	Spaghetti Warehouse, Inc.
		G	Spaghetti Warehouse, Inc.
	19990615	G	U.S. Liquids Inc.
		G	H. Michael Schneider.
		G	Romic Environmental Technologies Corporation.
	19990618	G	The Coastal Corporation.
		G	John E. Guinness.
		G	Cogen Energy Technology L.P.
	19990619	G	The Coastal Corporation.
		G	Robert I. Glass.
		G	Cogen Energy Technology L.P.
	19990621	G	Direct Focus, Inc.
		G	Delta Woodside Industries, Inc.
		G	Nautilus International, Inc.
	19990662	G	Sisters of Charity of the Incarnate Word, Houston, Texas.
		G	Incarnate Word Health System.
		G	Incarnate Word Health System.
	19990663	G	Incarnate Word Health Services.
		G	Sister of Charity of the Incarnate Word, Houston, Texas.
		G	Sister of Charity of the Incarnate Word, Houston, Texas.
	19990680	G	The General Electric Company, p.l.c.
		G	Tellium, Inc.
		G	Tellium, Inc.
08–DEC–98	19984362	G	Jon M. Huntsman.
		G	NOVA Corporation.
		G	Buyer Sub, a yet-to-be-formed company.
	19984363	G	NOVA Corporation.
		G	Jon M. Huntsman.
		G	Huntsman Chemical Corporation.
	19990607	G	Ameritas Mutual Insurance Holding Company.
		G	Acacia Mutual Holding Company.
		G	Acacia Mutual Holding Company.
	19990630	G	Hughes Supply, Inc.
		G	Harlan R. Kamen.
		G	Kamen Supply Company, Inc.
	19990632	G	Sunrise Assisted Living, Inc.
		G	Karrington Health, Inc.
		G	Karrington Health, Inc.
	19990633	G	McConnell Family Trust (The).
		G	Sunrise Assisted Living, Inc.
		G	Sunrise Assisted Living, Inc.
	19990637	G	Industrial Distribution Group, Inc.
		G	Robert D. Scallan.
		G	The Innovactive Distributor Group, Inc.
	19990638	G	Community Newspapers Holdings, Inc.
		G	Kenneth R. Thomson.
		G	Thomas Newspapers, Inc.
	19990640	G	Wind Point Partners III, L.P.
		G	The Quaker Oats Company.
		G	Liqui-Dri Foods, Inc.
	19990641	G	Mail-Well, Inc.
		G	Hill Graphics, Inc.
		G	Hill Graphics, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19990642	G	Citation Corporation.
		G	Automobile Foundry Co. Ltd.
		G	CT-South, Inc.
	19990644	G	Acxiom Corporation.
		G	Deluxe Corporation.
		G	Deluxe Financial Services, Inc.
	19990646	G	Boston Financial Group Limited Partnership (The).
		G	Schroders plc.
		G	Schroder Real Estate Associates, L.P.
	19990647	G	GS Capital Partners III, L.P.
		G	Carmike Cinemas, Inc.
		G	Carmike Cinemas, Inc.
	19990649	G	Industrial Growth Partners, L.P.
		G	Koninklijke Philips Electronics N.V.
		G	Philips Technologies Airpax Protector Group.
	19990651	G	Union Pacific Resources Group Inc.
		G	Union Pacific Resources Group Inc.
		G	East Texas Gas Systems.
		G	Panola Pipeline.
	19990657	G	Ford Motor Company.
		G	Auto Rental Corporation.
		G	Auto Rental Corporation.
	19990659	G	Kinder Morgan Energy Partners, L.P.
		G	Larry Addington.
		G	Mountaineer Coal Development Company.
		G	Shipyard River Coal Terminal Company.
	19990660	G	Starwood Hotels & Resorts Worldwide, Inc.
		G	Starwood Hotels & Resorts.
		G	Starwood Hotels & Resorts.
	19990672	G	TB Wood's Corporation.
		G	Lincoln Electric Holdings, Inc.
		G	Lincoln Electric Holdings, Inc.
	19990683	G	American Securities Partners II, L.P.
		G	The Chase Manhattan Corporation.
		G	Anthony's Manufacturing Company, Inc.
	19990685	G	West Virginia United Health Systems, Inc.
		G	Davis Health System, Inc.
		G	Davis Health System, Inc.
	19990689	G	President and Fellows of Harvard College.
		G	Willamette Industries, Inc.
		G	Willamette Industries, Inc.
	19990692	G	Willis Stein & Partners, L.P.
		G	Freedom Communications, Inc.
		G	CurtCo Freedom Group, L.L.C.
	19990693	G	Willis Stein & Partners.
		G	William J. Curtis.
		G	CurtCo Freedom Group, L.L.C.
	19990703	G	Windward Capital Partners II, L.P.
		G	L. Powell Company.
		G	L. Powell Company.
	19990711	G	Alec E. Gores.
		G	Thomson-CSF, S.A.
		G	Aonix Corporation.
09–DEC–98	19990540	G	Dinesh C. Patel.
		G	Watson Pharmaceuticals, Inc.
		G	Watson Pharmaceuticals, Inc.
	19990548	G	O. Bruton Smith.
		G	Ron Craft.
		G	Ron Craft Chevrolet-Cadillac-Oldsmobile-Geo, Inc.
		G	Ron Craft Chrysler Plymouth Jeep, Inc.
	19990605	G	Apollo Investment Fund, IV, L.P.
		G	CD Radio, Inc.
		G	CD Radio, Inc.
10–DEC–98	19990636	G	BankAmerica Corporation.
		G	General Roofing Services, Inc.
		G	General Roofing Services, Inc.
11–DEC–98	19990250	G	Edison International.
		G	GPU, Inc.
		G	Pennsylvania Electric Company.
	19990317	G	William F. Connell.
		G	Phillip Services Corp.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Phillip Enterprises, Inc.
		G	Phillip Metals (New York), Inc.
		G	Phillip Metals Recovery (USA), Inc.
	19990427	G	Plainwell Holding Company.
		G	Kamilche Company.
		G	Simpson Paper Company.
	19990505	G	Varlen Corporation.
		G	Dennis L. Owen.
		G	Dynamic Corporation.
	19990519	G	Counsel Corporation.
		G	Glaxo Wellcome plc.
		G	Glaxo Wellcome Inc.
	19990562	G	The Lubrizol Corporation.
		G	Mobil Corporation.
		G	Mobil Corporation.
	19990565	G	Hicks, Muse, Tate & Furst Equity Fund II, L.P.
		G	Hicks, Muse, Tate & Furst Equity Fund III, L.P.
		G	Capstar Broadcasting Corporation.
	19990589	G	Western Resources, Inc.
		G	Lifeline Systems, Inc.
		G	Lifeline Systems, Inc.
	19990603	G	Champion Enterprises, Inc.
		G	Charles E. Weeder.
		G	Homes of Merit, Inc.
	19990634	G	Kombassan Holding A.S.
		G	Access Capital Partners, L.P.
		G	Hit or Miss Inc.
	19990655	G	Miami Computer Supply Corporation.
		G	Dreher Business Products Corporation.
		G	Dreher Business Products Corporation.
	19990658	G	Glen A. Taylor.
		G	Deluxe Corporation.
		G	PaperDirect, Inc.
		G	Current, Inc.
	19990668	G	United American Energy Corp.
		G	Duke Energy Corporation.
		G	Mecklenburg Congenco, Inc.
		G	Congeneration Capital Corporation.
	19990670	G	Texas Utilities Company.
		G	ServiceMaster Company (The).
		G	ServiceMaster Energy Management.
	19990671	G	American Express Company.
		G	Rockford Industries, Inc.
		G	Rockford Industries, Inc.
	19990681	G	Duferco Participations Holding.
		G	Caparo Group, Ltd.
		G	Caparo Steel Company.
	19990684	G	Champion Enterprises, Inc.
		G	Charles Lee Raleigh.
		G	Pioneer Mobile Home Service, Inc.
		G	Heartland Homes of Forney, L.P.
		G	Heartland Homes of Mesquite, L.P.
		G	Heartland Homes of Rockwall, L.P.
		G	Heartland Homes of Tyler, L.P.
	19990688	G	American Commercial Lines Holdings LLC.
		G	The Chutz Family Limited Partnership.
		G	Tajon Holdings, Inc.
	19990702	G	GATX Corporation.
		G	Rolls-Royce Plc.
		G	Rolls-Royce North America, Inc.
	19990712	G	Randall W. Lewis.
		G	Kaufman and Broad Home Corporation.
		G	Kaufman and Broad Home Corporation.
	19990713	G	Robert E. Lewis.
		G	Kaufman and Broad Home Corporation.
		G	Kaufman and Broad Home Corporation.
	19990714	G	Federal-Mogul Corporation.
		G	Joel W. Jones.
		G	Tri-Way Machine Ltd.
	19990715	G	Dynegy Inc.
		G	Amoco Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	DPC Power Resources Holding Company.
		G	DPC Colombia-Opon Power Resources Company.
	19990722	G	Level 8 Systems, Inc.
		G	Welsh, Carson, Anderson & Stowe VI, L.P.
		G	Seer Technologies, Inc.
	19990737	G	EcoScience Corporation.
		G	George T. Lewis, Jr. and Betty G. Lewis (husband and wife).
		G	Cogentrix of Buffalo, Inc., Cogentrix of Fort Davis I, Inc.
		G	Cogentrix Greenhouse Investments, Inc.
		G	Cogentrix of Marfa, Inc., Cogentrix of Pocono, Inc.
14–DEC–98	19990724	G	CGW Southeast Partners III, L.P.
		G	Tomen Corporation.
		G	Diamond Perforated Metals, Inc.
	19990730	G	Plasmon Plc.
		G	Koninklijke Philips Electronics N.V.
		G	Philips Laser Magentic Storage.
	19990731	G	Gretag Imaging Holding AG.
		G	Raster Graphics, Inc.
		G	Raster Graphics, Inc.
	19990732	G	Pharmacia & Upjohn, Inc.
		G	Abbott Laboratories.
		G	Abbott Laboratories.
	19990733	G	Seagram Company Ltd., The.
		G	Seagram Company Ltd., The.
		G	Brillstein-Grey Entertainment.
	19990735	G	Sanmina Corporation.
		G	Mr. S. Zafar Jafri.
		G	Telo Electronics, Inc.
	19990742	G	El Chico Holding Company, L.P.
		G	El Fenix Corporation.
		G	El Fenix Corporation.
	19990749	G	NationsRent, Inc.
		G	John P. Greene and Diana L. Greene.
		G	River City Rentals.
	19990752	G	Zomax Optical Media, Inc.
		G	Kao Corporation.
		G	Kao Infosystems Company.
	19990758	G	MYR Group Inc.
		G	The Kirk and Blum Manufacturing Company.
		G	The Kirk and Blum Manufacturing Company.
	19990761	G	McKesson Corporation.
		G	Keystone/Ozone Pure Water Company.
		G	Keystone/Ozone Pure Water Company.
	19990763	G	WPG Corporate Development Associates V, LLC.
		G	Edward W. Scripps Trust (The).
		G	Scripps Community Newspapers, Inc.
	19990766	G	Larry C. Morgan.
		G	Donald J. Avellino.
		G	Tire Services Company, Inc.
	19990767	G	General Motors Corporation.
		G	Donald L. Lucas and Sally S. Lucas.
		G	Saturn Development North, LLC.
		G	Saturn Development I, LLC.
		G	Saturn of Hawaii, LLC.
		G	Franciscan Motors, Inc.
	19990769	G	Ruth U. Fertel, Inc.
		G	David Corigliano.
		G	Big Easy Associates, LP, Sizzling Steaks, LLC, Steak Inc.
		G	Parsteaks, LLC, Serious Steaks, Inc.
	19990781	G	Three Cities Fund II, L.P.
		G	F. Sibley Bryan, Jr.
		G	Chipman-Union, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–1180 Filed 1–19–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
21–DEC–98	19990840	G	John J. Rigas.
		G	MediaOne Group, Inc.
		G	MediaOne of Virginia.
		G	MediaOne Fiber Technologies, Inc.
	19990854	G	Building One Services Corporation.
		G	James R. Sanders, Jr.
		G	Sanders Brothers, Inc.
	19990861	G	General Motors Corporation.
		G	Koenig & Strey, Inc.
		G	Koenig & Strey, Inc.
	19990865	G	DKK Holding Company, Ltd.
		G	Republic Industries, Inc.
		G	Republic Industries, Inc.
	19990868	G	ITOCHU Corporation.
		G	Walter E. Jones, Jr.
		G	Middle Georgia Textile Co., Middle Georgia Mfg. Co., Inc.
	19990870	G	The Lundbeck Foundation.
		G	Crompton & Knowles Corporation.
		G	Ingredient Technology Corporation.
	19990871	G	Tele-Communications Inc. (or AT&T).
		G	Tele-Communications Inc. (or AT&T).
		G	Beatrice Cable TV Company, Northern Video, Inc.
		G	TCI American Cable Holdings, L.P.
	19990872	G	Mitsui & Co., Ltd.
		G	Champions Pipe & Supply, Inc.
		G	Champions Pipe & Supply, Inc.
	19990874	G	Discovery Communications, Inc.
		G	CBS Corporation.
		G	CBS Broadcasting, Inc.
	19990879	G	MBNA Corporation.
		G	Dominion Resources, Inc.
		G	OptaCor Financial Services Company.
	19990882	G	SOFTBANK Corp.
		G	Masayoshi Son.
		G	ZDTV, LLC.
	19990898	G	J.W. Childs Equity Partners II, L.P.
		G	Everett R. Dobson Irrevocable Family Trust.
		G	Dobson Communications Corporation.
	19990911	G	The Walt Disney Company.
		G	The New York Times Company.
		G	The New York Times Electronic Media Company.
22–DEC–98	19990664	G	Barlow Limited.
		G	Geneva Corporation.
		G	Geneva Corporation.
	19990686	G	TA/Advent VIII, L.P.
		G	NetScout Systems, Inc.
		G	NetScout Systems, Inc.
	19990687	G	UPMC Health System, Inc.
		G	University of Pittsburgh—Of the Commonwealth Syst.
		G	University of Pittsburgh Faculty Practice Plans.
	19990739	G	Deutsche Babcock Aktiengessellschaft.
		G	Phillip P. Holzman AG.
		G	Steinmuller Venwaltungsgesellschaft mbH.
	19990852	G	Lifetouch Inc. Employee Stock Ownership Trust.
		G	Olan Mills II.
		G	Olan Mills School Portraits, Inc.
	19990855	G	Kellstrom Industries, Inc.
		G	Jeffrey J. Steiner.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Solair, Inc.
	19990875	G	The Monarch Machine Tool Company.
		G	Derlan Industries Limited.
		G	CFG Corporation.
	19990876	G	Lawrence J. Ellison.
		G	Nextera Enterprises, Inc.
		G	Nextera Enterprises, Inc.
	19990904	G	Misys plc.
		G	C*ATS Software Inc.
		G	C*ATS Software Inc.
	19990918	G	Falcon Building Products, Inc.
		G	Penn Ventilation Companies, Inc.
		G	Penn Ventilation Companies, Inc.
23–DEC–98	19990623	G	Maxwell Technologies, Inc.
		G	Space Electronics, Inc.
		G	Space Electronics, Inc.
	19990695	G	Siebe plc.
		G	Mark K. Goldstein, Ph.D.
		G	Quantum Group, Inc.
	19990738	G	ITT Industries, Inc.
		G	Water Pollution Control Corporation.
		G	Water Pollution Control Corporation.
	19990746	G	Serologicals Corporation.
		G	Bayer AG.
		G	Bayer Corporation.
	19990772	G	Quintiles Transnational Corp.
		G	Hoechst Aktiengesellschaft.
		G	Hoechst Aktiengesellschaft.
	19990837	G	Stoneridge, Inc.
		G	Charles J. Hire.
		G	Hi-Stat Manufacturing Company, Inc.
28–DEC–98	19990935	G	Apollo Investment Fund, IV, L.P.
		G	National Financial Services Company, Inc.
		G	National Financial Services Company, Inc.
29–DEC–98	19990213	G	Laguanitas Partners.
		G	Modtech Holdings, Inc.
		G	Modtech Holdings, Inc.
	19990750	G	BellSouth Corporation.
		G	Fruit Growers Supply Co.
		G	Fruit Growers Supply Co.
	19990770	G	Central Reserve Life Corporation.
		G	Western and Southern Life Insurance Company.
		G	Continental General Corporation.
	19990797	G	Certified Grocers of California, Ltd.
		G	Michael A. Webb.
		G	Sav Max Foods, Inc.
	19990810	G	Seagull Engery Corporation.
		G	Ocean Energy, Inc.
		G	Ocean Energy, Inc.
	19990812	G	Triarc Companies, Inc.
		G	Ascent Entertainment Group, Inc.
		G	Ascent Entertainment Group, Inc.
	19990813	G	Kerry Francis Bullmore Packer.
		G	Ascent Entertainment Group, Inc.
		G	Ascent Entertainment Group, Inc.
	19990834	G	ALLIANCE National Incorporated.
		G	Reckson Service Industries, Inc.
		G	Reckson Office Center LLC, Interoffice Superholding LLC.
	19990835	G	Reckson Service Industries, Inc.
		G	ALLIANCE National Incorporated.
		G	ALLIANCE National Incorporated.
	19990846	G	Henry Schein, Inc.
		G	Randal J. Kirk.
		G	Biological and Popular Culture, Inc.
	19990857	G	Synetic, Inc.
		G	David Kipp.
		G	The Kipp Group, Inc.
	19990858	G	Synetic, Inc.
		G	James Kipp.
		G	The Kipp Group, Inc.
	19990859	G	David Kipp.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Synetic, Inc.
		G	Synetic, Inc.
	19990862	G	Freedom Securities Corporation.
		G	Allied Irish Banks, p.l.c.
		G	Hopper Soliday & Co., Inc.
	19990867	G	General Electric Company.
		G	Daimler Chrysler AG (a German corporation).
		G	Daimler Chrysler AG (a German corporation).
	19990892	G	James C. and Cherie H. Flores.
		G	Seagull Energy Corporation.
		G	Seagull Energy Corporation.
	19990896	G	Flores Family Limited Partnership.
		G	Seagull Energy Corporation.
		G	Seagull Energy Corporation.
	19990941	G	Steelcase Inc.
		G	Jonathan Landsberg.
		G	J.M. Lynne Co., Inc.
	19990942	G	Steelcase Inc.
		G	Michael Landsberg.
		G	J.M. Lynne Co., Inc.
	19990945	G	Heartwood Forestland Fund II, L.P.
		G	The Mead Corporation.
		G	Escabana Paper Company.
30–DEC–98	19984583	S	The British Petroleum Company p.l.c.
		S	Amoco Corporation.
		S	Amoco Corporation.
	19984614	G	Platinum technology, inc.
		G	Memco Software Ltd.
		G	Memco Software Ltd.
	19990759	G	MCC Aerospace, LLC
		G	Y.F. International, Ltd.
		G	Y.F. Americas Inc.
	19990929	G	The Prudential Insurance Company of America.
		G	Edward A. Erbesfield.
		G	PAR/Georgia, Inc.
		G	PRFS/Georgia, Inc.
		G	Referral Associates of Georgia, Inc.
	19990948	G	Datatec Limited
		G	Paul E. Hodges, III.
		G	Bloomfield Computer Systems Inc.
	19990960	G	MBNA Corporation.
		G	ABN AMRO Holding, N.V.
		G	European American Bank, LaSalle Bank National Assoc.
		G	Standard Federal Bank, LaSalle Natl Bank, LaSalle Bank, FSB.
	19991000	G	Washington Mutual, Inc.
		G	Search Liquidating Trust.
		G	Search Liquidating Trust.
31–DEC–98	19990727	G	RPM, Inc.
		G	Thomas Schmidheiny.
		G	Euclid Chemical Company.
	19990818	G	FirstHealth of the Carolinas, Inc.
		G	Richmond Memorial Hospital, Inc.
		G	Richmond Memorial Hospital, Inc.
	19990851	G	BankAmerica Corporation.
		G	Jack Emerick.
		G	K&K Screw Products, Inc.
	19990873	G	University of Maryland Medical System Corporation.
		G	Maryland General Health Systems, Inc.
		G	Maryland General Health Systems, Inc.
		G	Maryland General Home Health Agency, Inc.
	19990883	G	Global Private Equity III Limited Partnership.
		G	Samir Rehani.
		G	Euro United Corporation.
	19990887	G	Hollinger Inc.
		G	Community Newspaper Holdings, Inc.
		G	Newspaper Holdings, Inc.
	19990897	G	Allied Digital Technologies Corp.
		G	Vaughn Communications, Inc.
		G	Vaughn Communications, Inc.
	19990900	G	Associates First Capital Corporation.
		G	Royal Dutch Petroleum Company.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Equilon Enterprises LLC.
	19990902	G	Sumner M. Redstone.
		G	Trient Partners I, Ltd.
		G	Trient Partners I, Ltd.
	19990905	G	Seagram Company Ltd., The.
		G	Seven Network Limited.
		G	Brillstein-Grey Entertainment.
	19990910	G	Kellwood Company.
		G	Koret, Inc.
		G	Koret, Inc.
	19990912	G	Vivendi S. A.
		G	Cendant Corporation.
		G	Cendant Software Corporation.
	19990922	G	Chancellor Media Corporation.
		G	Canadian Imperial Bank of Commerce.
		G	Triumph Outdoor Holdings, LLC.
	19990924	G	Brentwood Associates Buyout II, L.P.
		G	David Seewack.
		G	Associated Brake Supply, Inc.
		G	Onyx Distribution, Inc.
	19990925	G	Brentwood Associates Buyout Fund II, L.P.
		G	Scott Spiwak.
		G	Associated Brake Supply, Inc.
		G	Onyx Distribution, Inc.
	19990927	G	Thomas H. Lee Equity Fund IV, L.P.
		G	Metris.
		G	Metris.
	19990928	G	PC-Tel, Inc.
		G	General DataComm Industries, Inc.
		G	General DataComm, Inc.
	19990930	G	Springs Industries, Inc.
		G	John J. & Janet Handorf-Foley (Husband and Wife).
		G	American Fiber Industries, LLC.
	19990937	G	Martin J. Granoff.
		G	Kellwood Company.
		G	Kellwood Company.
	19990938	G	EMAP Plc.
		G	Willis Stein & Partners, L.P.
		G	The Peterson Companies, Inc.
	19990939	G	Crown Group, Inc.
		G	Bill Fleeman.
		G	Fleeman Holding Company.
	19990943	G	Tree Top, Inc.
		G	Seneca Foods Corporation.
		G	Seneca Foods Corporation.
	19990944	G	United HealthCare Corporation.
		G	Dental Benefit Providers, Inc.
		G	Dental Benefit Providers, Inc.
	19990950	G	Tyco International Ltd.
		G	Entergy Corporation.
		G	Entergy Security Corporation.
	19990951	G	Herman J. Russell.
		G	Herman J. Russell.
		G	Concessions II Joint Venture.
	19990952	G	ARAMARK Corporation.
		G	Viad Corp.
		G	Restaura, Inc.
	19990956	G	Sandvik AB.
		G	William D. and Suzanne M. McEntire.
		G	Widmar, Inc., NII, Incorporated.
	19990957	G	E-Z Mart Stores, Inc.
		G	Tosco Corporation.
		G	Circle K Stores, Inc.
	19990961	G	Primax Electronics Ltd.
		G	Visioneer, Inc.
		G	Visioneer, Inc.
	19990966	G	Barnett Inc.
		G	Waxman Industries, Inc.
		G	WOC Inc.
	19990968	G	Alberto-Culver Company.
		G	The Estate of Robert Malin.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Ace Beauty Companies.
	19990977	G	Tyco International Ltd.
		G	Sage Products, Inc.
		G	Sage Products, Inc.
	19991012	G	Societe Nationale d'Expoitation Industrielle des Taba.
		G	Ronald O. Perelman.
		G	Consolidated Cigar Holdings, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–1181 Filed 1–19–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9910040]

ABB AB 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 22, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Pamela Taylor or Ann Malester, FTC/S–2308, 601 Pa. Ave., N.W., Washington, D.C. 20580, (202) 326–2237 or 326–2820.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 8, 1999), 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, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a proposed Consent Order from ABB AB and ABB AG (hereinafter collectively ''ABB''), which is designed to remedy the anticompetitive effects resulting from ABB's acquisition of Elsag Bailey Process Automation N.V. (''Elsag Bailey''). Under the terms of the agreement, ABB will be required to divest the Analytical Division of Elsag Bailey's Applied Automation, Inc. subsidiary, which is involved in the manufacture and sale of process gas chromatographs and the research and development of process mass spectrometers, to a Commission-approved buyer within six (6) months. If the sale of these assets is not made within six (6) months, the Commission may appoint a trustee to divest Elsag Bailey's entire Applied Automation, Inc. subsidiary.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the proposed Consent Order and the comments received and will decide whether it should withdraw from the proposed Consent Order or make final the proposed Order.

Pursuant to an October 26, 1998 cash tender offer, ABB agreed to acquire 100% of the issued and outstanding voting securities of Elsag Bailey for $1.1 billion. The proposed Complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the markets for process gas chromatographs and process mass spectrometers.

Process gas chromatographs are analytical instruments used in process manufacturing applications to measure the chemical composition of a gas or a liquid by separating a sample into its individual components through selective chemical interaction or solubility, and measuring the separated components using a detector. ABB and Elsag Bailey are the world's two leading suppliers of process gas chromatographs.

ABB is also one of the world's leading suppliers of process mass spectrometers. Process mass spectrometers are analytical instruments used in process manufacturing applications to determine the chemical composition of a gas or vapor stream by taking a sample, ionizing the sample, separating the ions for a particular atomic or molecular species by their mass to charge ration and measuring the concentrations using a detector. While Elsag Bailey does not currently manufacture process mass spectrometers, it is involved in the research and development of a process mass spectrometer which it plans to begin manufacturing and selling in 1999. Thus, Elsag Bailey is an actual potential competitor in the market for process mass spectrometers.

The worldwide process gas chromatograph market is highly concentrated, and the proposed acquisition would substantially increase concentration in that market. The acquisition would result in a Herfindahl-Hirschman Index (''HHI'') of 4,764 points, which is an increase of 2,310 points over the pre-acquisition HHI level. The combined firm would have a market share of almost 70%. By eliminating competition between the top two competitors in this highly concentrated market, the proposed acquisition would allow ABB to unilaterally exercise market power, thereby increasing the likelihood that process gas chromatograph customers would be forced to pay higher prices and that innovation in the process gas chromatograph market would decrease.

The worldwide process mass spectrometer market is also highly concentrated, with a pre-acquisition HHI of 4,150. Although Elsag

Bailey does not currently manufacture and sell process mass spectrometers, it is involved in the research and development of a new mass spectrometer product, which it plans to introduce in 1999. It appears that the introduction of this product would result in increased competition in the process mass spectrometer market, leading to lower prices and increased innovation. ABB's proposed acquisition of Elsag Bailey would eliminate this significant source of future competition and leave the process mass spectrometer market highly concentrated for the foreseeable future.

Substantial barriers to new entry exist in the process gas chromatograph and process mass spectrometer markets. A new entrant into either of these markets would need to undertake the difficult, expensive and time-consuming process of developing and testing a product, establishing a track record for product quality, and developing a service and support network. Because of the difficulty of accomplishing these tasks, new entry into either the process gas chromatograph or process mass spectrometer market, other than Elsag Bailey's imminent introduction of a process mass spectrometer, could not be accomplished in a timely manner and is therefore unlikely to deter or counteract the anticompetitive effects resulting from the transaction.

The proposed Consent Order effectively remedies the acquisition's anticompetitive effects in the process gas chromatograph and process mass spectrometer markets by requiring ABB to divest the assets of the Analytical Division of Elsag Bailey's Applied Automation, Inc. subsidiary. Pursuant to the Consent Agreement, ABB is required to divest these assets no later than six (6) months from the date ABB signs the Consent Agreement. In the event that ABB fails to divest the assets of the Analytical Division within this six-month time frame, the Consent Agreement contains a ''crown jewel'' provision which allows the Commission to appoint a trustee to divest Elsag Bailey's entire Applied Automation, Inc. subsidiary.

In order to ensure that the acquirer of the divested assets has access to all of the employees currently involved in Elsag Bailey's process gas chromatograph and process mass spectrometer businesses, the Consent Agreement requires ABB to provide financial incentives for these individuals to accept employment with the acquirer. The Order also requires ABB to provide the Commission a report of compliance with the divestiture provisions of the Order within thirty (30) days following the date the Order becomes final, and every thirty (30) days thereafter until ABB has completed the required divestiture. Finally, an Agreement to Hold Separate signed by ABB requires that the Applied Automation Assets, which includes the Analytical Division Assets, be operated independently of ABB until the divestiture required by the Order is completed.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–1179 Filed 1–19–99; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

Revisions to the General Services Administration's (GSA's) Centralized Household Goods Traffic Management Program (CHAMP)

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of proposed program changes for comment.

SUMMARY: This notice invites comments on GSA's plan to increase the Centralized Household Goods Management Program's (CHAMP's) shipment surcharge from $45 to $105, and revise the Household Goods Tender of Service ''shipment definition'' as reflected in the attachment to this notice. The proposed new definition states that each of the three components of an individual employee's belongings (i.e., household goods, privately owned vehicle(s) (POV), and unaccompanied air baggage) is separately subject to the shipment surcharge. These actions are necessary to increase CHAMP funding and enable GSA to defray its expenses for this program.

DATES: Please submit your comments by February 19, 1999.

ADDRESSES: Mail comments to the Transportation Management Division (FBF), General Services Administration, Washington, DC 20406, Attn: **Federal Register** Notice. GSA will consider your comments prior to implementing these proposals.

FOR FURTHER INFORMATION CONTACT: Larry Tucker, Senior Program Expert, Transportation Management Division, FSS/GSA, 703–305–5745.

SUPPLEMENTARY INFORMATION: GSA's Centralized Household Goods Traffic Management Program (CHAMP) receives no Congressional funding and depends on a shipment surcharge, currently $45, to defray its costs. The shipment surcharge has been in effect since 1996 and no longer fully funds program expenses. So that GSA may meet its expenses and continue to provide these critical services, GSA proposes to increase the shipment surcharge to $105. GSA also plans to revise the shipment definition in the Household Goods Tender of Service to state that each of the three components comprising an individual employee's belongings (i.e.,) household goods, POV, and unaccompanied baggage) whether shipped separately or together is separately subject to a shipment surcharge.

GSA is committed to providing a program that meets the needs of Federal agencies. The funding increase proposed in this notice will be used to directly pay for program activities including: domestic and international rate negotiations, review and approval of carrier applications, consolidating carrier survey (3080) responses and computing the resulting customer satisfaction indices, providing technical assistance on questions pertaining to tariff interpretation and loss and damage claims, developing helpful move-related publications and training materials, and conducting workshops.

Dated: January 13, 1999.

Alan J. Zaic,

Assistant Commissioner, Office of Transportation and Property Management.

Existing HTOS Definition—1998–99 RFO, Section, 2–6.7.3 ''First Shipment. The first shipment of a relocation performed pursuant to the HTOS is defined as a surface shipment of household effects, shipment of a privately owned vehicle, and a shipment of unaccompanied air baggage, all or any one of which are tendered to the Participant by the shipping Federal Agency at the same time or within six months of the tender of the first component of this shipment.

''Supplemental Shipments. A supplemental shipment of a relocation performed pursuant to the HTOS is defined as any surface shipment, including a privately owned vehicle, or unaccompanied air baggage shipment tendered to the Participant by the shipping Federal Agency after six months from the date of the tender of the first component of the first shipment.''

Proposed Amendment to HTOS Shipment Definition. We are planning to revise the above referenced provision to read as follows:

''Definition of a shipment. For purposes of this HTOS, a shipment (whether on the same GBL or separate GBL's) is defined as:

(a) A surface shipment of household effects;

(b) Shipment of a privately owned vehicle; or

(c) Shipment of unaccompanied air baggage.

''This definition applies to interstate, intrastate and international shipments as defined in the applicable Request for Offers (RFO).

''Application of the shipment surcharge. The carrier will remit to GSA a shipment surcharge for each shipment equal to that provided in the GSA Request for Offers (RFO) for a specific rate-filing period. The shipment surcharge is due by the end of the quarter in which the carrier bills the agency for line haul and accessorial services, exclusive of storage-in-transit (SIT) charges as provided in paragraph 7–1.A. (9) a., above. The surcharge is not billable to the Federal agency and must be shown on the Original Public Voucher for Transportation Charges, SF 1113, as an allowance to the Government.''

[FR Doc. 99–1204 Filed 1–19–99; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Amended Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of meeting.

The Advisory Committee on Blood Safety and Availability will meet on January 28, 1999 from 9 a.m. to 5 p.m. It was previously announced that the Committee would also meet on January 29, 1999. Since it no longer appears that the Committee will require two days to complete its agenda, the meeting is now scheduled to begin at 9 a.m. and conclude at 5 p.m. on January 29, 1999. The meeting will take place in the Crown Plaza Hotel, 14th and K Streets NW, Washington DC 20005. The meeting will be entirely open to the public.

As previously announced, the purpose of the meeting will be to discuss the options for implementation and evaluation of the recommendations made by the Advisory Committee regarding hepatitis C lookback at its November 24, 1998 meeting, and consideration of such Old and New Business as time permits.

Prospective speakers should notify the Executive Secretary of their desire to address the Committee and should plan for no more than 5 minutes of comment.

FOR FURTHER INFORMATION CONTACT: Stephen D. Nightingale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Safety, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201. Phone (202) 690–5560; FAX (202) 690–6584; e-mail SNIGHTIN@osophs.dhhs.gov.

Dated: January 8, 1999.

Stephen D. Nightingale,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 99–1155 Filed 1–19–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Notice of Meeting

AGENCY HOLDING THE MEETING: President's Committee on Mental Retardation.

TIME AND DATE: February 20, 1999–11:00 a.m.–5:00 p.m.

PLACE: Renassiance Hotel, 999 9th Street, N.E., Washington, D.C. 20001.

STATUS: Full Committee Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All meeting sites are barrier free.

TO BE CONSIDERED: The Committee plans to discuss critical issues concerning Federal Policy, Federal Research and Demonstration, State Policy Collaboration, Minority and Cultural Diversity and Mission and Public Awareness, relating to individuals with mental retardation.

The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs and supports for persons with mental retardation, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with mental retardation and their families.

CONTACT PERSON FOR MORE INFORMATION: Jane L. Browning, 352–G Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201–0001, (202) 619–0634.

Dated: January 12, 1999.

Jane L. Browning,

Executive Director, PCMR.

[FR Doc. 99–1203 Filed 1–19–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Antiviral Drugs 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 24, 1999, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Rhonda W. Stover or John Schupp, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 21–036, zanamivir for inhalation (Relenza®, Glaxo Wellcome, Inc.), for the treatment of influenza A and B.

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 February 17, 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 February 17, 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: January 12, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–1147 Filed 1–19–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction of One Single Family Residence on 0.75 Acre of the 10.117 Acres on City Park Road in Travis County, TX

SUMMARY: Mark A. and Brenda J. Hogan (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–005497–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (Dendroica chrysoparia). The proposed take would occur as a result of the construction of one single family residence on City Park Road, Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before February 19, 1999.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Christina Longacre, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Field Office, Austin, Texas at the above address. Please refer to permit number TE–005497–0 when submitting written comments.

FOR FURTHER INFORMATION CONTACT: Christina Longacre at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

APPLICANT: Mark A. and Brenda J. Hogan plan to construct a single family residence on City Park Road, Austin, Travis County, Texas. This action will eliminate less than one acre of habitat and indirectly impact less than four additional acres of golden-cheeked warbler habitat. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by donating $1,500 into the Balcones Canyonlands Preserve to acquire/manage lands for the conservation of the golden-cheeked warbler and place the remaining balance of the property in a conservation easement in perpetuity.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not decrease the impacts.

Geoffrey L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–1188 Filed 1–19–99; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(WY–920–09–1320–01); WYW147720

Notice of Invitation for Coal Exploration License

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.A. 201(b), and to the regulations adopted as 43 CFR Subpart 3410, all interested parties are hereby invited to participate with Amax Coal West, Inc., on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

T. 48 N., R. 71 W., 6th P.M., Wyoming
Sec. 17: Lots 11–14;
Sec. 18: Lots 5–19;
Sec. 19: Lots 5–19;
Sec. 20: Lots 1–16;
Sec. 21: Lots 11–14;
Sec. 28: Lots 3–6;
Sec. 29: Lots 1, 6;
T. 48 N., R. 72 W., 6th P.M., Wyoming
Sec. 13: Lots 1–15;
Sec. 24: Lots 1–16;
Sec. 25: Lots 1–16.

Containing 4366.86 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to obtain coal quality data.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW147720): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper Field Office, 1701 East ''E'' Street, Casper, WY 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in The ''News-Record'' of Gillette, WY, once each week for two consecutive weeks beginning the week of January 18, 1999, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Amax Coal West, Inc. no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Amax Coal West, Inc., Belle Ayr Mine, Attn: Robin Carlson, Caller Box 3039, Gillette, WY 82717–3039, and the Bureau of Land Management, Wyoming State Office, Minerals and Lands Authorization Group, Attn: Mavis Love, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR, Section 3410.2–1(c)(1).

Dated: January 11, 1999.

Mavis Love,

Acting Chief, Leasable Minerals Section.

[FR Doc. 99–948 Filed 1–19–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1410–00]

Alaska Resource Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Alaska Resource Advisory Council Meeting.

SUMMARY: The Alaska Resource Advisory Council will conduct an open meeting Thursday, February 18, 1999, from 9:30 a.m. until 4:30 p.m. and Friday, February 19, 1999, from 9 a.m. until 3 p.m. The council will review BLM land management issues and take public comment on those issues. The meeting will be held at the BLM Alaska State Office, located on the 4th floor of the Anchorage Federal Office Building at 7th Avenue and C Street.

Public comment will be taken from 1–2 p.m. Thursday, February 18. Written comments may be submitted at the meeting or mailed to the address below prior to the meeting.

ADDRESSES: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: December 28, 1998.

George P. Oviatt,

Acting Associate State Director.

[FR Doc. 99–1160 Filed 1–19–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–930–1920–00–4373; IDI–31741]

Legal Description of Juniper Butte Range Withdrawal, Correction; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice corrects the total acreage figure and the land description of the public lands withdrawn for the Juniper Butte Range Withdrawal published in 63 FR 251, of December 31, 1998, on page 72326. Two of the parcels listed in the original publication are owned by the State of Idaho and should not have been included in the land description for the Juniper Butte Range. The following two parcels of State land are hereby deleted from the Juniper Butte Range:

Boise Meridia

T. 12S., R. 9E.,
Section 36, S½, containing 320 acres.
T. 13S., R. 10E.,
Section 16, containing 640 acres.

The acreage figure of 32,380.60 in the original publication was also in error. The correct acreage figure for the Juniper Butte Range Withdrawal is approximately 11,796.64 acres in Owyhee County, Idaho.

EFFECTIVE DATE: January 20, 1999.

FOR FURTHER INFORMATION CONTACT: Jon Foster, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3813.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 99–1222 Filed 1–19–99; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, Royalty-in-Kind (RIK) Determination of Need (OMB Control Number 1010–0119), which expires on May 31, 1999.

FORM: None.

DATES: Written comments should be received on or before March 22, 1999.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e:mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, e-mail Dennis.C.Jones@mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information which expires May 31, 1999. We are requesting OMB approval for a three year extension of this existing collection authority. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

MMS on behalf of the Secretary performs Determinations of Need prior to issuing a Notice of Availability of Sale in the **Federal Register** advising industry of a forthcoming RIK sale. In past practice, the Determination of Need process has been an informal process reacting primarily to expressions of interest from small refiners not already participating in the program as well as indications from participating refiners of their continued interest in the program. We have also received formal expressions of interest from Congressmen on behalf of their refiner constituents, inquiries that we have also factored into our decision-making process.

As part of ongoing process reengineering, MMS has concluded that a proactive, structured, and documented methodology should be established for conducting all future RIK Determinations of Need. The first step in this process is to issue a **Federal Register** notice requesting specific information from eligible refiners: location of refinery; desirability of offshore versus onshore crude; type of crude desired (e.g., Wyoming Sweet); ability to obtain long-term supply of desired crude (with supporting documentation such as ''denial'' by major supplier); ability to obtain desired crude at fair market prices (with supporting documentation that desired oil was not available or equitably priced for the area or region in question); and percentage of total refining capacity attributable to Federal oil versus other sources; etc. Feedback from refiners (or other interested parties, like lease owners or operators) will be used by MMS to assess current marketplace conditions—i.e., whether small, independent refiners have access to ongoing supplies of crude oil at equitable prices.

We anticipate that 20 refiners (and other interested parties) will respond to this information collection request. Based on consultation with current program refiners, we estimate that each respondent will spend 4 hours per

response for a total industry burden of 80 hours.

Dated: January 13, 1999.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 99–1224 Filed 1–19–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 10, 1999.

Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by February 4, 1999.

Carol D. Shull,

Keeper of the National Register.

ARIZONA

Gila County

Perkins Store, AZ 288, 1.5 mi. SW of Young, Young, 99000108

Mohave County

Kingman Army Air Forces Flexible Gunnery School Radio Tower, 7000 Flightline Dr., Kingman, 99000107

ARKANSAS

Saline County

Gan Row Historic District, Bounded by Pine, Market, Maple and S. Main Sts., Benton, 99000106

CALIFORNIA

Ventura County

Oxnard, Henry T., Historic District, F and G Sts., between Palm and 5th Sts., Oxnard, 99000109

CONNECTICUT

Fairfield County

Freeman, Mary and Eliza, Houses, 352–4 and 358–60 Main St., Bridgeport, 99000110

ILLINOIS

Du Page County

Churchville School, 3N 784 Church Rd., Bensenville vicinity, 99000114

Ford County

Phillips, Alfred, House, 404 N. Melvin St., Gibson City, 99000113

Franklin County

Franklin County Jail, 209 W. Main St., Benton, 99000111

Livingston County

Route 66, Pontiac to Chenoa (Route 66 through Illinois MPS), Rte 66, bet. Pontiac Rd. 1600 N and Chenoa Township Rd. 1100 E, Pontiac vicinity, 99000115

Macoupin County

Route 66, Girard to Nilwood (Route 66 through Illinois MPS), Rte 66, between IL 4 S of Girard and IL 4, Nilwood vicinity, 99000117

Montgomery County

Route 66, Litchfield to Mount Olive (Route 66 through Illinois MPS), Rte. 66, between IL 16 and Mount Olive Rd., Litchfield vicinity, 99000116

Tazewell County

Waltmire Bridge, Locust Rd. over Mackinaw River, approx. 4.9 mi. S of Tremont, Tremont vicinity, 99000112

IOWA

Jefferson County

Commercial Block (Louden Machinery Company, Fairfield Iowa MPS), 106, 108, 110 N. Main St., Fairfield, 99000120

First Church of Christ Scientist (Louden Machinery Company, Fairfield Iowa MPS), 300 E. Burlington Ave., Fairfield, 99000127

Fryer, O.F. and Lulu E., House, 902 S. Main St., Fairfield, 99000131

Fulton, Fred and Rosa, Barn (Louden Machinery Company, Fairfield Iowa MPS), 1210 278th Blvd., Selma vicinity, 99000119

Iowa Malleable Iron Company (Louden Machinery Company, Fairfield Iowa MPS), 600–608 N. Ninth St., Fairfield, 99000122

Louden Machinery Company (Louden Machinery Company, Fairfield Iowa MPS), 607 W. Broadway Ave., Fairfield, 99000128

Louden Monorail System in the Auto Repair Shop (Louden Machinery Company, Fairfield Iowa MPS), 117 E. Broadway Ave., Fairfield, 99000129

Louden Whirl-Around (Louden Machinery Company, Fairfield Iowa MPS), 905 E. Harrison Ave., Fairfield, 99000123

Louden, R. B. and Lizzie L., House (Louden Machinery Company, Fairfield Iowa MPS), 107 W. Washington Ave., Fairfield, 99000125

Louden, R.R., and Antoinette, House (Louden Machinery Company, Fairfield Iowa MPS), 905 E. Adams Ave., Fairfield, 99000130

Louden, William and Mary Jane, House (Louden Machinery Company, Fairfield Iowa MPS), 501 W. Washington Ave., Fairfield, 99000118

Luedtke, August and Vera, Barn (Louden Machinery Company, Fairfield Iowa MPS), 1938 185th St., Fairfield vicinity, 99000121

Van Buren County

Midway Stock Farm Barn (Louden Machinery Company, Fairfield Iowa MPS), 0.3 mi. S of jct. of IA 1 and IA16, Keosauqua vicinity, 99000126

MARYLAND

Montgomery County

Bethesda Theatre, 7719 Wisconsin Ave., Bethesda, 99000133

Washington County

Clagett, Robert, Farm, Garrett's Mill Rd., Knoxville vicinity, 99000132

MASSACHUSETTS

Berkshire County

West Stockbridge Grange No. 246, 5 Swamp Rd., West Stockbridge, 99000134

Essex County

Osgood Hill, 709 and 723 Osgood St., North Andover, 99000135

MISSOURI

Howard County

South Main Street Historic District, 200,202,204 and 208–312 South Main St., Fayette, 99000083

NEW JERSEY

Monmouth County

Clarksburg Methodist Episcopal Church, 512 Cty Rd. 524, Millstone Township, 99000084

Morris County

Ralston Historic District (Boundary Increase), NJ 24 and Roxiticus Rd., Mendham Township, 99000085

NEW YORK

Allegany County

Main Street Historic District, Roughly along Main St., from Orchard St. to Green St., Cuba, 99000087

Steuben County

First Baptist Church of Painted Post, 130 W. Water St., Painted Post, 99000088

Ulster County

Ontario and Western Railroad Passenger Station, Institution Rd., Napanoch, 99000086

NORTH CAROLINA

Chowan County

Edenton Cotton Mill Historic District, Bounded by E. Church St., Bount's Creek, Queen Anne's Creek, and Wood Ave., Edenton, 99000089

Lee County

Buffalo Presbyterian Church and Cemeteries, 1333 Carthage St., Sanford, 99000090

Mecklenburg County

Textile Mill Supply Company Building, 1300 S. Mint St., Charlotte, 99000091

OHIO

Defiance County

Dey Road Bridge, 0.35 mi. E of US 24, Defiance vicinity, 99000095

Hamilton County

La Tosca Flats, 2700 Observatory Ave., Cincinnati, 99000096

Montgomery County

Aullwood House and Garden, 900 Aullwood Rd., Dayton vicinity, 99000092

Morgan County

Adams Covered Bridge, San Toy Rd., Malta vicinity, 99000093
Barkhurst Mill Covered Bridge, Township Rd. 21 over Wolf Creek, Chesterhill vicinity, 99000097
Helmick Mill Covered Bridge, Township Rd. 269 over Island Run, Malta vicinity, 99000098

Richland County

Tubbs—Sourwine House, 49 Railroad St., Plymouth, 99000094

SOUTH CAROLINA

Allendale County

Williams House, US 321, near Ulmer, Ulmer, 99000104

Chesterfield County

Seaboard Air Line Railway Depot in Patrick, Winburn St., S of jct. of SC 102 and US 1, Patrick, 99000100
Seaboard Air Line Railway Depot in McBee, W. Pine Ave., NW of jct. of SC 151 and US 1, McBee, 99000103

Greenville County

Brushy Creek, 327 Rice St., Greenville, 99000102

Richland County

South Carolina State Armory, 1219 Assembly St., Columbia, 99000099

Sumter County

Magnolia Hall, 2025 Horatio-Hagood Rd., Hagood, 99000101

TENNESSEE

Jefferson County

Strawberry Plains Fortification (Archeological Resources of the American Civil War in Tennessee MPS) Address Restricted, Strawberry Plains vicinity, 99000105

Williamson County

Triune Fortification (Archeological Resources of the American Civil War in Tennessee MPS) Address Restricted, Arrington vicinity, 99000137

VERMONT

Chittenden County

Preston—Lafreniere Farm (Agricultural Resources of Vermont MPS) Jct. of Duxbury Rd. and Honey Hollow Rd., Bolton, 99000138

VIRGINIA

Albemarle County

Ballard—Maupin House, 4257 Ballard's Mill Rd., Free Union vicinity, 99000142
Proffit Historic District, Roughly the area around the jct. of Southern RR tracks and VA 649, Proffit vicinity, 99000145

Cesterfield County

Bethel Baptist Church, 1100 Huguenot Springs Rd., Midlothian, 99000141

Rockbridge County

Kennedy—Lunsford Farm (Boundary Increase), 1194 Raphine Rd., Raphine vicinity, 99000140

Alexandria Independent City

Parkfairfax Historic District, Bounded by Quaker Ln., US 395, Beverley Dr., Wellington Rd., Gunston Rd., Valley Dr., Glebe Rd. and Four-mile Run, Alexandria, 99000146

Newport News Independent City

Greenlawn Cemetery, 2700 Parish Ave., Newport News, 99000139

Richmond Independent City

Whitworth, John, House, 2221 Grove Ave., Richmond, 99000143

Virginia Beach Independent City

Shirley Hall, 1109 S. Bay Shore Dr., Virginia Beach, 99000144

[FR Doc. 99–1190 Filed 1–19–99; 8:45 am]
BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Repository for Archaeological and Ethnographic Collections, Department of Anthropology, University of California-Santa Barbara, Santa Barbara, CA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Repository for Archaeological And Ethnographic Collections, Department of Anthropology, University of California-Santa Barbara, Santa Barbara, CA which meet the definition of ''sacred object'' under Section 2 of the Act.

The four cultural items consist of a prayer-stick or paho (224-030), a partial face mask of the relation of the water-drinking maiden or Palhik' Maana (224-199), and two tablitas (224-270 and 224-271).

Since before 1970, these cultural items have been in the Repository's collections. No records or information exists indicating how the Repository acquired these items, although it is presumed they were donations.

On the basis of stylistic characteristics, these cultural items have been identified as Hopi in origin. Consultations with traditional religious leaders and representatives of the Hopi Tribe and traditional religious leaders and representatives of the Pueblo of Jemez confirm the cultural affiliations of these cultural items as Hopi. The Repository contacted personnel at the Arizona State Museum, who identified the two tablitas as having been used in the Niman ceremony. Representatives of the Hopi Tribe and Hopi traditional religious leaders have identified these four cultural items as needed by Native American traditional religious leaders for the practice of traditional Native American religion by present-day adherents.

Based on the above-mentioned information, officials of the University of California-Santa Barbara have determined that, pursuant to 43 CFR 10.2 (d)(3), these four cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the University of California-Santa Barbara have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Hopi Tribe.

This notice has been sent to officials of the Hopi Tribe and the Pueblo of Jemez. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Nancy A. Doner, NAGPRA Coordinator, Office of Research, University of California-Santa Barbara, Santa Barbara, CA 93106; telephone (805) 893–4180 before February 19, 1999. Repatriation of these objects to the Hopi Tribe may begin after that date if no additional claimants come forward.

Dated: January 7, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–1201 Filed 1–19–99; 8:45 am]
BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing

its intention to request approval for the collection of information under 30 CFR Part 842 which allows the collection and processing of citizen complaints and requests for inspection. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by March 22, 1999, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to approve the collection of information in 30 CFR Part 842, Federal inspections and monitoring. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information will be placed on the forms once approved and the control number assigned.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on October 27, 1998 (63 FR 57311). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Federal inspections and monitoring—30 CFR Part 842.

OMB Control Number: 1029–NEW.

Summary: For purposes of information collection, this part establishes the procedures for any person to notify the Office of Surface Mining in writing of any violation which may exist at a surface coal mining operation. The information will be used to investigate potential violations of the Act or applicable State regulations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Citizens, State governments.

Total Annual Responses: 140.

Total Annual Burden Hours: 45 minutes.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please include the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: January 13, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–1189 Filed 1–19–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 14, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ((202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: Producer Price Index Survey.

OMB Number: 1220–0008 (revision).

Affected Public: Business or other for-profit.

Form No.	Total number of respondents	Frequency	Total annual responses	Average time per response	Total burden hours
BLS 1810A, A1, B, C, C1, and E	6,342	Once	6,342	2 hours	12,684
BLS 473P	105,000	Monthly	1,260,000	18 minutes	378,000

Total Burden Hours: 390,684 hours.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): 0.

Description: The Producer Price Index, one of the Nation's leading economic indicators, is used as a measure of price movements, as an indicator of inflationary trends, for inventory valuation, and as a measure of purchasing power of the dollar at the primary-market level. It is also used for market and economic research and as a basis for escalation in long-term contracts and purchase agreements.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 99–1216 Filed 1–19–99; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Institute of Museum and Library Services, Office of Library Services, Submission for OMB Review, Comment Request, Museum/Library Partnerships Research

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice.

SUMMARY: The Institute of Museum Services has submitted the following public information request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Currently, the Institute of Museum and Library Services is soliciting comment concerning a new collections entitled, Museum/Library Partnerships Research. A copy of this proposed form, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Research and Technology, Rebecca Danvers (202) 606–2478. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, by 30 days from publication date.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Background: The Institute of Museum and Library Services (IMLS) is seeking to collect and analyze information on the nature and extent of museum and library partnerships in the United States. The research program will help IMLS more fully meet its goal of supporting such collaborations between museums and libraries, an objective which was specifically set forth in the Museum and Library Services Act of 1996. In 1998, IMLS began awarding financial support to museum and library partners through the National Leadership Grants (NLG) program. As such, IMLS requires an estimate on the number of collaborations that currently exist as well as detailed information on the types of activities and programs that may require IMLS support. This research study will collect these and other data from libraries and museums across the nation.

Type of Review: New collection.

Agency: Institute of Museum and Library Services.

Title: Museum/Library Partnerships Research.

OMB Number: N/A.

Affected Publics: museums and libraries.

Total Respondents: 280 (265 + 15).

Frequency: one time.

Total Responses: 280.

Average Time per Response: 265 at 5 minutes; 15 at 45 minutes.

Estimated Total Burden Hours: 32 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., N.W. Washington, DC 20506.

Dated: January 14, 1999.

Mamie Bittner,

Director, Public and Legislative Affairs.

[FR Doc. 99–1202 Filed 1–19–99; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1074 (which should be mentioned in all correspondence concerning this draft guide), is titled ''Steam Generator Tube Integrity.'' The guide is intended for Division 1, ''Power Reactors.'' This draft guide is being developed to describe methods acceptable to the NRC staff for monitoring and maintaining the integrity of the steam generator tubes at operating pressurized water reactors.

The NRC staff is working with industry to resolve issues with a document prepared by the Nuclear Energy Institute, NEI 97–06, ''Steam Generator Program Guidelines.'' [1] NEI's chief objective with NEI 97–06 is for pressurized water reactor (PWR) licensees to evaluate their existing steam generator programs and, where necessary, to revise or strengthen program attributes to meet the intent of the NEI 97–06 guidelines. The NEI 97–06 guidelines are intended to improve both the quality and the consistency of steam generator programs throughout the industry. Currently, technical differences remain between the industry and the staff, as well as issues regarding the appropriate regulatory framework for implementing the NEI guidelines.

Previous draft versions of DG–1074 have been made publicly available to support technical interactions with industry and for better understanding of the technical differences between the

[1] Copies are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555; telephone (202) 634–3273; fax (202) 634–3343.

DG–1074 guidance and the industry NEI 97–06 approach. As a result of these technical interactions, the staff is already familiar with industry's comments regarding the DG–1074 guidance. In order to minimize expenditure of additional industry resources for commenting on the DG–1074 guidance, the staff intends to consider as comments the information that the industry has provided in prior public meetings on this subject and suggests that industry reference previous interactions and submittals wherever possible as providing its comments. However, to date the public has not had an opportunity to comment on the DG–1074 guidance. Accordingly, this **Federal Register** announcement provides an opportunity for the public, as a whole, to provide comments on the DG–1074 guidance. The staff will consider the public comments both in its efforts to finalize the regulatory guidance and in its continuing interactions with industry regarding NEI 97–06.

In addition, two documents in regard to a differing professional opinion (DPO) concerning steam generator tube integrity have been placed in the NRC's Public Document Room: a document containing the NRC staff's consideration of the DPO and a memorandum to the Commission from J. Hopenfeld dated September 25, 1998.[1] The NRC staff requests public comments on the technical issues in these documents. The DPO consideration document discusses how the staff considered the issues of the DPO during the development of the DG–1074 guidance. The September 25, 1998, memorandum informs the Commission of the DPO author's continuing concerns about steam generator tube integrity. The DPO author's memorandum to the Commission was sent after the NRC staff completed the DPO consideration document; consequently the DPO consideration document was not revised to reflect the contents of the memorandum. By making this memorandum publicly available, the NRC is not endorsing the memorandum nor its contents and is instead providing this additional information to enable the public to comment on the technical issues contained therein.

The draft guide does not represent an official NRC staff position. Accordingly, the NRC staff does not expect licensees to revise their steam generator programs to be in accordance with DG–1074.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by June 30, 1999.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov*. For information about the draft guide and the related documents, contact Mr. Timothy A. Reed, (301) 415–1462; e-mail TAR@nrc.gov.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by e-mail to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 31st day of December 1998.

For the Nuclear Regulatory Commission.

John W. Craig,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 99–1197 Filed 1–19–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Contingency Plan for the Year 2000 Issue in the Nuclear Industry

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is making available a draft document entitled, ''Contingency Plan for the Year 2000 Issue in the Nuclear Industry.'' This document describes the current plan and approach the NRC staff expects to use in addressing contingencies resulting from potential unanticipated events due to the Year 2000 (Y2K) problem. The NRC staff believes prudent contingency planning for the Y2K problem is appropriate in addition to actions being taken by NRC licensees to achieve Y2K readiness of their facilities. The staff further recognizes the importance of a broader focus that will help to ensure that Y2K concerns regarding the national infrastructure are identified and resolved.

DATES: Public input is solicited on the overall scope and direction of the NRC Contingency Plan. To be most helpful, comments should be received no later than February 15, 1999. Comments received after this date may be considered in the further development of the Contingency Plan if practical to do so.

ADDRESSES: A copy of the draft Contingency Plan can be obtained via the World Wide Web at *http://www.nrc.gov/NRC/Y2K/Y2KCP.html* or from the NRC's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555; telephone 202–634–3273; fax 202–634–3343.

Mail Comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Mail Stop T–6D59, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or fax to 301–415–5144. Comments may be hand-delivered to 11545 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Joseph G. Giitter; Mail Stop T–4A43, Office for Evaluation and Analysis of Operational Data, Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–7485; E-mail *JGG@NRC.GOV*.

SUPPLEMENTARY INFORMATION: The NRC is working with its licensees to ensure that their potential Year 2000 (Y2K) issues have been identified and corrected, and that the agency's own computer-based systems will continue to function properly during the transition from 1999 into 2000.

Nuclear power plant licensees indicate no significant Year 2000 problems with computer systems

required for safe operation or shutdown of plants, since most are controlled by analog equipment that does not use computers. However, other non-safety computer systems used in such areas as control room displays, radiation monitoring and security functions may have potential problems. For this reason, and to be able to respond to potential unanticipated Y2K problems, the NRC is developing a contingency plan for ensuring that public health and safety and the environment will continue to be protected.

The Contingency Plan for the Year 2000 Issue, built around a reasonably conservative planning scenario, would establish NRC expectations for staff coordination with external stakeholders and staff actions to be taken during the transition period.

The staff considers the NRC Year 2000 Contingency Plan to be a rapidly evolving product, subject to anticipated but very necessary coordination efforts with other Federal agencies and with NRC licensees. In its current form, the plan discusses actions and approaches involving potential policy issues that may require more formal Commission review and approval. However, the Commission has determined that the plan should be made available to the public at this time in order to promote communication and dialogue regarding the proposals discussed therein.

Dated at Rockville, Maryland, this 13th day of January, 1999.

For the Nuclear Regulatory Commission.

Frank J. Congel,

Director, Incident Response.

[FR Doc. 99–1199 Filed 1–19–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of NUREG–1700, ''Standard Review Plan for Evaluating License Termination Plans for Nuclear Power Reactors''

The U.S. Nuclear Regulatory Commission is noticing issuance of NUREG–1700, ''Standard Review Plan Evaluating License Termination Plans for Nuclear Power Reactors.'' The standard review plan (SRP), NUREG–1700, guides staff reviewers on performing safety reviews of LTPs. Although the SRP is intended to be used by the NRC staff in conducting reviews, it can be used by interested parties responsible for conducting their own licensing reviews or developing an LTP. The principal purpose of the SRP is to ensure the quality and uniformity of staff reviews and to present a well-defined base from which to evaluate the requirements. It is also the purpose of the SRP to make the information about regulatory matters widely available to improve the understanding of the staff's review process by interested members of the public and the nuclear industry.

The document is available for inspection at the NRC's Public Document Room, 2120 L Street, NW, Washington, DC 20555, and on the NRC Home Page (http://www.nrc.gov/). NUREG–1700, ''Standard Review Plan for Evaluating License Termination Plans for Nuclear Power Reactor'' is being issued as a draft for comment. Any interested party may submit comments on this report for consideration by the NRC staff. The comment periods end June 15, 1999. Please specify the report number, draft NUREG–1700, in your comments and send them by June 15, 1999, to: Chief, Rules and Directives Branch, Office of Administration, Mail Stop T–6D59, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Clayton L. Pittiglio, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–6702.

Dated at Rockville, Maryland, this 18th day of December 1998.

For the Nuclear Regulatory Commission.

John W. N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–1198 Filed 1–19–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

December 1, 1998.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of December 1, 1998, of the two deferrals contained in the first special message for FY 1999. The message was transmitted to Congress on October 22, 1998.

Deferrals (Attachments A and B)

As of December 1, 1998, $167.6 million in budget authority was being deferred from obligation. Attachment B shows the status of each deferral reported during FY 1999.

Information from Special Message

The special message containing information on the deferrals that are covered by this cumulative report is printed in the edition of the **Federal Register** cited below:

63 FR 63949–50, Tuesday, November 17, 1998.

Jacob J. Lew,

Director.

ATTACHMENT A.—STATUS OF FY 1999 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	167.6
Routine Executive releases through December 1, 1998 (OMB/Agency releases of $0)	.....
Overturned by the Congress	.....
Currently before the Congress	167.6

BILLING CODE 3110–01–P

ATTACHMENT B
Status of FY 1999 Deferrals - As of December 1, 1998
(AMOUNTS IN THOUSANDS OF DOLLARS)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congres-sionally Required	Congres-sional Action	Cumulative Adjust-ments	Amount Deferred as of 12-1-98
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D99-1	82,858		10-22-98					82,858
INTERNATIONAL ASSISTANCE PROGRAMS									
International Security Assistance									
Economic support fund	D99-2	84,777		10-22-98					84,777
TOTAL, DEFERRALS		**167,635**	**0**		**0**			**0**	**167,635**

12/23/98

[FR Doc. 99–1229 Filed 1–19–99; 8:45 am]

BILLING CODE 3110–01–C

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–12937]

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (All Communications Corporation, Common Stock, No Par Value; Redeemable Class A Common Stock Purchase Warrants; and Units-2 Commons & 2 Class A Warrants)

January 13, 1999.

All Communications Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities and Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'').

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Company has complied with the rules of the BSE by filing with the Exchange a certified copy of the resolution adopted by the Company's Board of Directors authorizing the withdrawal of its Securities from listing on the BSE and by setting forth the reasons for the proposed withdrawal. In making the decision to withdraw its Securities from listing on the BSE, the Company considered the direct and indirect costs and expenses attendant upon continuing such listing, particularly in view of the paucity of trading in the Company's Securities on the BSE. An overwhelming majority of the transactions in the Company's Securities are conducted on the OTC Bulletin Board with no apparent problem for the Company's shareholders. The Company does not see any particular advantage in the dual trading of its Securities.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Securities from listing on the BSE.

Any interested person may, on or before, February 4, 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.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–1206 Filed 1–19–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14472]

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Cornell Corrections, Inc., $0.001 Par Value Common Stock)

January 13, 1999.

Cornel Corrections, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A which became effective on December 7, 1998, on the New York Stock Exchange, Inc. (''NYSE''). Trading of the Company's Security on the NYSE commenced at the opening of business on December 10, 1998, and concurrently therewith the stock was suspended from trading on the Amex.

The Company has complied with Rule 18 of the Amex by filing with the Exchange a certified copy of preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. In making the decision to withdraw its Security from listing on the Amex, the Company considered direct and indirect costs and the division of the market resulting from dual listing on the Amex and NYSE.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Amex.

This application relates solely to the withdrawal from listing of the Company's Security from the Amex and shall have no effect upon the continued listing of the Security on the NYSE.

Any interested person may, on or before February 4, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–1207 Filed 1–19–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40933; File No. SR–NASD–98–93]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Timing of Payment of Prehearing Process Fee In Arbitration

January 11, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 1998 the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated the proposed rule change as constituting a change in a fee under Section 19(b)(3)(A)(ii) of the Exchange Act [3] and paragraph (e)(2) of Rule 19b–4 under the Exchange Act,[4]

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(e)(2).

which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 10333(d) of the Rules of the Association to change the time when the prehearing process fee in an arbitration must be paid. The fee is charged to members. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 10333. Member Surcharge

(a)–(c) No change.

(d) Each member that is a party to an arbitration proceeding will pay a non-refundable process fee as set forth in the schedule below for each stage of a proceeding. The process fee shall not be chargeable to any other party under Rules 10332(c) and 10205(c) of the Code. If an associated person of a member is a party, the member that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy will be charged the process fees. The prehearing process fee will accrue according to the schedule set forth below, but will *not become* [be] due [and payable] *until (1) the parties are notified of the prehearing conference, or (2) if no prehearing conference is scheduled, the parties are notified of the date and location of the first hearing session* [when the prehearing conference is held, or, if no prehearing conference is held, when the parties are notified of the date and location of the first hearing session]. The hearing fee will accrue and be due and payable when the parties are notified of the date and location of the first hearing session. All accrued but unpaid fees will be due and payable at the conclusion of the member's or associated person's involvement in the proceeding. No member will pay more than one prehearing and hearing process fee for any case. The process fees will stop accruing when either the member enters into a settlement of the dispute or the member is dismissed from the proceeding or, if the member is paying a process fee as a result of an associated person being named as a party, when the associated person enters into a settlement or is dismissed from the proceeding, whichever is later.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the prehearing process fee is to cover the cost of the arbitration activities to which the fee relates. The purpose of the proposed amendment is to match the Association's receipt of the fees more closely in time with the dates that the Association incurs the costs of such activities. The fee is charged to members.

Under the current rule, since the prehearing process fee is not due and payable until the earlier of the prehearing conference or, if such conference is not held, the date when the parties are notified of the location of the first hearing session, significant staff activity occurs and the related costs are incurred before the prehearing process fee is payable. Before the fee is payable, Association staff execute a number of arbitration pre-hearing tasks. For example, prior to the date of the prehearing conference or scheduling of the first hearing session, staff is involved in serving the claim, processing motions, and administering the process by which arbitrators are selected. The purpose of the rule change is to match more closely in time the revenues to be received with the costs incurred by NASD Regulation for these activities. Making the prehearing process fee payable when the parties are notified of the prehearing conference, or, if no prehearing conference is scheduled, when the parties are notified of the date and location of the first hearing session, will accomplish this goal.

(b) Statutory Bias

NASD Regulation believes that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change is consistent with Section 15A(b)(5) of the Exchange Act in that the proposed rule change provides for the equitable allocation of reasonable charges among members and other persons using the Association's arbitration facility and requires member firms to absorb a reasonable share of the costs of operating the arbitration program.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act [5] and paragraph (e)(2) of Rule 19b–4 thereunder [6] in that the proposed rule change constitutes an amendment to the timing of the payment of a fee that the NASD currently imposes on its members. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 C.F.R. 240.19b–4(e)(2).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–98–93 and should be submitted by February 10, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1205 Filed 1–19–99; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 C.F.R. 200.30–3(a)(12). In approving the proposal, the Commission has considered the rule's impact on efficiency, and capital formation. 15 U.S.C. 78c(f).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before February 19, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–6629.

SUPPLEMENTARY INFORMATION:

Title: Servicing Agent Agreement.
Form No: 1506.
Frequency: On Occasion.
Description of Respondents: Certified Development Companies.
Annual Responses: 4,200.
Annual Burden: 4,200.

Dated: January 12, 1999.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–1241 Filed 1–19–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center; Advisory Board Public Meeting

The U.S. Small Business Administration National Small Business Development Center Advisory Board will hold a public meeting on Sunday, January 31, 1999, from 12:00 p.m. to 5:00 p.m. at the Adam's Mark Hotel in Columbia, South Carolina to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, please write or call Ellen Thrasher, U.S. Small Business Administration, 409 Third Street, SW., Fourth Floor, Washington, DC 20416, telephone number (202) 205–6817.

Dated: January 12, 1999.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 99–1142 Filed 1–19–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board Public Meeting

The U.S. Small Business Administration National Small Business Development Center Advisory Board will hold a public meeting on Monday, March 1, 1999, from 9:00 a.m. to 5:00 p.m. at the Crystal City Marriott Hotel in Arlington, Virginia to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, please write or call Ellen Thrasher, U.S. Small Business Administration, 409 Third Street, SW, Fourth Floor, Washington, DC 20416, telephone number (202) 205–6817.

Dated: January 12, 1999.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 99–1143 Filed 1–19–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice #2959]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Dangerous Goods, Solid Cargoes and Containers; Meeting

The Working Group on Dangerous Goods, Solid Cargoes and Containers (DSC) of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Wednesday, February 3, 1999, in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the Fourth Session of the DSC Subcommittee of the International Maritime Organization (IMO) which is scheduled for February 22–26, 1999, at the IMO Headquarters in London.

The agenda items of particular interest are:

a. Amendment 30 to the International Maritime Dangerous Goods (IMDG) Code, its Annexes and Supplements including harmonization of the IMDG Code with the United Nations Recommendations on the Transport of Dangerous Goods, reformatting of the IMDG Code, and revision of the format of the Emergency Schedules (EmS).

b. Implementation of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended.

c. Review of the Code of Safe Practice for Solid Bulk Cargoes (BC Code).

d. Amendments to SOLAS chapters VI and VII to make the IMDG Code mandatory.

e. Mandatory application of the Code for the Safe Carriage of Irradiated Nuclear Fuel, Plutonium and High Level Radioactive Wastes in Flasks on board Ships (INF Code).

f. Implementation of IMO instruments and training requirements for cargo-related matters, including revision of resolution A.537(13) and development of multimodal training requirements.

g. Reports on incidents involving dangerous goods or marine pollutants in packaged form on board ships or in port areas.

Members of the public may attend this meeting up to the seating capacity

of the room. Interested persons may seek information by writing: Mr. E.P. Pfersich, U.S. Coast Guard (G–MSO–3), 2100 Second Street, S.W., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: January 13, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–1194 Filed 1–19–99; 8:45 am]

BILLING CODE 4710–7–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–4974]

Port Access Routes Study; Strait of Juan de Fuca and Adjacent Waters

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments.

SUMMARY: The Coast Guard is conducting a study of port-access routes to evaluate the continued applicability of and the need for modifications to current vessel routing measures in and around the Strait of Juan de Fuca and adjacent waters, including Admiralty Inlet, Rosario Strait, Haro Strait, Boundary Pass, and the Strait of Georgia. The goal of the study is to help reduce the risk of marine casualties and increase vessel traffic management efficiency in the study area. The recommendations of the study may lead to future rulemaking action or appropriate international agreements. The Coast Guard asks for comments on the issues raised and questions listed in this document.

DATES: Comments must be received on or before April 20, 1999.

ADDRESSES: You may mail your comments to the Docket Management Facility, (USCG–1999–4974), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

A copy of the 1995 Waterways Analysis and Management System (WAMS) report for the Strait of Juan de Fuca (1995) is available in the public docket at the above addresses. You may also obtain a copy of the WAMS report by calling Mr. John Mikesell at 206–220–7272.

A copy of the ''Puget Sound Additional Hazards Study,'' formally titled ''Scoping Risk Assessment: Protection Against Oil Spills in the Marine Waters of Northwest Washington State,'' is available in the public docket at the above addresses. You may also obtain a copy of the study from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 800–553–6847, fax 703–321–8547. Order the study as document PB97–205488 and the technical appendices to the study as document PB97–205470.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. John Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, Thirteenth Coast Guard District, telephone 206–220–7272, or Ms. Barbara Marx, Office of Vessel Traffic Management, U.S. Coast Guard Headquarters, telephone 202–267–0574. For questions on viewing, or submitting material to, the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to respond to this notice by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (USCG–1999–4974) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period.

The Coast Guard will hold at least one public meeting. We will announce the time, place, and agenda for the public meeting in a later notice in the **Federal Register**.

Definition of Terms Used in this Notice

The following International Maritime Organization (IMO) definitions should help you review this notice and provide comments.

1. *Internationally recognized vessel routing system* means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

2. *Traffic Separation Scheme* or *TSS* means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

3. *Two-way route* means a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

4. *Recommended track* means a route which has been specially examined to ensure so far as possible that it is free of dangers and along which ships are advised to navigate.

5. *Area to be avoided* means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships, or certain classes of ships.

6. *Inshore traffic zone* means a routing measure comprising a designated area between the landward boundary of a traffic separation scheme and the adjacent coast, to be used in accordance with the provisions of Rule 10(d), as amended, of the International Regulations for Preventing Collisions at Sea, 1972 (Collision Regulations).

7. *Roundabout* means a routing measure comprising a separation point or circular separation zone and a circular traffic lane within defined limits. Traffic within the roundabout is separated by moving in a counterclockwise direction around the separation point or zone.

8. *Precautionary area* means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

9. *Deep-water route* means a route within defined limits which has been accurately surveyed for clearance of sea bottom and submerged obstacles as indicated on the chart.

Background and Purpose

Port Access Route Study Requirements. Under the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223(c)), the Secretary of Transportation may designate necessary fairways and Traffic Separation Schemes (TSS's) to provide safe access routes for vessels proceeding to and from U.S. ports. The Secretary's authority to make these designations was delegated to the Commandant, U.S. Coast Guard, in 49 Code of Federal Regulations (CFR) 1.46. The designation of fairways and TSS's recognizes the paramount right of navigation over all other uses in the designated areas.

The PWSA requires the Coast Guard to conduct a study of port-access routes before establishing or adjusting fairways or TSS's. Through the study process, we must coordinate with Federal, State, and foreign state agencies (as appropriate) and consider the views of maritime community representatives, environmental groups, and other interested stakeholders. A primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses.

Initial port access route study. An initial port access route study for the coasts of Oregon and Washington, including the entrance to the Strait of Juan de Fuca, was announced on April 16, 1979, in the **Federal Register** (44 FR 22543) and modified on January 31, 1980 (45 FR 7026). Results of this study were published in the **Federal Register** (46 FR 59686) on December 7, 1981. For the entrance to the Strait of Juan de Fuca, the study recommended to continue addressing port access routes under a cooperative agreement between the United States and Canada.

The United States and Canada established an ''Agreement for a Cooperative Vessel Traffic Management System for the Juan de Fuca Region'' in 1979. This agreement included a protocol to develop a TSS at the entrance to and within the Strait of Juan de Fuca. This TSS was adopted by the Marine Safety Committee of the International Governmental Maritime Consultative Organization (now called ''International Maritime Organization'') and became effective on January 1, 1982. Other than minor alignment changes, no modifications have been made to the TSS in the study area since that date.

Why is a new port access route study necessary? The latest Waterways Analysis and Management System (WAMS) report for the Strait of Juan de Fuca, dated June 1995, identified potential measures to improve navigational safety and traffic management efficiency. In 1997, the Volpe National Transportation Systems Center, on behalf of the Coast Guard, conducted a broad assessment of the probabilities and consequences of marine accidents in Puget Sound-area waters, including Puget Sound, the Strait of Juan de Fuca, passages around and through the San Juan Islands, and the offshore waters of the Olympic Coast National Marine Sanctuary. This assessment, formally titled ''Scoping Risk Assessment: Protection Against Oil Spills in the Marine Waters of Northwest Washington State'' but commonly called the ''Puget Sound Additional Hazards Study,'' recommends several vessel routing measures for further study, including changes to the offshore approaches to the Strait of Juan de Fuca. You will find a listing of some specific recommendations from these reports later in this document.

Timeline, area, and process of the new port access route study. Based on the recommendations of the 1995 WAMS report and the Puget Sound Additional Hazards Study, the Thirteenth Coast Guard District, in close cooperation with Canadian counterparts, will conduct a port access route study to determine the need to modify the existing vessel routing measures and the effects of potential modifications in the study area. The study will begin immediately and be completed by August 30, 1999.

The study area will encompass waters in and around the Strait of Juan de Fuca, approximately between longitudes 126°W and 122°40′W, including Admiralty Inlet, Rosario Strait, Haro Strait, Boundary Pass, and the Strait of Georgia. The study area includes both U.S. and Canadian TSS's and an area to be avoided.

As part of the study, we will consider previous studies (i.e., the 1995 WAMS report, the Puget Sound Additional Hazards Study, etc.), analyses of vessel traffic density, and agency and stakeholder experience in vessel traffic management, navigation, ship-handling, and affects of weather. We encourage you to participate in the study process by submitting comments in response to this notice and by attending public meetings.

We will publish the results of the port access route study in the **Federal Register**. It is possible that the study may validate continued applicability of existing vessel routing measures and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to enhance navigational safety and vessel traffic management efficiency. Study recommendations may lead to future rulemaking or appropriate international agreements.

Potential study topics. Based on the recommendations of the 1995 WAMS report and the Puget Sound Additional Hazards Study, as well as related public comments, we plan to address the following potential measures in the port access route study. We welcome your feedback on these measures, as well as any additional measures you believe the study should address under the broad category of vessel routing.

- Require mandatory compliance with the International Maritime Organization (IMO)-approved area to be avoided associated with the Olympic Coast National Marine Sanctuary.
- Establish in-shore traffic zones in the Strait of Juan de Fuca.
- Require mandatory compliance with the TSS in U.S. waters.
- Remove the dogleg in the TSS west of Port Angeles.
- Change the location of the pilot embarkation and debarkation station near Port Angeles.
- Modify the TSS convergence zone at the western entrance to the Strait of Juan de Fuca.
- Modify the precautionary area located west of Port Angeles.
- Straighten the TSS approach to Rosario Strait.
- Grant formal recognition to an offshore VTS zone as part of the Cooperative Vessel Traffic Management System (CVTMS).

Questions

To help us conduct the port access route study, we request comments on the following questions, although comments on other issues addressed in this document are also welcome. In responding to a question, please explain your reasons for each answer, and follow the instructions under ''Request for Comments'' above.

1. What navigational hazards do vessels operating in the study area face? Please describe.

2. Are there strains on the current vessel routing system (increasing traffic density, for example)? If so, please describe.

3. Are modifications to existing vessel routing measures needed to address hazards and strains and improve traffic management efficiency in the study area? Why or why not? If so, what measures should the study of port-access routes address for potential implementation?

4. What costs and benefits are associated with the potential measures

for study discussed in this document? What measures do you think are most cost-effective?

5. What impacts, both positive and negative, would changes to existing routing measures or new routing measures have on the study area?

Dated: January 13, 1999.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–1200 Filed 1–19–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Hinds and Rankin Counties, Mississippi

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the Pearl River Bridge and Jackson International Airport Parkway/Mississippi 25 Connectors between Interstate 55, the Jackson International Airport, and Mississippi Highway 25 in the vicinity of Jackson, Flowood, and Pearl, Mississippi.

FOR FURTHER INFORMATION CONTACT: Cecil Vick, Reality Officer/Environmental Coordinator, Federal Highway Administration, 666 North Street, Suite 105, Jackson MS 29202–3199, Telephone: (601) 965–4217. Contacts at the State and local level, respectively are: Mr. Billie Barton, Environmental/Location Division Engineer, Mississippi Department of Transportation, P.O. Box 1850, Jackson, MS, 39215–1850, telephone: (601) 359–7920; and Mr. William Hillman, District Engineer, Mississippi Department of Transportation, 7759 Highway 80 W., Newton MS, 39345, telephone (601) 683–3341.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Mississippi Department of Transportation (MDOT) will prepare an Environmental Impact Statement (EIS) on the proposed Pearl River Bridge and Jackson International Airport Parkway/Mississippi 25 Connectors in Hinds and Rankin Counties, Mississippi. The proposed connectors would begin at Interstate 55 at or near High Street in Jackson, Mississippi and extend eastward across the Pearl River to connect with Mississippi Highway 475 south of the Jackson International Airport and with Mississippi Highway 25 north of the Jackson International Airport. The proposal is for a full control of access facility, and interchanges will be studied at various locations. The estimated length of the project is 14.9 kilometers (9.3 miles).

State and Federal legislation authorized studies of the bridge and connectors and the Intermodeal Surface Transportation Efficiency Act of 1998, authorized partial funding for design, right of way, or construction. Alternatives under consideration include (1) taking no action and (2) build alternative.

Initial environmental studies for the proposed project began as an Environmental Assessment. As part of the Environmental Assessment Process, the FHWA and MDOT sought input through the scoping process to assist in determining and clarifying issues relative to this project. Letters describing the proposed action and soliciting comments were sent to appropriate federal, state, and local agencies, and to private organizations and citizens who had previously expressed or were known to have an interest in the proposal. A formal scoping meeting with federal, state, and local agencies, and other interested parties was held October 30, 1996. The U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the Mississippi Department of Wildlife Fisheries and Parks became cooperating agencies. The scoping process and interagency coordination is continuing and has reached the point where the FHWA and MDOT have determined that completion of an EIS is appropriate.

Coordination will be continued with federal, state, and local agencies, and with private organizations and citizens who express or are known to have interest in this proposal. The draft EIS will be available for public and agency review and comment prior to the official public hearing.

To ensure that the full range of issues relating to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Lawrence J. Kastner,

Assistant Division Administrator, Jackson, Mississippi.

[FR Doc. 99–173 Filed 1–19–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Environmental Impact Statement; Washington County, Minnesota and St. Croix County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement (EIS) will be prepared for a proposed highway project in Washington County, Minnesota and St. Croix County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, Box 75, 175 East Fifth Street, Suite 500, St. Paul, Minnesota 55101–2901, Telephone (651) 291–6120; or Adam Josephson, Project Manager, Minnesota Department of Transportation—Metro Division, 1500 West County Road B2, Roseville, Minnesota 55113, Telpehone (651) 582–1320.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation (MnDOT) and Wisconsin Department of Transportation, will prepare a supplement to the EIS on a proposal for a replacement river crossing, including the reconstruction of bridge approach roadways, on Trunk Highway (TH) 36/State Trunk Highway (STH) 64 in the vicinity of Stillwater and Oak Park Heights (Washington County), Minnesota and Houlton (St. Croix County), Wisconsin. MnDOT will be the lead State agency. The original EIS for the river crossing (FHWA–MN–EIS–90–92–F) was approved on April 5, 1995 with a Record of Decision issued on July 10, 1995.

In 1996, the National Park Service (NPS) evaluated the project under Section 7(a) of the Federal Wild and Scenic Rivers Act. The Section 7(a) Evaluation, completed in December 1996, found that the project, as proposed, would have a direct and adverse effect on the scenic and recreational values for which the Lower St. Croix River was included in the National Wild and Scenic Rivers System. As a result, the NPS directed that Federal permits not be issued for the project and it was not allowed to proceed. In April 1998, in response to challenges to the NPS determination, a U.S. District Court Judge upheld the findings of the Section 7(a) Evaluation.

In June 1998, a facilitation process was initiated in the hope that a

mutually satisfactory solution to the impasse on the river crossing could be reached. Over a period of four months, an independent review of the proposed project was performed, including extensive discussions and meetings with the key individuals and organizations involved and public meetings with the St. Croix River Crossing Advisory Group. The Advisory Group was made up of representatives from regulatory agencies, local units of government, and other interested organizations; including, environmental groups, historic preservation groups and Chambers of Commerce. The facilitation process concluded that a new four-lane bridge was required to satisfy the project need and recommended a new alignment with less impact on the river.

The proposed improvements consist of a four-lane bridge on a new alignment approximately 800 meters north of the Final EIS Preferred Alternative alignment. It is proposed to be constructed using a below deck arch bridge type. This proposed alternative is the only new alternative that will be evaluated in the supplemental EIS process.

An Amended Scoping Decision Document will be published in February 1999. A press release will be published to inform the public of the document's availability. Copies of the Amended Scoping Decision Document will be distributed to agencies, interested persons and libraries. No formal scoping meeting is planned.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies, and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. Public meetings have been held in the past and will continue to be held, with public notice given for the time and place of the meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: January 11, 1999.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration.

[FR Doc. 99–1221 Filed 1–19–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the North Shore-CBD Transportation Corridor in Pittsburgh, Pennsylvania

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) (the Federal co-lead agencies) and the Port Authority of Allegheny County (the local lead agency), in cooperation with the City of Pittsburgh and Pennsylvania Department of Transportation, intend to prepare an Environmental Impact Statement (EIS) for transportation improvements in the North Shore-Central Business District (CBD) Corridor in Pittsburgh, Pennsylvania. The EIS is being prepared in conformance with the National Environmental Policy Act (NEPA) and will also satisfy the requirements of the 1990 Clean Air Act Amendments (CAAA).

The City of Pittsburgh and the Southwestern Pennsylvania Regional Planning Commission (SPRPC) initiated the North Shore/CBD Transportation Corridor Major Investment Study (MIS) in Fall 1997. Under the MIS, a long list of road and transit alternatives were generated and analyzed for their physical feasibility and ability to serve the needs of the corridor. This list was screened to a short list of alternatives which will be analyzed under the EIS.

The EIS will evaluate a No-Build Alternative, a Transportation System Management (TSM) Alternative which includes enhanced bus service and pedestrian facilities, and the Build Alternatives which would include one or more of the following transportation projects: two Intermodal Transportation Centers (ITC's), a ramp from an ITC to a highway, a people mover system including a possible low-speed Maglev technology, and an extension of Port Authority's existing light rail transit line into the North Shore.

DATES: Comment Due Date: Written comments on the scope of the alternatives and impacts to be considered must should be sent to Port Authority by February 19, 1999. Public Scoping Meetings will be held on Tuesday, February 2, 1999 at 12:00 and at 6:00 p.m. at the Southwestern Pennsylvania Commission, 31st Floor. See **ADDRESSES** below.

ADDRESSES: Written comments on the project scope should be sent to Mr. Bruce W. Ahern, Assistant General Manager of Business Development and Planning, Port Authority of Allegheny County, 2235 Beaver Avenue, Pittsburgh, PA 15233. Two Public Scoping Meetings will be held at the following location: Southwestern Pennsylvania Commission, 31st Floor; 425 Sixth Avenue in Downtown Pittsburgh, 15219. See **DATES** above.

FOR FURTHER INFORMATION CONTACT: John Garrity, Federal Transit Administration, Region III, (215) 656–7100 or Anthony L. Mento, Federal Highway Administration, Pennsylvania Division, (717) 221–3461.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA, FHWA, and the Port Authority invite interested individuals, organizations, and federal, state, and local agencies to participate in establishing the purpose, scope, framework, and approach for the environmental analysis of the alternatives and identifying any significant social, economic, or environmental impacts to be evaluated. At the two Scoping Meetings, presentations will be made which will provide a description of the proposed scope of the study as well as a plan for an active citizen involvement program, a work schedule, and an estimated level of effort and detail of the analysis. Scoping comments may be made at the Public Scoping Meeting or in writing within thirty days after publication of this notice. See the ''Scoping Meetings'' under the **DATES** and **ADDRESSES** sections above for locations and times.

The Scoping Meeting will begin with an ''open house'' where attendees will be able to view graphics and discuss the project with staff involved in the study. A presentation on the project will be given at 12:30 p.m. and 6:30 p.m., followed by an additional opportunity for questions and answers. Scoping material will be available at the meeting or in advance of the meeting by contacting Mr. David E. Wohlwill, Project Manager at (412) 237–7338. A sign language interpreter will be available for the hearing impaired. A TDD number (412) 231–7007 is also available. The meeting location is accessible to persons with disabilities.

II. Description of the Study Area and Project Need

The corridor extends roughly from 13th Street in the Strip District, through the Golden Triangle between Liberty Avenue and Fort Duquesne Boulevard, and into the North Shore from the Fort Wayne Railroad Bridge to the West End Bridge south of I–279 and Route 65. Recently, this area has experienced new development and redevelopment such as the Western Pennsylvania History Center, the Cultural District, Andy Warhol Museum, new Alcoa Headquarters, and Lincoln Housing. Significant new development is proposed or underway including expansion of the David L. Lawrence Convention Center, new hotels, the O'Reilly Theater, PNC Ballpark, new Steelers Stadium, Carnegie Science Center expansion, a North Shore amphitheater, new parking facilities, and new retail and office development. The vision is to expand Downtown from its traditional Golden Triangle confines across the Allegheny River into the North Shore.

This corridor experiences significant congestion during peak periods and when there is an event at Three Rivers Stadium. Demand for parking exceeds supply, a condition which will be exacerbated when some land presently being used for parking will be developed for other purposes. The North Shore area is perceived is difficult to access. Improved transportation facilities will be required to support new development in the corridor. Transit linkages between the major attractions need to be improved.

III. Alternatives

The following describes the No-Build, TSM, and Build Alternatives that were evaluated in the MIS and are being presented for further study in the North Shore/CBD Transportation Corridor DEIS:

1. No-Build Alternative—Existing transit service and programmed new transportation facilities with level of transit service expanded as appropriate to meet projected year 2020 travel demand.

2. TSM Alternative—Enhanced bus service including: high-frequency shuttle bus service connecting the major attractions and hotels in the corridor; routing of regional bus services through the North Shore; and a network of regional express buses serving Steelers and Pirates events. To ensure service reliability and improve bus speeds, exclusive bus lanes and bus priority treatments are proposed for periods of high congestion (i.e., post-game events). New pedestrian facilities linking the North Shore with adjacent communities are also included in this alternative.

3. Build Alternatives: The set of build alternatives being considered in the DEIS include the following:

a. Intermodal Transportation Centers—Two Intermodal Transportation Centers (ITC's) are proposed: one at Federal and General Robinson Streets (ITC #1) and the other near Reedsdale Street and Allegheny Avenue (ITC #2). These would be high-capacity (2,000+) parking garages connected by a rapid transit line to the Golden Triangle.

b. Roadway Improvement—A ramp from ITC #1 to Route 28.

c. People Mover Gateway Alignment—Automated people-mover operating primarily on elevated guideways using vehicles with rubber tires or low-speed Maglev technology. This alignment begins at Fifth and Liberty Avenues, traverses Cecil Way, crosses over Fort Duquesne Boulevard, extends across the Allegheny River on a new bridge, and terminates at ITC #1.

d. People Mover Fort Wayne Alignment—Automated people-mover operating primarily on elevated guideways using vehicles with rubber tires or low-speed Maglev technology. This alignment begins at the Steel Plaza LRT Station, uses a portion of the Penn Park Line, crosses the Allegheny River either on the lower deck of the Fort Wayne Railroad Bridge or on a new bridge just east of the Fort Wayne Bridge and then turns west to terminate at ITC #1.

e. LRT Gateway Alignment—This alignment extends from the existing Gateway LRT Station in the Golden Triangle in a subway under the Allegheny River to a station at or near ITC #1 and then west to the Carnegie Science Center and ITC #2.

f. LRT Fort Wayne Alignment—This alignment connects with the existing LRT system at the Steel Plaza Station, uses a portion of the Penn Park Line and crosses the Allegheny River on either the lower deck of the Fort Wayne Railroad Bridge or a new bridge just east of the Fort Wayne Bridge, and turns west to ITC #1 and further west to ITC #2.

IV. Probable Effects

The FTA, FHWA, and Port Authority will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the EIS. Primary environmental issues include: land use, neighborhood enhancement, parklands, traffic and parking, visual impacts and aesthetics, archeological, cultural and historic resources, navigation impacts of new river crossings, and geotechnical issues associated with tunnels. Other issues to be considered are floodplains, wildlife and vegetation including endangered species, safety, air and water quality, hazardous wastes, displacements, and energy impacts. The impacts will be considered for both construction and operating and maintaining the new facilities. Measures to mitigate any adverse impacts will be developed for consideration.

V. FTA Procedures

In accordance with the federal transportation planning regulations (23 CFR Part 450) and the federal environmental impact regulations and related procedures (23 CFR 771), the Draft EIS will be prepared to include an evaluation of the social, economic, and environmental impacts of the alternatives. The DEIS will consider the public and agency comments received. Port Authority, in concert with the City of Pittsburgh, the Pennsylvania Department of Transportation, and other affected agencies will select the preferred alternative. Then Port Authority, as the lead agency, will continue with the preparation of the Final EIS. Opportunity for additional public comment will be provided throughout all phases of project development.

Issued on: January 14, 1999.

Sheldon A. Kinbar,

Regional Administrator, Federal Transit Administration.

[FR Doc. 99–1234 Filed 1–19–99; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33693]

RailTex, Inc., Mid-Michigan Railroad, Inc., Michigan Shore Railroad, Inc., and Grand Rapids Eastern Railroad, Inc.—Corporate Family Transaction Exemption

RailTex, Inc. (RailTex),[1] Mid-Michigan Railroad, Inc. (MMRR), Michigan Shore Railroad, Inc. (MS), and Grand Rapids Eastern Railroad, Inc. (GRE), have jointly filed a verified notice of exemption. MS and GRE will be merged into MMRR with MMRR being the surviving corporation. After consummation of the transaction,

[1] RailTex is a noncarrier which directly controls 22 Class III railroads operating in 22 states, as well as 3 rail carriers that operate in Canada.

RailTex will control 20 Class III railroads in the United States.

The transaction was scheduled to be consummated on or shortly after December 31, 1998.

The purpose of the transaction is to simplify RailTex's corporate structure and eliminate costs associated with separate accounting, tax, bookkeeping and reporting functions. The properties of the rail carriers involved in this transaction are located in the States of Michigan, Kansas, Missouri and Texas.

The merger of MS and GRE into MMRR is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers operating outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33693, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, P.C., Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided: January 12, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–1113 Filed 1–19–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–57 (Sub–No. 46X)]

Soo Line Railroad Company—Abandonment Exemption—in St. Paul, Ramsey County, MN

On December 31, 1998, Soo Line Railroad Company, doing business as Canadian Pacific Railway (Soo), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the St. Paul Terminal Trackage extending from milepost 17.29± (southeast of Jackson Street) to the end of the line at milepost 18.19± (near I–35E North), a distance of .90± miles in Ramsey County, MN. The line traverses U.S. Postal Service Zip Code 55117 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by April 20, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $1,000. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than February 9, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–57 (Sub-No. 46X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Diane P. Gerth, 150 South Fifth Street, Minneapolis, MN 55402. Replies to the Soo petition are due on or before February 9, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: January 12, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–1112 Filed 1–19–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 12196

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 12196, Small Business Office Order Blank.

DATES: Written comments should be received on or before March 22, 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: Small Business Office Order Blank.

OMB Number: 1545–1638.

Form Number: Form 12196.

Abstract: Form 12196 is used by Small Business Information and Development Centers and One-Stop Capital Shops to order IRS tax forms and publications for distribution to their clients. The form can be faxed directly to the IRS Area Distribution Center for order fulfillment, packaging and mailing.

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 Respondents: 45.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 2.

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: January 12, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–1150 Filed 1–19–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–5–92]

Proposed Collection; Comment Request for Regulation Project

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 an existing final regulation, IA–5–92 (TD 8537), Carryover of Passive Activity Losses and Credits and At Risk Losses to Bankruptcy Estates of Individuals (§§ 1.1398–1 and 1.1398–2).

DATES: Written comments should be received on or before March 22, 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 regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Carryover of Passive Activity Losses and Credits and At Risk Losses to Bankruptcy Estates of Individuals.

OMB Number: 1545–1375.

Regulation Project Number: IA–5–92.

Abstract: These regulations provide rules for the carryover of a debtor's passive activity loss and credit under section 469 and any ''at risk'' losses under section 465 to the bankruptcy estate. The regulations apply to cases under chapter 7 or chapter 11 of title 11 of the United States Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 600,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 600,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be 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: January 12, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–1151 Filed 1–19–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Committee on the Special Enrollment Examination

AGENCY: Internal Revenue Service, Office of Director of Practice, Treasury.

ACTION: Notice of establishment of advisory committee; invitation to submit nominations for advisory committee membership.

SUMMARY: The Director of Practice gives notice of the establishment of the Advisory Committee on the Special Enrollment Examination. The Director of Practice also invites individuals and organizations to nominate candidates for membership on the Committee.

DATES: Submit nominations on or before February 19, 1999.

ADDRESSES: Mail nominations to: Internal Revenue Service; Office of Director of Practice, C:AP:DOP; 1111 Constitution Ave., NW. Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Kathy Black, 202–694–1851.

SUPPLEMENTARY INFORMATION:

Establishment of Advisory Committee

In accordance with section 9(a)(2) of the Federal Advisory Committee Act (FACA), Public Law 92–463, 86 Stat. 770, the Director of Practice hereby gives notice of the establishment of the Advisory Committee on the Special Enrollment Examination.

Section 330 of 31 U.S.C. authorizes the Secretary of the Treasury to require that representatives before the Department demonstrate their ''competency to advise and assist persons in presenting their cases.'' Pursuant to that statute, the Secretary has promulgated the regulations governing practice before the Internal Revenue Service, which are found at 31 CFR part 10 and are separately published in pamphlet form as Treasury Department Circular No. 230 (to order call 1–800–829–3676).

The regulations provide that enrolled agents are among the classes of individuals eligible to practice before the Internal Revenue Service. The regulations also authorize the Director of Practice to pass upon applications for enrollment and to grant enrollment to applicants who demonstrate special competence in tax matters by written examination administered by the Internal Revenue Service. This written examination is the Special Enrollment Examination (SEE).

The purpose of the Committee is to advise the Director of Practice on the SEE. The Committee's advisory functions will include, but will not necessarily be limited to: (1) Considering areas of federal tax knowledge that should be treated on the examination; (2) developing examination questions; and (3) recommending passing scores.

Invitation To Submit Nominations for Advisory Committee Membership

The Director of Practice invites individuals and organizations to nominate candidates for membership on the Committee. Committee members must possess professional or academic qualifications sufficient to allow contributions to the Committee's advisory functions. In addition, Committee members will be screened for compliance with the Federal tax laws. Current or former status as an enrolled agent is not a requirement for Committee membership.

If the SEE is to provide objective and fair indicia of special competence in Federal taxation, the SEE's specific subject matter and questions must not become publicly available prior to administration of the examination. Consequently, most Committee meetings will be closed to public participation. With respect to such closed meetings, Committee members must be prepared to maintain the confidentiality of their deliberations and advice.

FACA mandates that the membership of the Committee be fairly balanced in terms of the points of view presented and the functions to be performed. To that end, the Director of Practice will consider nominations of all qualified individuals. Individuals may nominate themselves; an individual may nominate other individuals; or professional associations or other organizations may nominate individuals.

A nomination may be in any format, but it must state that the nominee is willing to accept an appointment to Committee membership, and it must give full details of the nominee's qualifications. Nominations should not include copies of articles or other publications.

Appointment to the Committee will be for a two-year term. The Committee is expected to meet up to four times a year. Members should be prepared to devote from 125 to 175 hours per year, including meetings, to the Committee's work. Members will be reimbursed, in accordance with Government regulations, for expenses (transportation, meals, and lodging) incurred in connection with Committee meetings.

Dated: January 11, 1999.

Patrick W. McDonough,

Director of Practice.

[FR Doc. 99–1149 Filed 1–19–99; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit ''John Singer Sargent,'' imported from abroad for temporary exhibition without profit within the United States, is of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, from on or about February 21, 1999, to on or about May 31, 1999 and at the Museum of Fine Arts, Boston, Massachusetts from on or about June 23, 1999, to on or about September 26, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Paul W. Manning, Assistant General Counsel, 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: January 12, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–1146 Filed 1–19–99; 8:45 am]

BILLING CODE 8230–01–M

federal register

Wednesday
January 20, 1999

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 285 et al.

Atlantic Highly Migratory Species (HMS) Fisheries, Fishery Management Plan, Plan Amendment, and Consolidation of Regulations; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285, 600, 630, 635, 644, and 678

[Docket No. 981216308-8308-01; I.D. 071698B]

RIN 0648-AJ67

Atlantic Highly Migratory Species (HMS) Fisheries; Fishery Management Plan, Plan Amendment, and Consolidation of Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the draft Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and draft Amendment 1 to the Atlantic Billfish Fishery Management Plan (Billfish FMP). The proposed regulations would address requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) as required by the Atlantic Tunas Convention Act (ATCA), and consolidate existing regulations, organized by species, for the conservation and management of highly migratory species (HMS) into one part of the Code of Federal Regulations (CFR), organized by theme, as part of the President's Regulatory Reinvention Initiative.

NMFS previously published a Notice of Availability for the HMS FMP and for Amendment 1 to the Billfish FMP. NMFS extends the comment period for the HMS FMP and reopens the comment period for the Billfish FMP to coincide with the proposed rule. NMFS will announce public hearings to receive comments from fishery participants and other members of the public regarding this proposed rule, the draft HMS FMP, Amendment 1 to the Billfish FMP and associated supporting documents in a separate Federal Register document. NMFS requests comments specifically on the revised Initial Regulatory Flexibility Analysis (IRFA), updated since publication of the Draft HMS FMP, and the IRFA associated with the billfish management measures.

DATES: Comments on the proposed rule, the HMS FMP, Amendment 1 to the Billfish FMP and/or supporting documents must be received by March 4, 1999. Public hearings on this proposed rule will be held in February 1999 and will be announced in a separate Federal Register document.

ADDRESSES: To submit comments on, or to obtain copies of, the draft HMS FMP, the draft Amendment 1 to the Billfish FMP, the proposed rule and supporting documents, including the revised IRFA, or a summary of these items, contact Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282, phone (301) 713–2347, fax (301) 713–1917. Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Rebecca Lent and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Pat Scida regarding tuna issues at (978) 281–9260; Jill Stevenson regarding swordfish issues at (301) 713–2347; Margo Schulze regarding shark issues at (301) 713–2347; Buck Sutter regarding billfish issues at (727) 570–5447; Karyl Brewster-Geisz regarding limited access at (301) 713–2347; and Chris Rogers regarding the regulatory consolidation at (301) 713–2347.

SUPPLEMENTARY INFORMATION: Atlantic HMS included in the HMS FMP are Atlantic swordfish (*Xiphias gladius*), west Atlantic bluefin tuna (*Thunnus thynnus*), Atlantic yellowfin tuna (*T. albacares*), Atlantic bigeye tuna (*T. obesus*), North Atlantic albacore tuna (*T. alalunga*), west Atlantic skipjack tuna (*Katsuwonus pelamis*), 39 species of Atlantic sharks grouped into three management sub-groups. Four species of Atlantic billfish other than swordfish are also Atlantic HMS, and they are included in the Billfish FMP: Atlantic blue marlin (*Makaira nigricans*), Atlantic white marlin (*Tetrapturus albidus*), west Atlantic sailfish (*Istiophorus platypterus*), and west Atlantic spearfish (*T. pfluegeri*). U.S. fishing vessels, both commercial and recreational, fish for Atlantic HMS in the North and South Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. The fisheries for Atlantic tunas, swordfish, sharks, and billfish each have some unique characteristics, but they overlap considerably in participants, gear usage, and species pursued.

Atlantic HMS migrate widely throughout the North and South Atlantic Ocean, including the Mediterranean Sea, the Gulf of Mexico, and the Caribbean Sea, requiring cooperative management not only among different user groups within the United States, but also between the United States and other fishing nations. In some cases, the United States accounts for only a small portion of the total Atlantic-wide mortality for a species, and unilateral management action could not be expected to have significant effect on the status of the stock. In other cases, the United States accounts for a larger portion of Atlantic-wide fishing mortality, giving it more influence on total fishing mortality levels. In all cases, however, the international component of the fishery is an important consideration in developing and implementing domestic management measures.

To meet requirements of the Magnuson-Stevens Act, NMFS prepared an FMP for Atlantic tunas, swordfish and sharks and an amendment to the Billfish FMP. NMFS published a Notice of Availability of the Draft Amendment 1 to the Billfish FMP on October 9, 1998 (63 FR 54433) with a comment period ending on January 7, 1999 and a Notice of Availability of the Draft HMS FMP on October 26, 1998 (63 FR 57093) with a comment period ending on January 25, 1999. NMFS extends the comment periods for these documents to coincide with the comment period on this proposed rule. Therefore, comments are invited and may address the HMS FMP, Amendment 1 to the Billfish FMP, the supporting documents, the proposed rule or all of these items, but must be received by March 4, 1999 to be considered in the decisions on the HMS FMP, Amendment 1 to the Billfish FMP and the final rule. All comments received by March 4, 1999, whether specifically directed to any of the documents or to the proposed rule, will be considered in the decisions on the final documents and the final rule.

The following is an outline of the information presented in the preamble to this proposed rule:

I. Background
A. Regulatory Consolidation
B. Fishery Management Plans
C. The HMS Management Process
II. Management Strategy
A. Problems and Objectives
B. Management Measures
III. Quotas and Monitoring/Adjustment Procedures
A. Quotas
B. Accounting for All Sources of Fishing Mortality
C. Quota Adjustment Procedures
IV. Restrictions on Catch and Retention

V. Minimize Bycatch and Bycatch Mortality
A. Marine Mammal Bycatch
B. Finfish Bycatch
VI. Improve Data Collection and Enforcement
VII. Administrative and Procedural Changes
VIII. Limited Access Program
A. Permit Categories
B. Eligibility Criteria
C. Permit Process
D. Transfer of Permits
E. Vessel Upgrading
F. Ownership Limits
IX. Essential Fish Habitat (EFH)
X. Minor Administrative and Technical Changes
XI. Applicability of Regulations in State Waters

I. Background

A. Regulatory Consolidation

On November 6, 1996, NMFS published a proposed rule consolidating fishery regulations pertaining to Atlantic HMS (61 FR 57361). Background information about the need for the consolidation appeared in the preamble to that proposed rule and is not repeated here. Since that proposed rule was issued, several significant changes to HMS regulations were made necessary by new legislative requirements, ICCAT recommendations, and several domestic management initiatives including limited access systems for the Atlantic swordfish and shark fisheries. Considering comments submitted to date, NMFS elected to re-propose the technical and administrative changes from the consolidation in the context of the HMS FMP implementation. This proposed rule carries out the President's directive on regulatory reform with respect to existing regulations for the conservation and management of Atlantic HMS in the exclusive economic zone (EEZ), and, as applicable, in regulatory areas beyond the U.S. EEZ.

Regulations pertaining to management of Atlantic HMS are currently found in species-specific sections of the Code of Federal Regulations (50 CFR parts: 285–-Atlantic Tunas Fisheries, 630—Atlantic Swordfish Fishery, 644–Atlantic Billfishes, and 678—Atlantic Sharks). These regulations are proposed to be consolidated into a new part: 635–Atlantic Highly Migratory Species. The intent is to make the regulations more concise, clearer, and easier to use than the previous regulations.

B. Fishery Management Plans

Atlantic HMS that transit the U.S. EEZ are managed under the authority of the Magnuson-Stevens Act and, in the case of tunas, swordfish, and billfish, also under ATCA. ATCA authorizes the Secretary of Commerce to implement the binding recommendations of ICCAT, to which the United States is a contracting party. ICCAT recommends harvest levels, minimum sizes, and other management measures for implementation by its 25 contracting parties. Through its scientific body, ICCAT conducts stock assessments and other Atlantic HMS-related research. It is the intent of the HMS FMP and Amendment 1 to the Billfish FMP to issue regulations for HMS fishery management under the dual authority of ATCA and the Magnuson-Stevens Act, whenever possible. In some cases, such as for sharks, management authority is limited to the Magnuson-Stevens Act; in other cases, such as for South Atlantic swordfish and southern albacore, the Magnuson-Stevens Act does not apply because the stock does not venture into the U.S. EEZ.

The Magnuson-Stevens Act is the primary legislation affecting domestic management of fisheries in the U.S. EEZ. Further guidance on interactions of HMS fisheries with protected resources is given under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). Provisions of the Magnuson-Stevens Act allow NMFS and the eight regional fishery management councils (the Councils) to develop FMPs that are implemented through regulations to manage the Nation's fishery resources. Generally, FMPs contain objectives for each fishery and guidance on allowable gear types in the fisheries; acceptable harvest levels; restrictions on the time, area, or manner in which fish may be caught; and consideration of how the fishery affects other parts of the marine ecosystem or coastal communities, including essential fish habitat (EFH), non-target finfish, marine mammals, sea turtles, and sea birds.

FMPs and their implementing regulations must be consistent with each of the 10 national standards set forth in the Magnuson-Stevens Act, as well as with the Act's general requirements for the contents of FMPs and the Act's requirement that overfished fisheries be rebuilt. Additionally, FMPs to manage HMS and their implementing regulations must be consistent with section 304(g) of the Magnuson-Stevens Act, which pertains specifically to Atlantic HMS and requires NMFS to consult with the Councils and advisory panels (APs); minimize disadvantages resulting from implementation of domestic conservation and management measures to U.S. fishermen relative to international fisheries to the extent practicable; provide a reasonable opportunity for fishermen to harvest an allocation, quota, or fishing mortality level allocated to the United States under an international agreement; review, on a continuing basis, and revise as appropriate measures included in this plan; and diligently pursue, through international entities, comparable international management measures. Regarding HMS management, NMFS is also required to ensure that management measures promote international conservation; consider traditional fishing patterns of the U.S. fleet; allocate fishing privileges fairly and equitably; and promote, to the extent practicable, research programs that include tagging and release of HMS.

Currently, Atlantic billfish, swordfish, and sharks are managed under FMPs developed and implemented under the authority of the Magnuson-Stevens Act. No Magnuson-Stevens Act FMP has previously been developed for Atlantic tunas, although regulations have been developed under ATCA with consistency with the Magnuson-Stevens Act in mind. The draft HMS FMP integrates management of Atlantic tunas, swordfish, and sharks by combining management measures for the three species groups into one FMP. NMFS elected to combine the FMP for tunas, swordfish, and sharks in recognition of the multispecies nature of these fisheries and to promote better integration of HMS management. A single management plan for these species will help ease the regulatory burden on user groups and is consistent with the ecosystem-oriented provisions of the National Environmental Policy Act and with the Presidential Regulatory Reform Initiative.

The U.S. fishery for Atlantic billfish is a recreational fishery only (no commercial retention is allowed) and, given its unique characteristics, will continue to be managed separately under the FMP for Atlantic Billfish. However, NMFS recognizes the multispecies nature of all HMS fisheries and the need for well-integrated management of fishing activity for all HMS. Wherever possible, management objectives and practices are integrated, and analyses have been conducted with consideration of the overlapping participation, target species, and habitats of these multispecies fisheries. The HMS FMP and Amendment 1 to the Billfish FMP overlap in certain preferred measures due to the multispecies nature of the recreational and pelagic longline fisheries and the need for combined data collection in all

HMS fisheries. This proposed rule would implement both the integrated HMS FMP and Amendment 1 to the Billfish FMP.

C. The HMS Management Process

The HMS Management Process encompasses administrative procedures that NMFS follows in developing FMPs and implementing regulations. Congress gave the Secretary of Commerce (Secretary) management authority for Atlantic HMS in 1990, following many years of joint management for several of these species by the five Atlantic, Gulf, and Caribbean Councils and for Atlantic tunas under ICCAT. The Secretary has delegated management of Atlantic HMS to the Administrator of NOAA, who delegated it to the Assistant Administrator for Fisheries, NMFS (AA). Within NMFS, daily responsibility for management of Atlantic HMS fisheries rests with the Office of Sustainable Fisheries, and is carried out by the HMS Management Division.

The development of an FMP or plan amendment commences with the preparation of a document that describes issues in the fisheries and states options for management (the scoping document). The October 1997 scoping document, which covered all HMS species, was used as the basis for discussion at 21 public scoping meetings that were held throughout the management region in October and November 1997 (62 FR 54035, October 17, 1997). Public comments at scoping meetings and during the accompanying comment period were reviewed and considered in preparation of draft HMS FMP documents.

The HMS AP and the Billfish AP were established pursuant to the Magnuson-Stevens Act (section 302 (g)(1)). The HMS AP advised NMFS throughout the development of the scoping document and of the draft FMP. The HMS AP is composed of representatives of the commercial, recreational, environmental, and scientific sectors, as well as one representative from each of the five fishery management councils that work with Atlantic HMS and the Chair, or the Chair's designee, of the U.S. ICCAT Advisory Committee. Each of the Atlantic and Gulf Coast states, as well as the Virgin Islands and Puerto Rico, may send a non-voting representative to AP meetings to participate in the process. The Billfish AP is composed of members of the recreational, commercial, environmental, and scientific communities, as well as fishery management council representatives and non-voting state members. AP meetings are open to the public, and NMFS rotates meeting locations throughout the management region to provide fishery participants a reasonable opportunity to attend meetings. For all but the final meetings, the HMS and Billfish APs convened at the same locations with agendas arranged to allow joint discussion of overlapping issues.

The HMS AP met six times in development of the draft HMS FMP. At the first meeting, in October 1997, members of both APs provided input on the draft scoping document. The document was extensively revised following the APs' input before it was distributed to the general public (62 FR 54035, October 17, 1997). The second AP meeting, held in Baltimore, MD, in January 1998, focused on Atlantic bluefin tuna (BFT) issues, specifically, on quota allocations and effort controls for the HMS AP. The Billfish AP discussed the implementation of an ICCAT recommendation to reduce billfish landings by 25 percent by 1999, and NMFS subsequently implemented measures through an interim rule under the authority of the Magnuson-Stevens Act. At its third meeting, held in Tampa, FL, in March 1998, the HMS AP and the Billfish AP advised NMFS on criteria that should be considered in overfishing definitions, and developing rebuilding programs for overfished HMS.

The AP reviewed draft sections of the HMS FMP at its fourth meeting in Hauppauge, NY, in May 1998. Draft sections included issues and objectives for management, the management unit, alternatives to rebuild overfished fisheries, and descriptions of fishing activities. In July 1998, the Billfish AP and the HMS AP met in Alexandria, VA, to discuss measures that would minimize bycatch and bycatch mortality in all HMS fisheries, and the HMS AP met separately to discuss shark issues. The HMS AP reviewed the pre-draft HMS FMP at its sixth meeting, held August 27–28, 1998, in Warwick, RI. The Billfish AP reviewed the pre-draft Amendment 1 to the Billfish FMP at its sixth meeting, held September 2–3, 1998, in St. Croix, U.S. Virgin Islands. These draft documents had been extensively revised following each AP meeting.

Restrictions on the billfish fishery to implement the ICCAT recommendation were discussed in several AP meetings and resulted in an interim rule (63 FR 14030, March 24, 1998), which established tournament registration and reporting requirements, and increased minimum sizes for blue and white marlin. An extension of that interim rule followed (63 FR 51859, September 29, 1998), which further increased the blue marlin minimum size and established a retention limit of one marlin per vessel per day (adjustable by the AA). An amendment to that rule removed the measure that would allow the AA to reduce the retention limit to zero. NMFS also proposes these measures as part of this rule to implement Amendment 1 to the Billfish FMP.

This proposed rule would implement the preferred alternatives identified in the draft HMS FMP (63 FR 57093, October 26, 1998) and Amendment One to the Billfish FMP (63 FR 54433, October, 9, 1998). NMFS will hold a series of public hearings to solicit comments on this proposed rule and the FMP documents. The purpose of the public hearings is to provide NMFS with additional information to evaluate impacts and the effectiveness of the proposed measures. NMFS has updated the economic analyses related to the HMS FMP and Amendment 1 to the Billfish FMP since their publication to include updated analyses of limited access under more recent eligibility criteria, and analyses of billfish measures, respectively. NMFS specifically requests comments on these updated analyses. During the comment period, NMFS will hold additional HMS and Billfish AP meetings.

II. Management Strategy

The regulations contained in this proposed rule would completely replace current regulations for all Atlantic HMS, including billfish. Thus, NMFS intends that the regulatory text proposed here restates all existing regulations that it intends to retain. In addition to the consolidation of current regulations, NMFS proposes numerous regulatory changes to incorporate new elements of the HMS FMP and Amendment 1 to the Billfish FMP (e.g., rebuilding overfished stocks) and to achieve consistency in the HMS regulations. NMFS has performed a thorough review of the restructured regulatory text to ensure that all changes are noted. However, given the scope of the restructuring, certain changes may not be specifically identified and explained, or unintended changes may have been made. Identification of, and comments on any such inadvertent or unexplained changes are specifically invited.

A. Problems and Objectives

Amendment 1 to the Atlantic Billfish FMP identifies several management problems affecting billfish stocks: (1) Overfished blue and white marlin stocks, (2) excess fishing mortality

caused by bycatch and discards, (3) compliance with ICCAT recommendation to reduce marlin landings, (4) need for improved data collection, and (5) decreased or unknown stock levels of sailfish and longbill spearfish.

Several management objectives are presented in draft Amendment 1 to the Billfish FMP to address these problems: (1) Prevent overfishing, (2) rebuild stocks and monitor all fishing mortality from directed and incidental catch, (3) promote comparable international conservation, (4) minimize bycatch and bycatch mortality to the extent practicable, (5) coordinate multispecies fisheries, (6) improve data collection, (7) promote live release of billfish, (8) protect EFH, (9) manage for optimum yield, and (10) minimize adverse impacts on recreational and commercial activities. Amendment 1 would add these to the existing objectives of the Billfish FMP.

The following management problems are identified in the HMS FMP: (1) Overfished populations of HMS, (2) excess fishing mortality caused by bycatch and discards, (3) inconsistencies and inadequacies in international compliance with conservation and management measures, (4) the need to assure optimal data collection, (5) the need for integrated and streamlined domestic HMS management, and (6) overcapitalization.

The draft HMS FMP lists several management objectives for the fisheries for Atlantic tunas, swordfish, and sharks, paraphrased here: (1) Prevent overfishing, (2) rebuild stocks, (3) minimize adverse impacts of rebuilding to the extent practicable, (4) control all components of fishing mortality, (5) minimize bycatch and bycatch mortality to the extent practicable, (6) establish a foundation for international negotiation on conservation and management, (7) facilitate compliance with ICCAT recommendations, (8) improve data collection, (9) simplify and streamline HMS management, (10) manage for continuing optimum yield, (11) protect areas identified as EFH for tunas, swordfish, and sharks, and (12) reduce overcapitalization in the Atlantic swordfish and shark commercial fisheries. Conservation and management measures to address these objectives follow.

B. Management Measures

To address these objectives, NMFS proposes domestic management programs for all HMS. Although the management measures are domestic actions, stock status and rebuilding programs are designed to be implemented stock-wide. NMFS also suggests specific measures to be addressed internationally by ICCAT. These measures include proposed overfishing status determination criteria, designation of biomass and fishing mortality targets, and a suite of proposed management alternatives that are intended to reduce fishing mortality on overfished species, and to minimize bycatch and bycatch mortality, to the extent practicable.

III. Quotas and Monitoring/Adjustment Procedures

A. Quotas

Quotas for HMS are implemented and allocated among fishing categories and seasons by the AA. The Director of the Office of Sustainable Fisheries has been delegated the authority to make inseason adjustments among categories and adjustments to each period's quota based on overharvest or underharvest during the previous year.

NMFS proposes rebuilding programs for North Atlantic swordfish in the draft HMS FMP. However, NMFS cannot implement management measures that effectively raise or lower the quota the United States receives from ICCAT. Therefore, this proposed rule incorporates existing U.S. quotas for swordfish stocks. The draft HMS FMP did not identify a preferred rebuilding alternative for bluefin tuna. In the future, the United States may seek to negotiate quotas and other measures that contribute to rebuilding of swordfish and BFT through the international process, including counting dead discards of swordfish against the quota. NMFS proposes that the existing quotas established for North Atlantic swordfish (through 1999) and South Atlantic swordfish (through 2000) under ATCA remain in effect pending new stock assessments (in 1999) and further recommendations of ICCAT.

Based on the results of the 1998 ICCAT meeting, and recommendations regarding BFT, NMFS will prepare an addendum to the HMS FMP. The addendum will specifically address BFT quota and discard issues addressed under ICCAT's recommendation to establish a rebuilding program for west Atlantic BFT. It is NMFS' intent to publish this addendum before the end of 1998 or shortly thereafter. For the large coastal shark (LCS) management unit, NMFS is proposing to separate the LCS unit into two subgroups based on the presence or absence of a mid-dorsal ridge, which is easily identified after the carcass has been dressed. NMFS proposes to use this characteristic to separate the LCS into a ''ridgeback'' subgroup (which would include sandbar and silky sharks) and a ''non-ridgeback'' group (which would include blacktip, spinner, bull, tiger, nurse, lemon, narrowtooth, great hammerhead, scalloped hammerhead, and smooth hammerhead sharks) and to establish separate quotas and management measures for the two subgroups.

NMFS is also proposing to prohibit possession of certain shark species that are uncommon in U.S. waters or are seriously depleted (note discussion under Retention Limits). To reduce mortality on ridgeback LCS, NMFS also proposes to establish a minimum size for retention of ridgeback LCS of 54 inches (137 cm) fork length. Observer data indicate that the primary ridgeback LCS, the sandbar shark, segregates by size and depth. Therefore, NMFS expects a reduction in fishing mortality since fishermen should be able to target larger sandbar sharks. Because of the expectation that this minimum size for ridgeback sharks (in combination with other management measures) will reduce ridgeback LCS harvests by the amount necessary to rebuild this subgroup, NMFS proposes to maintain the current ridgeback LCS harvest levels of 642 mt dressed weight (dw).

NMFS is not proposing to establish a minimum size for non-ridgeback sharks due to indications that the primary non-ridgeback LCS, the blacktip shark, does not segregate by size or depth and that a minimum size would not reduce fishing mortality. To reduce mortality for these species, NMFS is proposing to lower the commercial quota for non-ridgeback LCS by 66 percent from current catch levels to 218 mt dw.

For the pelagic shark management unit, NMFS is proposing to establish a separate porbeagle shark quota of 30 mt dw based on historical harvest levels. NMFS also proposes to subtract that quota from the pelagic shark quota, resulting in a 550 mt dw quota for pelagic sharks, other than porbeagle. This measure is intended to establish separate controls for porbeagle sharks because this species is highly susceptible to overfishing. NMFS is also proposing to prohibit possession of blue sharks and to establish a quota for blue shark dead discards of 273 mt dw, based on a 10-year dead discard average. NMFS is proposing to reduce the pelagic shark quota each year by any overharvest of the blue shark dead discard quota occurring in the previous year. The intent of these measures is to address concerns regarding the high numbers of blue sharks discarded dead by longline fisheries and to create an incentive to reduce blue shark dead

discards, while mitigating the potential adverse impacts of counting dead discards against the available quota.

For the small coastal shark (SCS) management unit, NMFS is proposing to cap the commercial quota at 359 mt dw, which is 10 percent higher than 1997 harvest levels. This measure is intended to allow for limited fishery expansion but would eliminate the potential for excessive growth of this fishery. This measure is also proposed because NMFS believes that SCS landing statistics may substantially underestimate SCS mortality. This is a result of unreported catches of SCS because they are used for bait and thus are not always landed.

In November 1997, ICCAT adopted a recommendation with several measures to address billfish resources throughout the Atlantic Ocean, including reduction of Atlantic blue marlin and Atlantic white marlin landings by at least 25 percent from 1996 levels, starting in 1998, to be accomplished by the end of 1999. Reductions will be assessed in 2000 based on landing data through 1999. Delaying the stock assessment until 2000 (per the 1998 ICCAT recommendation) will allow preliminary evaluation of the effectiveness of landing reductions for over-exploited Atlantic billfish resources. A total of 34.9 mt of Atlantic blue marlin and 3.3 mt of Atlantic white marlin were reported as recreational landings for the U.S. in 1996. Therefore, under the 1997 ICCAT recommendation, the U.S. landing limits for Atlantic blue marlin will be 26.2 mt, and 2.48 mt for Atlantic white marlin.

B. Accounting for All Sources of Fishing Mortality

NMFS seeks to account for all sources of fishing mortality on HMS stocks. In recreational HMS fisheries, post-release mortality rates are currently unknown; however, recorded dead discards of HMS are minimal. ICCAT currently subtracts an estimate of dead discards of BFT from the total allowable catch to allocate a stock-wide landing quota, a portion of which is then allocated to the United States. NMFS may seek this type of strategy with respect to all species.

For the Atlantic tunas fishery, NMFS proposes to establish a reserve quota for school BFT (27 inches - <47 inches or 69–119 cm curved fork length). The intent of this measure is to provide an ''overflow'' allowance in the event that projections underestimate actual recreational landings of school-size BFT. This measure would further ensure that the United States does not exceed the 8–percent tolerance established under the ICCAT quota scheme for school BFT. This provision will be further addressed in the BFT addendum to incorporate recent modifications by ICCAT.

NMFS also proposes to subtract dead discards of sharks in the commercial fishery and to subtract commercial landings of sharks from state waters after Federal closures from the Federal commercial quotas. While these measures may reduce the available LCS commercial quota significantly, accounting for this additional mortality would enhance the rebuilding of shark stocks. For pelagic sharks, this measure could substantially reduce the available commercial quota because recent estimates of dead discards of pelagic sharks approach current quota levels. For SCS, these measures are not expected to reduce the available quota substantially because most SCS that are not landed are kept for bait; they are not discarded, and therefore, would not be included in estimates of dead discards.

Some HMS are collected for the purpose of science, education, or public display. NMFS must account for such mortality, particularly for overfished species. NMFS proposes to establish a separate shark public display quota of 0.5 percent of the LCS annual quota (60 mt whole weight). This measure would make quota accounting and monitoring procedures for sharks collected under the authority of an exempted fishing permit (EFP) consistent with those for Atlantic tunas. BFT collected under the authority of an EFP would be deducted from the Reserve quota or School Reserve quota, depending on size. NMFS also proposes to establish a new permitting and reporting system to monitor EFP collections (refer to Section IV).

For the swordfish fishery, NMFS proposes to deduct recreational landings of swordfish from the Incidental Catch quota until such time that the swordfish population rebuilds and a directed recreational fishery is sustained. This measure would account for recreational fishing mortality of Atlantic swordfish, which is currently incidental to other HMS recreational fisheries. If the recreational fishery directs fishing effort on swordfish successfully in the future, NMFS may establish a recreational fishing quota.

C. Quota Adjustment Procedures

NMFS proposes to adjust any commercial shark quota overharvest and underharvest in a given period in the same period the following year and to adjust management measures to account for recreational overharvest and underharvest of the recreational harvest limits on an annual basis. These measures support rebuilding of LCS because they would ensure that overharvesting will be accounted for in setting future harvest limits and will not delay LCS rebuilding.

Additionally, NMFS seeks to simplify the procedures for managing the brief fishing season for LCS. NMFS proposes to establish opening and closing dates of the LCS fishery prior to the fishery opening based on catch rates from previous years. Fishery seasons would be scheduled for a specific period instead of projecting closure dates based on landings information. The Director of the Office of Sustainable Fisheries will file for publication with the Office of the Federal Register a notice of each season's length in a timely manner. NMFS also proposes to adjust overharvest and underharvest levels the following year and to not reopen the fishery within a season if there is a quota underharvest. This measure is intended to increase the stability and predictability of the LCS fishery and to reduce enforcement costs and the administrative burden of projecting fishery closures based on near real-time landings data.

NMFS proposes to add an additional criterion to use in determining the appropriateness of a proposed in-season quota transfer for the BFT fishery: ''effects on rebuilding and overfishing.'' Adding this criterion to other factors to be considered would be consistent with the precautionary approach to fisheries management and the 20-year rebuilding program recently adopted by ICCAT, to be addressed in the addendum to the draft HMS FMP.

NMFS also proposes to change the way quotas are tallied by NMFS by changing the fishing year for Atlantic tunas from the current calendar year to a June 1 through May 31 ''fishing year.'' This would facilitate timely implementation of ICCAT recommendations for the fishing year. Since it is not NMFS' intention to substantially change the fishing practices of Purse Seine vessels targeting Atlantic tunas, the BFT fishing season for the Purse Seine category will continue to open August 15 and close December 31, or when each vessel's individual vessel quota (IVQ) is filled. Purse Seine category vessels may fish for tunas, other than BFT, at any point in the fishing year; however, a Purse Seine category vessel may not fish for other tunas from August 15 through December 31 if that vessel's IVQ for BFT is filled. BFT caught prior to August 15 in the yellowfin tuna purse seine fishery may not be sold, but will be counted against the harvesting vessel's IVQ.

IV. Restrictions on Catch and Retention

Retention limits are employed by fishery managers to reduce fishing mortality. In some cases, restrictions on catch may increase bycatch mortality due to the discard of dead fish or post-release mortality. Although post-release mortality in recreational HMS fisheries is currently unknown, it is estimated to be low for most shark species and for many tuna and billfish species if those fish are properly handled.

NMFS proposes to increase the minimum size limits for blue marlin to 99 inches (251 cm) lower jaw-fork length (LJFL) and for sailfish to 63 inches (160 cm) LJFL and to maintain the minimum size for white marlin at 66 inches (168 cm) LJFL. These measures will contribute to the 25 percent reduction in landings required by a 1997 ICCAT recommendation. NMFS further proposes to establish a retention limit of one Atlantic white or blue marlin per vessel per trip, with a provision to adjust the retention limit for each species to zero when the landing limits for that species have been reached. NMFS has drafted an IRFA regarding the economic impacts of these measures on small businesses. Together, the minimum size limits and the retention limit should ensure that the United States meets its international obligations regarding reductions in billfish landings.

To date, no stock assessment of longbill spearfish exists, and NMFS does not know of any directed or substantial incidental fishery for this species. Therefore, NMFS proposes to prohibit the retention of spearfish.

NMFS proposes new restrictions on catch and retention for sharks that reflect a change in management policy regarding sharks from one where possession of only certain species known to be vulnerable to overfishing is prohibited to one where only possession of those species expected to be able to withstand some fishing mortality is allowed. This change in policy employs the precautionary approach and would reduce the number of species authorized for retention by approximately 50 percent. In addition to the five species of LCS currently prohibited from being retained, this measure would prohibit possession by any U.S. fisherman (recreational or commercial) of dusky, night, bignose, Caribbean reef, Galapagos, and narrowtooth sharks from the LCS management unit; longfin mako, blue, bigeye thresher, sevengill, sixgill, and bigeye sixgill sharks from the pelagic shark management unit; and Caribbean sharpnose, smalltail, and Atlantic angel sharks from the SCS management unit. Prohibiting retention of these sharks is intended to prevent development of directed fisheries or a market for uncommon or seriously depleted species.

Despite reductions in shark retention limits of 50 percent in the recreational fishery in 1997, recreational harvest of LCS was reduced by only 12 percent (in numbers of fish), and, for sandbar and blacktip sharks, recreational harvest increased. NMFS, therefore, concludes that the 1997 retention limit reduction was not effective at implementing the desired 50 percent harvest reduction, and that additional measures are necessary. Therefore, NMFS proposes to prohibit retention of all Atlantic LCS and SCS in the recreational fishery and to set a retention limit of one pelagic shark per vessel per trip. The proposed reduction in retention limits to zero for LCS and SCS and one for pelagic sharks is consistent with national standard 1 to rebuild the overfished LCS stocks and is precautionary regarding pelagic and small coastal shark stocks for which recent assessments have not been conducted.

NMFS also proposes a recreational retention limit of three yellowfin tuna per person per day. This retention limit would help reduce or redistribute recreational landings while allowing for continued access to the fishery by recreational anglers. The Director of the Office of Sustainable Fisheries will file for publication a notice at the Office of the Federal Register of any adjustment to retention limits for Atlantic tunas at least 3 calendar days prior to the change becoming effective.

V. Minimize Bycatch and Bycatch Mortality

A 1997 NMFS Biological Opinion (BO), which identifies threats to endangered species and provides alternatives to reduce those threats, concludes that the pelagic longline component of the Atlantic pelagic fishery for tuna, swordfish, and sharks may adversely affect, but is not likely to jeopardize, the continued existence of the northern right whale. It also concludes that the longline fishery may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species. The BO concluded that the driftnet component for tuna, swordfish, and sharks is likely to jeopardize the continued existence of the northern right whale and may adversely affect humpback and sperm whales, Kemp's ridley, green, loggerhead, and leatherback sea turtles. NMFS seeks to minimize bycatch and bycatch mortality of protected species and finfish to the extent practicable in HMS fisheries and has, thus, evaluated all HMS fisheries with respect to bycatch information.

A. Marine Mammal Bycatch

To reduce marine mammal bycatch, NMFS proposes to (1) implement pelagic longline gear restriction and deployment measures recommended by the Atlantic Offshore Cetacean Take Reduction Team (AOCTRT) in the pelagic longline fishery, (2) prohibit the use of driftnet gear for Atlantic tunas, and (3) implement take reduction measures recommended by the Atlantic Large Whale Take Reduction Team in the southeast shark gillnet fishery. These measures are also expected to reduce takes of sea turtles in these fisheries.

(1) NMFS convened the AOCTRT in May 1996 to address interactions between strategic marine mammal stocks and the Atlantic pelagic driftnet and pelagic longline fisheries for tunas, sharks, and swordfish. Cumulatively, these fisheries (and the pair trawl fishery which was operating at that time under an EFP) take incidentally several species of marine mammals at levels that are estimated to be above the Potential Biological Removal (PBR) levels established for these stocks. The AOCTRT included representatives of each of the fisheries, environmental and conservation groups, several states, the Mid-Atlantic Fishery Management Council, independent fisheries, the marine mammal biological community, and NMFS. NMFS proposes to implement the following measures, the majority of which were recommended by the AOCTRT, to reduce marine mammal takes in the pelagic longline fishery:

Mandatory educational workshops. Mandatory educational workshops for pelagic longline fishermen are an effective means of reducing bycatch; several workshops have been held thus far. NMFS began workshops in October 1998 for pelagic longline captains, crew, and vessel owners, and proposes that these workshops be mandatory for all vessel owners/operators. These workshops educate fishery participants about the MMPA and the problem of marine mammal interactions, promote open communication at sea concerning interactions, encourage communication between NMFS and fishermen experienced with handling interactions, and provide marine mammal identification keys. Guidance for preventing interactions with and disentanglement of mammals with pelagic longline gear has been developed and is distributed at those workshops.

Limited access. NMFS is re-proposing a limited access program for the Atlantic swordfish and shark fisheries.

Gear length restrictions. NMFS proposes as an interim measure for one year a requirement that pelagic longlines set in the Mid-Atlantic Bight during August 1 through November 30 do not exceed 24 nautical miles (nm) in length. In 1996, the AOCTRT estimated that this measure could reduce bycatch and bycatch mortality of marine mammals by 20 to 30 percent. However, 1996 and 1997 observer data indicate that the average length of longlines in that area during that time of year is 20 and 22 nm, respectively. Nevertheless, this measure would prevent the use of longer gear in the future and may increase survival of some finfish species, particularly billfish, due to the shorter soak time of the gear. This measure, recommended by the AOCTRT, was intended to be implemented on a trial basis for one year, to be followed by an evaluation of the success of the management measure in reducing bycatch of marine mammals.

Requirement to move gear after one entanglement. Because observer and logbook data show that marine mammals and sea turtles are often encountered in clusters, NMFS proposes to require pelagic longline fishermen to retrieve their gear and move their vessels at least 1 nm away after any gear interaction with a marine mammal or sea turtle. This is a common practice among many pelagic longline fishermen and is considered by fishermen to be effective in some areas at reducing bycatch. The AOCTRT estimated that this measure could result in a 40–percent reduction in serious injury and incidental mortality of marine mammals. This measure is also likely to reduce takes of sea turtles.

Closure of right whale critical habitat. NMFS is proposing a time/area closure of critical right whale habitat to reduce potential interactions between pelagic longline gear and the endangered northern right whale. NMFS proposes to close critical right whale habitat to pelagic longline fishing in New England and the southeast coastal United States (refer to regulatory text for specific times and areas).

Other. Because of current funding constraints, NMFS at this time cannot adopt the recommendation of the AOCTRT and pursue research on acoustic deterrent devices. However, NMFS is interested in identifying gear modifications which may increase post-release survival, including hook types, rig configurations, and so forth. NMFS has developed a research plan to identify research needs and objectives for a comprehensive plan for HMS and related fisheries. Should funding become available, NMFS would assign a priority to such research needs.

(2) The AOCTRT, in a draft plan submitted to NMFS in 1996 recommended measures for the driftnet fishery to reduce marine mammal bycatch. At this time, NMFS does not propose to implement those measures because of a proposed rule to prohibit the use of this gear for taking swordfish.

In a separate rulemaking (63 FR 55998, October 20, 1998), NMFS proposed to prohibit the use of driftnets in the Atlantic swordfish fishery due to the high management burden of reducing bycatch of marine mammals and sea turtles in a limited fishery that lasts approximately 14 days a year for 12 vessels. Such a ban in the Atlantic swordfish fishery may discourage anyone from entering a driftnet tuna fishery because the possession of swordfish on a vessel with a driftnet on board would be prohibited, thereby decreasing the gross ex-vessel revenues of the driftnet trip. Therefore, extending this proposed ban to include driftnets in the tuna fishery is not expected to have a significant negative economic impact. The final rule implementing the HMS FMP will include any measures finalized as a result of the proposed rule to ban driftnets in the swordfish fishery.

(3) NMFS proposes to adopt measures in the Atlantic Large Whale Take Reduction Plan (ALWTRP) to reduce bycatch of marine mammals in the shark gillnet fishery. The implementing regulations for the ALWTRP, which include observer coverage requirements, gear marking requirements, closed times and areas, and special provisions for strikenetting (refer to interim final rule, 62 FR 39157, July 22, 1997) are applicable to the southeast shark drift gillnet fishery. NMFS proposes to adopt the regulations of the ALWTRP under the authority of the Magnuson-Stevens Act to ensure regulatory consistency.

B. Finfish Bycatch

To reduce finfish bycatch mortality, NMFS encourages recreational and commercial fishermen to handle released fish carefully. Handling options include leaving a fish in the water and cutting the leader close to the hook or releasing the fish by using a dehooking device. Current billfish regulations stipulate that billfish must be released by cutting the leader. However, public comments and data suggest that dehooking devices are very useful, even for large pelagic fish, and may decrease post-release mortality. Therefore, for billfish, NMFS proposes to allow alternative mechanisms to remove a hook from a billfish caught on commercial or recreational gear either by cutting the leader close to the hook or by using a dehooking device.

Multiple hooks per bait or lure may increase post-release mortality by increasing the probability that fish are hooked in the gills or throat. NMFS, therefore, takes a precautionary approach and proposes to prohibit the use of more than one hook per bait or lure in the recreational billfish fishery.

To address the incidental catch of undersized swordfish in the pelagic longline fishery, NMFS analyzed catch data from 1987 through 1996. Based on logbook data submitted by pelagic longline fishermen, small swordfish appear to aggregate in areas that include the Charleston Hump, the east coast of Florida, and the Florida Escarpment. Given unknowns related to seasonal distribution of small swordfish, NMFS intends to reduce bycatch of undersized swordfish in an area that consistently produces small swordfish year-round. Fishery-dependent data indicate that catch rates of undersized swordfish (less than 33 lb or 15 kg dw) are high in some areas at certain times of the year but appear to be high year-round in the Florida Straits. NMFS proposes to prohibit the use of pelagic longline gear in the Florida Straits (26–28° N. lat, 78–81° long.) during July-September. Analysis of 1996 pelagic logbook data indicates that swordfish discard ratios are the highest in this area during the third quarter; however if seasonal distribution of small swordfish shifts, reductions in bycatch are still likely to occur. NMFS will evaluate the efficacy of this program in reducing discards of undersized swordfish, given the distribution of swordfish and re-distribution of fishing effort, and may implement other time/area closures in the future to reduce swordfish discards. This measure is likely to have a significant impact on small businesses that regularly fish in that area during the third quarter and may have significant impacts on related businesses such as those that specialize in high-quality swordfish. The Florida Straits consistently produces high quality swordfish due to the proximity of the fishing grounds to port and to the subsequent short fishing trips. (Refer to the Regulatory Impact Review and the IRFA in the FMP for details on estimated economic impacts.)

NMFS recognizes that the proposed measures to minimize juvenile swordfish bycatch mortality may result in significant economic impacts to small businesses. However, long term positive economic impacts resulting from a

larger spawning stock biomass may mitigate the effects of short-term closures such as the closure proposed herein. NMFS is proposing a large closure area to discourage fishermen from fishing the ''fringes'' of the closed area and thus impeding the discard reduction and lengthening the amount of time needed for rebuilding.

In order to effectively enforce the time/area closure, NMFS proposes to require all vessels with pelagic longline gear on board to submit regular position reports (one report per hour) to NMFS via a vessel monitoring system (VMS) unit meeting NMFS' specifications. The VMS requirement would be extended to all vessels in the pelagic longline fleet with a Directed or Incidental Limited Access Permit because any vessel could fish off the coast of Florida at any given time. A VMS would also reduce the cost of enforcing the time/area closure.

A VMS has a vessel safety feature because it increases communication with shore. Other possible benefits include allowing pelagic longline fishermen reporting from a VMS to offload swordfish after a directed fishery closure, provided no fishing activity takes place after the closure date. In addition, because VMS units would be on board, NMFS proposes to allow longline vessels to transit the North Atlantic Ocean with South Atlantic swordfish on board during a closure of the North Atlantic directed swordfish fishery.

Fishermen should consult with NMFS on VMS requirements before purchasing a VMS unit. The cost of a VMS unit would be approximately $3,000 to $5,000, with an additional $1,000 estimated for installation. Vessel owners would be responsible for the maintenance of the VMS unit and communication costs, which are not likely to exceed $2.50 per day. Related to bycatch reduction monitoring, NMFS proposes to require that all HMS longline and shark nets be marked on the terminal floats and high flyers, as applicable. This requirement would result in better identification of gear in the enforcement of current regulations and facilitate enforcement of the proposed time/area closure for pelagic longline vessels. Identifying lost gear or gear entangling protected species is also facilitated if the gear has the vessel's official number or, in the case of Atlantic tunas, a vessel's permit number clearly marked. Further, marked gear can be reported for any violation of fishery conservation and management measures. Therefore, NMFS proposes that all harpoon and handline floats be marked as well.

To reduce bycatch mortality in recreational HMS fisheries, NMFS intends to initiate an educational program by (1) distributing information concerning dehooking devices and hook and leader types that may increase post-release survival; (2) informing fishermen about problems of recreational fishery bycatch; (3) promoting a survival ethic concerning released fish; and (4) informing fishermen about reporting requirements that include reporting of bycatch species.

VI. Improve Data Collection and Enforcement

The proposed rule contains several existing and several new permitting requirements. In all cases except initial limited access permits (ILAPs), vessel and dealer permit applications and instructions for their completion are available from the NMFS Regional Offices (for tuna vessel permits, call 888–USA-TUNA; for tuna dealer permits, call 978–281–9370; for swordfish/shark dealer permits and the first LAP, call 727–570–5326). ILAPs will be issued by the Director of the Office of Sustainable Fisheries. Application forms and instructions for ILAPs and LAPs are available from the HMS Management Division of NMFS at 301–713–2347. Based upon application information and the eligibility criteria, the Office Director will make determinations regarding eligibility for limited access. Inquiries and concerns related to the issuance of ILAPs and LAPs should be directed to the HMS Management Division. After you receive your first LAP, LAP renewals and replacements will be issued by NMFS. Permitting requirements for specific HMS fisheries are detailed in the regulatory text.

The proposed rule contains several new and existing reporting requirements. Pelagic logbook and swordfish and shark dealer reporting forms are available from the Southeast Fisheries Science Center and are mailed regularly to all permit holders in the database. BFT bi-weekly dealer reports and BFT landing report forms, Bluefin Statistical Documents, and BFT dealer tags are available from the HMS Management Division, in Gloucester, MA 978–281–9140. For HMS other than bluefin tuna, in lieu of reporting to the Northeast Science Director (SD) in Woods Hole, MA or the Southeast SD in Miami, FL, reports may be submitted to a state or Federal fishery port agent designated by the SD. BFT landing reports should be submitted by dealers to the HMS Management Division in Gloucester, MA by electronic facsimile or Interactive Voice Response(fax, 978–281–9393) and by U.S. mail (NMFS-NERO, 1 Blackburn Drive, Gloucester, MA, 01930). Bi-weekly reports on BFT purchases should be submitted to the same address. If you carry a general, Longline, Harpoon, or Trap category Atlantic Tunas permit and you land a large medium/giant BFT but do not sell it, you must contact NMFS enforcement at the time of landing and, if requested, make the fish available for inspection by a NMFS enforcement agent. If you land any size BFT and are permitted in the Angling category or fishing under Angling retention limits with a Charter/Headboat permit, you must report the BFT through the automated catch reporting system by calling 888–USA-TUNA. NMFS will inform fishery participants of reporting requirements and procedures, and alternatives or changes to those requirements, for school, large school, and small medium BFT.

Anglers who voluntarily release HMS are encouraged to tag their released fish. Anglers who catch a BFT during a closed season must tag all released BFT. You may obtain NMFS-issued conventional tags, or request permission to use alternate tags, by contacting the NMFS Cooperative Tagging Program at 800–437–3936.

Mandatory registration of tournaments involving any Atlantic HMS is proposed. Under the proposed measure, tournament operators must notify the NMFS Southeast Fisheries Science Center (''Tournament Registration'', 75 Virginia Beach Drive, Miami, FL 33149, fax: 305–361–4219) of the purpose, dates, and location of a fishing tournament for Atlantic HMS at least 4 weeks prior to tournament commencement. When selected by NMFS, this measure is accompanied by reporting requirements for all tournament directors. This measure, proposed in the consolidated rule, and re-proposed here, is currently implemented under a separate interim rulemaking for billfish tournaments only.

To account for limited access and to improve quota monitoring and catch data collection, shark and swordfish vessel permit holders or dealer permit holders would no longer be exempt from obtaining an Atlantic tunas dealer permit to purchase tunas. These permit holders would also be subject to reporting requirements associated with the Atlantic tunas permit. Additionally, the requirement for owners and operators to present the harvesting vessel's permit to the receiving dealer upon transfer of HMS is proposed to be extended to all Atlantic tunas, shark, and swordfish permit holders.

To facilitate enforcement and prevent circumvention of the proposed Certificate of Eligibility requirement, NMFS proposes to extend the authority to designate and restrict, after consultation with the U.S. Customs Service, ports of entry for import into the United States to any Pacific or Atlantic swordfish from any source.

NMFS proposes to create an HMS Charter/Headboat permit in order to identify the universe of these vessels. This universe would be useful in estimating economic and social aspects of the fishery as well as providing a universe for implementing proposed logbook and observer coverage requirements. Charter/Headboat operators who currently report their HMS catch and effort data in non-HMS Federal logbooks would be able to continue to do so. All others would report catch and effort data in the Large Pelagic Logbook and submit to NMFS, Logbook Program, P.O. Box 491500, Key Biscayne, FL 33149–9916. NMFS proposes to require all HMS logbooks to be completed within 24 hours of hauling a longline or shark net set or of completing a day's fishing activities, if a single day trip. This measure would lessen the management and enforcement costs of HMS regulations and would ultimately aid in rebuilding overfished stocks and preventing overfishing. Currently, pelagic logbooks must be submitted to NMFS within 7 days after offloading HMS from a trip.

If selected by NMFS, the HMS Charter/Headboat permit holders, along with all Atlantic tunas permit holders, would be required under this proposal to carry an observer. This would supplement bycatch and bycatch mortality databases as well as provide coverage of catch and discard rates of target and non-target species.

To collect sufficient data from EFPs, NMFS proposes to develop a reporting system regarding collection of sharks for public display. This information would be useful in monitoring the proposed public display quota (see section I).

To facilitate enforcement, NMFS proposes to require that sharks be recreationally landed with heads, tails, and fins attached. This measure is expected to have minimal economic and social impacts, but would greatly facilitate dockside species-specific identification of shark landings for monitoring, management, and enforcement purposes.

Finally, NMFS proposes to extend the prohibition on finning to all sharks, regardless of whether the shark species are defined as part of Federal management unit or are subject to any Federal regulations, as a condition of the Federal commercial shark permit. This measure is intended to enhance enforcement capabilities by removing a costly and time-consuming administrative burden of verifying species-specific identification of shark fins through genetic testing. Note that the Mid-Atlantic and New England Fishery Management Councils are proposing a finning prohibition in a draft FMP for spiny dogfish.

VII. Administrative and Procedural Changes

NMFS proposes to dissolve the Shark Operations Team due to the subsequent formation of the HMS Advisory Panel. The HMS AP serves essentially the same advisory function for shark management. By eliminating the Shark Operations Team, NMFS would reduce management costs, avoid duplication of effort, and reduce the burden on interested constituents. Further, NMFS seeks to reduce management costs of administering these panels and would continue to rely on the HMS AP to provide comments on FMPs or FMP Amendments related to shark management.

NMFS proposes to adjust the fishing year to be June 1 through May 31 for the Atlantic tunas and billfish fishery, consistent with the Atlantic swordfish fishery. The Atlantic shark fishing year will continue to be January 1 through December 31.

To further prevent U.S. overfishing, NMFS proposes to extend the management unit definitions for Atlantic blue marlin and Atlantic white marlin to the entire Atlantic Ocean. This would allow for consistent management with other Atlantic HMS and is consistent with the biology of the species (Atlantic-wide stock).

VIII. Limited Access Program

Vessel permit limited access systems were considered by NMFS in a draft amendment to the Atlantic Sharks FMP (November 8, 1996) for which a proposed rule published on December 27, 1996 (61 FR 68202)and to the Atlantic Swordfish FMP (January 28, 1997) for which a proposed rule published on February 26, 1997 (62 FR 8672). Significant changes to the qualifying criteria and operational characteristics of the limited access systems are being considered by NMFS in response to comments on those proposed rules. Due to the magnitude of changes under development and the need to update ownership records under the revised eligibility criteria, NMFS decided to re-propose the limited access systems as part of the HMS FMP. Furthermore, the proposed rule to implement the HMS FMP offers an opportunity to propose an expanded limited access program for longline vessels that also includes tunas. Comments on the first limited access proposed rules are summarized with NMFS responses in the HMS FMP. NMFS has also updated the economic analyses since the publication of the HMS FMP to include analyses of limited access under the revised eligibility criteria.

The objectives of the limited access system are to: (1) reduce latent effort by eliminating speculative permit holders who have not participated in the fisheries (i.e., to allow only permit holders who were active and dependent on swordfish or shark fishing before January 1, 1998, and who are still active); (2) provide mechanisms to allow traditional swordfish handgear fishermen (whose permits may have lapsed due to the scarcity of large fish, which they target) to participate fully as the stock recovers; (3) reduce regulatory discards in both directed and incidental fisheries; (4) provide mechanisms to account for the dynamic and multispecies aspects of these fisheries through permit transferability and vessel upgrading provisions; and (5) prevent substantial increases in vessel harvesting capacity of the currently active fleet. A long-term objective for the Atlantic swordfish and shark fisheries is to create a management system in which the U.S. harvesting capacity would be commensurate with resource productivity to achieve the dual goals of economic efficiency and biological conservation.

As described below and in the draft HMS FMP, major changes from the previously proposed rules include: (1) an extension of the eligible permit and landings periods from June 30, 1995, to December 31, 1997, in order to be consistent with the goal of limited access to reduce latent effort only; (2) the establishment of historical evidence or meeting an earned income requirement as the criteria for a swordfish handgear permit; (3) a withdrawal of the proposed decrease in the directed swordfish fishery harvest limit for longline vessels during a directed longline fishery closure; (4) a provision for transferability of incidental catch permits; (5) an elimination of the allowance to submit landings records other than official NMFS fishing vessel logbook records, except for the period January 1, 1991, through June 30, 1993, for sharks; (6) an elimination of the restriction on permit and vessel transferability during the first year of limited access implementation; (7) the clarification that a limited access

permit is a privilege and not a right in perpetuity; (8) an exemption for those persons who purchased a qualifying vessel and its landings history after December 31, 1997, from the requirement to have owned a vessel issued a valid Federal swordfish or shark permit at any time from July 1, 1994 through December 31, 1997; (9) an exemption for persons who first obtained a Federal swordfish or shark permit in 1997 from the requirement to document a second year of Atlantic swordfish or shark landings, and the establishment of the requirement that such persons have documented landings for the calendar year of January 1, 1997, through December 31, 1997, of at least 25 swordfish or 102 sharks for a directed permit or at least one swordfish or shark for an incidental catch permit; (10) the clarification that vessel landing histories cannot be divided among permit holders; (11) the clarification that vessel landings histories cannot be consolidated from several vessels; (12) a modification of the provision for contested eligibility of vessel ownership, or permit, or landings histories; (13) an extension of the eligibility requirements for a limited access permit to persons who fish for, possess, land, or sell swordfish from the South Atlantic swordfish stock (consistent with the 1997 rulemaking for South Atlantic swordfish); and (14) an extension of limited access requirements to the Atlantic Tunas Longline Category permit holders.

A. Permit Categories

NMFS proposes to establish a two-tiered commercial fishing permit system in which permits are classified as ''directed'' or ''incidental'' based on historical and current permit and landings histories in the relevant HMS fisheries. Five types of permits would be issued: Directed swordfish; incidental swordfish; swordfish handgear; directed shark; and incidental shark. Directed permits would allow holders of such permits to operate under the commercial quotas, trip limits, minimum size restrictions, closures, harvest limits during closures, gear restrictions, and other regulations, that will be established by the HMS FMP. Directed handgear permits would allow holders of such permits to harvest swordfish with handgear, provided no longline gear is on board. Incidental catch permits would allow holders of such permits to harvest a smaller limited number of swordfish or sharks per trip. Limited access permits would be issued only for gears and areas for which a commercial quota has been authorized. Access to both the directed and incidental swordfish and shark fisheries would be limited. A vessel's owner would be issued only one type of swordfish permit and one type of shark permit.

B. Eligibility Criteria

Only persons who: (1) owned a vessel issued a valid Federal swordfish or shark permit at any time from July 1, 1994, through December 31, 1997; (2) have documented landings that meet at least the directed or incidental threshold levels of participation in the swordfish or shark fishery (defined below); and (3) owned a swordfish-permitted or shark-permitted vessel at any time during the period June 1 through August 31, 1998 (swordfish), or July 1 through August 4, 1998 (sharks), would be eligible for a limited access permit. Separate criteria are proposed for a swordfish handgear permit. Recreational anglers would not need a permit to fish for, possess, or land swordfish or sharks; however, they may not sell swordfish or sharks and would be subject to relevant retention limits and other restrictions (e.g., recreational retention limits, size restrictions, gear restrictions)

As part of the eligibility criteria for the directed permit, documented landings of at least 25 swordfish or 102 sharks per year in any 2 calendar years between January 1, 1987, and December 31, 1997 (swordfish), or between January 1, 1991 and December 31, 1997 (shark), would be required. This threshold is roughly equivalent to having landed sufficient swordfish or shark each year on average to earn $5,000 per year in gross revenue. NMFS estimates that approximately 190 vessels would be eligible for directed swordfish permits and approximately 187 vessels would be eligible for directed shark permits based on these criteria. The actual number of directed permits that are issued may be higher than this estimate if additional landings records or evidence of vessel history transfers are presented in support of an application or appeal.

NMFS would issue swordfish handgear permits only to those persons who provide evidence of having been issued a swordfish permit for use with handgear or having landed swordfish with handgear, or to those who have derived more than 50 percent of their earned income from all commercial fishing through the harvest and first sale of fish or from charter/headboat fishing, or to those who had gross sales of fish greater than $20,000 harvested from their vessel, during any one of the last three calendar years (earned income requirement). There would be no requirement of having a permit or landings history specific to the swordfish fishery in order to qualify for a swordfish handgear permit, although historical evidence of swordfish permit and landings history would be accepted.

As part of the eligibility criteria for an incidental swordfish permit, a minimum of 11 swordfish landed between January 1, 1987, and December 31, 1997, and meeting the same earned income requirement as for a directed handgear permit would be required. As part of the eligibility criteria for an incidental shark permit, a minimum of seven sharks landed between January 1, 1991, and December 31, 1997, would be required. NMFS estimates that approximately 70 vessels and 305 vessels would be eligible for incidental swordfish and shark permits, respectively. As with the directed permits, the actual number of incidental permits that are issued may be higher depending on additional record or vessel history transfer submissions.

Vessel landings histories are assumed to belong to the owner of the vessel at the time of actual landing. However, if a vessel was sold and its landings history was included specifically in the original written sales agreement, such landings would accrue to the purchaser instead of the seller for purposes of qualifying for a directed or incidental permit under the limited access system. Because NMFS does not currently maintain records of associated vessel history sales or purchases, NMFS proposes to consider claims that a vessel's landings history was transferred at the time the vessel was sold during the application process.

NMFS is proposing two exemptions to these eligibility criteria in order to be consistent with the overall intent of the limited access system, to accommodate for the dynamic aspect of this fishery since NMFS first began limited access rulemaking in mid-1995, and to address the effects of delays in implementation of this limited access program. The first exemption would exempt persons who purchased a qualifying vessel and its landings history after December 31, 1997, from the requirement to have owned a vessel issued a valid Federal swordfish or shark permit at any time from July 1, 1994, through December 31, 1997. Such persons would have to have purchased vessels and their associated landings histories that meet the landings eligibility criteria specified above, through documented transfer at the time of purchase, and would have to have owned this swordfish-permitted or shark-permitted vessel at any time during the period June 1 through August 31, 1998 (swordfish), or July 1 through

August 4, 1998 (shark). This exemption would provide a mechanism to account for vessel sales since NMFS initiated rulemaking and would not result in any increase in the number of current participants. Without such an exemption, qualifying vessels could be eliminated despite legitimate purchases of vessels and their associated landings histories because the current owner did not own a vessel issued a valid Federal swordfish permit before December 31, 1997. Because NMFS does not currently maintain records of associated vessel history sales or purchases, NMFS proposes to consider such claims on vessel landings history transfer during the application process.

The second exemption would exempt persons who first obtained a Federal swordfish or shark permit in 1997 from the requirement to document a second year of swordfish or shark landings. Rather, such persons would have to document, for the calendar year of January 1, 1997, through December 31, 1997, landings of at least 25 swordfish or 102 sharks for a directed permit, or at least 1 swordfish or shark for an incidental catch permit. This exemption would provide for persons who first obtained Federal swordfish permits in 1997 to be eligible for directed or incidental permits, as appropriate. The requirements to own a vessel issued a valid permit at any time from July 1, 1994, through December 31, 1997, and to own a swordfish-permitted or shark-permitted vessel at any time during the period June 1 through August 31, 1998 (swordfish), or July 1 through August 4, 1998 (shark), would still apply. The rationale for this exemption is that persons who first entered the fishery in 1997 would be incapable of meeting the 2-year landings requirement. NMFS estimates that approximately 4 and 3 additional vessels would qualify for a directed swordfish and shark permits, respectively, and approximately 5 and 21 additional vessels would qualify for an incidental catch swordfish or incidental catch shark permit, respectively, based on this exemption.

Many permit holders who will receive these directed/incidental permits also hold Atlantic Tunas Incidental Category Permits. Nevertheless, to address the multispecies nature of the pelagic longline fishery, anyone who had an Atlantic Tunas Incidental Category Permit between January 1, 1998, and August 31, 1998, would receive a swordfish and a shark incidental permit. Also, anyone with a swordfish permit would receive a shark incidental permit and an Atlantic Tunas Longline Category Permit. A total of 738 vessels would be expected to receive at least one type of limited access permit. More vessels could receive permits under the application and appeals processes.

Given the limited quota available to U.S. vessels in the South Atlantic swordfish fishery, NMFS does not intend to allow expansion of pelagic longline fishing effort in that area. On July 25, 1997 (62 FR 40039), NMFS published a proposed rule to establish commercial quotas for swordfish from the South Atlantic stock. In that rulemaking, NMFS provided the public the opportunity to comment on the proposal that vessel permits to fish for swordfish from the South Atlantic stock be limited to those who qualify for a directed permit under the previously proposed limited access system for swordfish. At the time, NMFS noted that most vessels that have fished for swordfish in the South Atlantic have also landed swordfish from the North Atlantic Ocean. NMFS received no comments during the comment period on this measure and concluded in the final rule (62 FR 55357, October 24, 1997) that permits in the South Atlantic should be limited to those who qualify for a directed swordfish permit under limited access. This proposed rule and the draft HMS FMP reflect that decision.

C. Permit Process

Effective 1 June 1999, all Federal swordfish and shark vessel permits issued prior to this date by the NMFS Southeast Regional Office would be invalid. All owners of vessels who wish to fish for, possess, land, or sell swordfish or sharks from the management unit (except those participating in the recreational fishery only or fishing exclusively in state waters) would be required to obtain an initial limited access permit from the Director of the Office of Sustainable Fisheries.

After NMFS conducts an analysis of landings and permit histories, all those who owned swordfish-permitted vessels and owned or operated shark-permitted vessels at any time during the period June 1 through August 31, 1998 (swordfish), or July 1 through August 4, 1998 (shark), would be notified by letter of their eligibility status for the directed or incidental swordfish and shark fisheries. NMFS would issue initial limited access permits to those who qualify. Those permits would be valid through the marked expiration date.

If a vessel owner or operator is informed that he or she does not qualify for a limited access permit, but he or she believes that there is credible evidence to the contrary, he or she may apply for either a directed or incidental catch permit and provide the appropriate documentation to NMFS within 90 days. Similarly, if a vessel owner or operator is notified that he or she qualifies for an incidental catch permit, but he or she believes that there is credible evidence of eligibility for a directed permit, he or she may apply for a directed permit and provide the appropriate documentation to NMFS within 90 days. NMFS would notify no one as to his or her status for handgear permits. If a person believes he or she is eligible for a handgear permit, that person may apply to NMFS within 90 days. NMFS would then evaluate all applications and accompanying documentation, and notify the applicant of its decision either to issue or deny the permit. If denied, the applicant may appeal the decision by submitting an appeal, in writing, to NMFS within 90 days of receipt of the notice of denial. Oral hearings would not be provided. Provisional limited access permits, as appropriate, would be issued for use by the appellant pending the outcome of an appeal until the final agency decision has been rendered. The sole grounds for appeal would be that NMFS reviewed incorrect or incomplete landings data in the eligibility analysis or improperly considered the applicant's earned income documentation, if applicable. No ''hardship'' appeals would be considered.

Landings documentation that would be considered in support of an application or an appeal would be restricted to official NMFS logbook records of landings that were received by NMFS prior to March 2, 1998 (60 days after the cutoff date for eligible landings) and that reflect landings during the time the person held a valid permit. Landings records from sources other than fishing vessel logbooks would not be accepted because mandatory permitting and reporting requirements existed during the entire permit eligibility and landings time frame, except for sharks landed from January 1, 1991, through June 30, 1993. For sharks landed from January 1, 1991, through June 30, 1993, landings documentation that would be considered in support of an application or appeal for a shark limited access permit would be restricted to official, verifiable sales slips or receipts from registered dealers, and state landings records. Dealer sales slips or receipts would have to show definitively the species and the vessel's name or other traceable indication of the harvesting vessel. Dealer records would have to contain a sworn affidavit by the dealer confirming the accuracy of the records.

Additionally, landings records during periods that a vessel did not have a

valid Federal permit would not be accepted. Landings histories may not be divided among permit holders; only complete catch histories of sold vessels would be accepted. This restriction is intended to prevent increases in fleet capacity that would result from multiple vessels qualifying for a limited access permit based on a single vessel's catch history. Similarly, landings may not be consolidated among vessels; permit holders may not pool landings from several ineligible vessels to meet eligibility requirements. This restriction is intended to prevent increases in fleet capacity that would result from the pooling of multiple ineligible vessel catch histories.

In the event that more than one vessel owner claims eligibility for a limited access permit based on one vessel's ownership, permit, or landings history, the applicants claiming the vessel's ownership or permit or landings history would have to determine which person will receive the limited access permit. NMFS would not determine the outcome of contractual conflicts, but the applicants would have to resolve the contested issue and inform NMFS.

D. Transfer of Permits

Directed and incidental permits would be transferable with the sale of the permitted vessel, or to a transfer vessel, or to a replacement vessel owned or purchased by the original permittee, but not under any other circumstances. Such transfers would be subject to upgrading restrictions (described in the following paragraph). Swordfish handgear permits would be transferable, but only for use with handgear.

After the initial limited access permits (ILAPs) are issued in 1999, the eligibility criteria to which initial limited access permit holders are subject would no longer apply; the only requirement would be to have been issued a limited access permit in the preceding year. Similarly, transferees/buyers of limited access vessel permits would not be subject to the initial limited access eligibility criteria; only transfer restrictions would apply (i.e., vessel upgrading and ownership restrictions, if applicable). After the issuance of ILAPs, all renewals or transferred permits would be issued as limited access permits (LAPs) by NMFS.

E. Vessel Upgrading

NMFS proposes that any vessel to which a LAP is transferred, defined as the ''transfer'' vessel, have no more than a 20–percent increase in vessel horsepower or 10–percent increase in length overall, gross registered tonnage, net tonnage, and hold capacity as the vessel originally issued the limited access permit. This restriction would apply to replacement vessels, transfer vessels, and to the refurbishment of existing permitted vessels. These proposed upgrading criteria are based on proposed guidelines recently adopted by the Mid-Atlantic and New England Fishery Management Councils. Since HMS vessels are also affected by upgrading restrictions of fisheries under management by these two Councils, NMFS is attempting to achieve consistency on upgrading restrictions.

F. Ownership Limits

NMFS proposes to restrict the number of permitted vessels that any one person could own or control to no more than five percent of the directed fleet.

IX. Essential Fish Habitat (EFH)

The HMS FMP and the Amendment 1 to the Billfish FMP identify EFH as required by the Magnuson-Stevens Act. Because they range over vast expanses of the ocean, factors that control or limit habitat use by HMS are largely unknown or are difficult to determine. However, to the extent possible, EFH has been described and identified based on scientific publications, expert knowledge, and analysis of presence/absence and relative abundance data, when available. Where information is available (e.g., temperature/salinity tolerances, and/or current or water mass information), it has been used to narrow the extent of EFH within the areas most commonly used by the species.

Analyses of fishing practices led to the conclusion that adverse impacts on EFH from HMS fishing gears are negligible. However, there are potential threats from gears of other fisheries that warrant further investigation. Non-fishing activities with the potential to adversely affect EFH are described in the draft HMS and Billfish FMP documents along with conservation measures based on recommendations made in the past by NMFS regional staff and consistent with conservation measures delineated by the Councils that have jurisdiction over other species that occur in the same areas as those identified as EFH in the HMS and Billfish FMPs and supporting documents.

Research recommendations include investigation of HMS habitat associations and preferences, life history studies and early life stage species identification, habitat characterizations (e.g., for nursery and spawning areas), improved tagging and tracking technology, and the role of habitat in survival and productivity for the various life stages. The EFH portions of the HMS FMP and Amendment 1 to the Billfish FMP do not have any measures requiring regulatory implementation at this time.

X. Minor Administrative and Technical Changes

These measures represent administrative and technical changes to HMS regulations or changes to the regulations that are necessary to implement the draft HMS FMP or draft Amendment 1 to the Billfish FMP. They may not be explicitly addressed in the draft HMS FMP or in draft Amendment 1 to the Billfish FMP. NMFS issued a proposed rule to consolidate HMS regulations for tunas, sharks, swordfish, and billfish on November 6, 1996 (61 FR 57361). Five public hearings were held to receive comments on the proposed rule. Additionally, numerous written comments were received by mail and fax. Most of these comments focused on the identified substantive changes to the regulations rather than on the consolidated format. The following changes to the regulations were identified in the previously proposed consolidated rule or have been made in response to the comments received on that proposed rule or are necessary to implement measures in the draft HMS FMP and draft Billfish Amendment.

1. The incidental catch permit category for Atlantic tunas would be eliminated and redefined as ''longline'' to reflect the existing authorization of directed longline fisheries for tunas other than bluefin tuna and as ''traps'' to account for unavoidable catch of bluefin tuna by pound nets, traps and weirs. As a consequence of this reorganization and to address enforcement issues concerning unauthorized landing of bluefin tuna under the Incidental catch quota, fixed gear other than ''traps'' and purse seines for non-tuna fisheries will be no longer allowed to land BFT. Additionally, due to the limited Incidental catch quota, an incidental catch limit of one BFT per year is established for trap fishermen. This measure would also eliminate confusion with Incidental limited access permits.

2. To achieve consistency between regulations applicable to all HMS, the definition of rod and reel gear would be modified to include the use of electrically operated reels. Although electric reels are permitted under current billfish regulations, conflicts with the consolidated regulations would arise when fishing for, or incidentally taking, Atlantic tunas. Therefore, the broader definition would be made applicable to all HMS.

3. The handgear exemption for fishing vessels and dealers of Atlantic tunas, shark, and swordfish permits, in Puerto Rico and the U.S. Virgin Islands would be eliminated. These vessel owners and dealers would be required to obtain the appropriate permits and follow all reporting requirements. These exemptions were created because it was presumed catch data could be accessed from other information collection programs. However, it has not been possible to access this information in a timely manner. Given the likelihood of continuing restricted quotas for tunas, swordfish, and sharks, accurate and timely reporting of all catch is necessary.

4. The permit category for BFT buy-boats would be eliminated as obsolete. For the last several years, the retention limit for General category vessels has been set at one fish per day, thus precluding the need to offload BFT at sea. In addition, compliance with applicable vessel and dealer reporting requirements would be difficult to achieve under at-sea transfer conditions. ICCAT has also recommended prohibiting transfer of BFT at sea.

5. The 30-day allowance for swordfish and shark dealers to operate under the permit of the previous business owner would be removed to achieve consistency with tuna dealer permit regulations.

6. Regulations that are no longer necessary on tuna vessel reporting, as approved under OMB control number 0648–0168, would be replaced by the vessel logbook requirements approved under OMB control number 0648–0016.

7. To facilitate enforcement and to achieve consistency with regulations applicable to all HMS, the allowance to transfer HMS at sea by transfer vessels would be removed. This allowance was originally implemented for purse seine fishermen using transport vessels for cannery deliveries, a practice that no longer occurs in the Atlantic Ocean. The allowance for at-sea transfer of BFT among permitted purse seine vessels would remain.

8. The distinction between selected and non-selected vessels for the purposes of shark logbooks would be dropped because all vessels have been selected in recent years under the previously implemented mandatory reporting requirement.

9. The time frame for reporting and submitting the bi-weekly BFT dealer report would be adjusted to the time frame applicable for the bi-weekly dealer report for swordfish, sharks, and other Atlantic tunas. Thus, all dealer reports regarding these three species groups would be due not later than the 20th day of the month for HMS received on the 1st through the 15th days of each month, and not later than the 5th day of the following month for HMS received on the 16th through the last day of each month.

10. Current regulations that prohibit sale of billfish are unclear concerning the sale of such related species as striped marlin, black marlin, shortbill spearfish. The consolidation would clarify the regulatory text to achieve consistency with the prohibition on sale as implemented through the certificate of eligibility requirements for sale of billfish and related species. All billfish species found in commerce would be considered to be Atlantic billfish unless accompanied by a Certificate of Eligibility.

11. Regulations applicable to the swordfish donation program would be removed as unnecessary codified text. Donation programs for swordfish or any of the regulated HMS could be established and adequately enforced under a specific letter of authorization.

12. Current regulations prohibit a change of tuna permit category after May 15. This restriction was imposed so that a vessel could not fish in more than one quota category subsequent to the June 1 commencement of the Harpoon and General category BFT fishing seasons. Existing regulations have not prevented some vessel operators from fishing under the bluefin tuna Incidental category prior to May 15 and in the General category after June 1. Under this proposed rule, Atlantic tunas permit category changes would be limited to one change each year, between January 1 and May 15. No permit changes would be permitted from May 16 through December 31, regardless of sale of a vessel. This would prevent commercial vessel operators from fishing for bluefin tuna in more than one commercial quota category in a single year. To be consistent among all categories, the one-per-year limit on category changes for Atlantic Tunas permits would also apply to recreational vessels obtaining Angling category permits.

13. To facilitate enforcement of minimum size and retention limit regulations and to facilitate identification of species, all Atlantic tunas would be required to be landed with the tail attached.

14. The set-aside of swordfish quota for the harpoon segment of the directed fishery would be removed because it is unnecessary. A prior rulemaking established the swordfish fishing year and first semiannual quota period beginning June 1. When the fishing year and the first semiannual period began on January 1, a set-aside was needed because the summer harpoon fishery could be precluded by a directed fishery closure at the end of the period. The change in fishing year has eliminated this problem.

15. Gear restrictions applicable to specific categories of tuna permits would be limited to fishing activity for bluefin tuna. In a prior rulemaking, the requirement for tuna permits was extended from BFT to all Atlantic tunas. Gear restrictions necessary to implement category quotas for bluefin tuna were carried over to apply to all Atlantic tunas. Because Atlantic tunas other than bluefin are not subject to quotas, gear restrictions are not necessary, with the exception of driftnets.

16. Much of the regulatory text regarding restrictions on imports would be removed as obsolete since ATCA has been amended. The Department of State will be consulted during the comment period for this proposed rule, as necessary, to ensure that the revised trade restrictions regulations comply with ATCA. NMFS implemented a final rule in 1997 that banned the import of BFT from Belize, Honduras, and Panama as a result of an ICCAT recommendation. Further, NMFS proposed trade restrictions for Atlantic swordfish on October 13, 1998 (63 FR 54661). The final rule to implement the HMS FMP will include any finalized trade restrictions that result from that separate rulemaking for swordfish.

17. Except for applications for an initial limited access permit, vessel and dealer permit applicants will have up to 30 days to submit required information not supplied with original applications, otherwise, the application will be considered abandoned. Information changes must be reported within 30 days for permits to remain valid.

18. Logbook requirements approved under OMB control number 0648–0016 would apply to commercial and for-hire tuna vessels only if selected by NMFS. Initially, a sample of vessels from each permit category, (except for Charter/headboat permit holders, which will all be selected), will be selected to evaluate reporting forms and reporting schedules.

19. To enhance flexibility in business decisions, purse seine notification would be set at 24 hours prior to sailing or landing, with automatic waiver of inspection requirements if not undertaken within 24 hours of notification.

20. To be consistent with revised 50 CFR 600.745, § 635.32 incorporates new policies and procedures on issuance of letters of authorization, exempted

fishing permits, and scientific research permits.

21. Technical changes were made to reflect NMFS reorganization by changing references from Regional Director to Regional Administrator and from Science and Research Director to Science Director. Where necessary, cross references to regulations in other CFR parts were updated.

22. The method of taking tuna measurements was amended to conform with instructions given in past years and to reflect an analysis of measurement conversion data obtained in 1996.

23. Given the increased use of inseason retention limit adjustments to restrict harvest in the BFT Angling category to seasonal and geographic subquotas, the retention limit for school, large school, and small medium BFT is established at one per vessel, per day. This retention limit may be adjusted inseason through one or more specification notices published in the **Federal Register**.

24. Changes were made to the BFT trophy catch provisions applicable within the Gulf of Mexico to clarify that anglers may retain large medium or giant BFT onboard vessels permitted in the Angling or Charter/Headboat categories if taken incidental to fishing for other species.

25. Specific regulatory text was added to prohibit purchase or possession by dealers of undersized Atlantic swordfish landed by fishing vessels of the United States.

26. Technical revisions were made to the bluefin tuna statistical document (BSD) program. Current regulations require that a BSD be completed and provided to NMFS for import or export of bluefin tuna. NMFS has recently acquired import records from U.S. Customs that indicate non-compliance with the BSD program, particularly for imports. Revisions are necessary to clarify procedures for BSD filing by defining import, importer, export and exporter, and by specifying circumstances under which a BSD must be completed. These revisions do not materially change the requirements, but provide more explicit instructions for the benefit of both tuna dealers and NMFS/Customs enforcement.

27. Revisions are also made to the ICCAT port inspection scheme. At its 1997 meeting, ICCAT recommended revisions to its port inspection scheme, to which the United States is a party. These revisions are technical in nature and serve to clarify the authority for inspections, procedures for inspections, and the requirements for reports to flag states and the ICCAT Secretariat. The revisions are not substantive and only standardize procedures already in place for most contracting parties that have adopted the port inspection scheme.

28. A revision to the Angling category trophy fish tagging requirement is made to provide coordination with harvest tagging programs for school, large school, and small medium fish as implemented by NMFS or by any of the States. In coordinating such programs, the burden on anglers and NMFS enforcement will be reduced.

29. NMFS has removed the notification requirement for vessels transiting the Panama Canal with regulated species on board. This requirement was originally implemented for purse seine vessels offloading Pacific tuna catch at canneries in Puerto Rico. NMFS believes that fishing and offloading practices have changed so as to make this regulation obsolete.

30. The effective date of all regulatory amendments and inseason actions will be the date of filing with the Office of the Federal Register or, if subject to delayed effectiveness, on the prescribed period of delay based on the date of filing. Existing regulations variously refer to dates of filing or publication, with the publication delay normally three or four days. The discrepancies arise from balancing the need for timely action with the need for advance notification. Given the ability to rapidly communicate with fishery interest groups via the HMS Fax Information Network and NOAA weather radio, standardizing the effective date relative to filing will allow NMFS to be more responsive without unduly restricting the advance notification required by fishery participants.

XI. Applicability of Regulations in State Waters

State regulations applicable to ICCAT-managed species (Atlantic tunas, swordfish, and billfishes) that are less restrictive than Federal regulations or are not effectively enforced are subject to preemption by Federal regulations under section 971g(d) of ATCA. Pursuant to 971g(e) of ATCA, the Secretary of Commerce is required to perform a continuing review of the laws and regulations of all states for which preemption by Federal regulations applies and the extent to which such laws and regulations are enforced. Also, under section 306(b)(1) of the Magnuson-Stevens Act, after notice and an opportunity for a hearing, Federal regulations may apply within state waters if the state has taken action or omitted to take action which will substantially and adversely affect the carrying out of Federal FMPs and the regulations to implement them (16 U.S.C. 1801 *et seq*.).

In an effort to review those regulations and make determinations about preemption, NMFS contacted the following states: Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Michigan, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, Puerto Rico, and the U.S. Virgin Islands.

As of October 1998, NMFS has received replies from the following states: Florida, Georgia, Louisiana, Massachusetts, New Jersey, North Carolina, and Virginia. With the issuance of this proposed rule, NMFS will again contact the states to request information regarding state regulations applicable to ICCAT-managed HMS and the gear used in fisheries targeting or catching them.

NMFS will be conducting public hearings in several states regarding the proposed regulations to implement the HMS FMP and Billfish Amendment. In addition, NMFS will contact all Atlantic Coast states and territories to determine if additional hearings on the FMPs and proposed regulations are necessary, particularly regarding the preemption issue. NMFS intends to coordinate and consult with all Atlantic Coast states and territories to meet management objectives and to achieve regulatory consistency.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq*., and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq*.

NMFS has concluded that this proposed rule to implement the HMS FMP would have a significant economic impact on a substantial number of small entities. Specifically, the time/area closure for pelagic longline fishermen in the Florida Straits, the non-ridgeback LCS quota reduction, and limited access measures for the shark fishery would have a significant economic impact on affected entities. In combination, the proposed alternatives for sharks and swordfish would also have a significant economic impact on a substantial number of small entities. Accordingly, an IRFA has been prepared to accompany the HMS FMP. A summary of the IRFA regarding these issues follows:

Time/Area Closure for Pelagic Longline Fishing

NMFS proposes to ban the use of pelagic longline gear in the Florida Straits between July and September. The preferred time/area closure would likely have significant economic impacts for 17 of the 20 vessels that fish in that area at that time.

NMFS considered several alternatives that would reduce catches of small swordfish and that could have less severe economic impacts on the pelagic longline fishery participants. The alternatives included continuing the existing minimum size (33 lb, or 15 kg dw) and counting dead discards against the swordfish quota. If ICCAT adopts a recommendation that dead discards should count against the quota, NMFS will further consider this measure in future rulemaking. Although these alternatives may have lesser economic impacts on the pelagic longline fishery participants and provide incentives to reduce small swordfish catch, neither measure guarantees reduced discards of undersized swordfish.

NMFS also considered the alternative of closing other areas with high swordfish discard rates in addition to the Florida Straits. NMFS rejected this alternative for several reasons, including the significant economic impacts expected on additional pelagic longline participants. NMFS may consider closing these areas in the future if deemed necessary to reduce the bycatch of undersized swordfish. Although the status quo alternative (no time/area closure) would have less of an economic impact in the short term, this alternative was rejected because it is not expected to meet the statutory objectives of reducing the discard rate and rebuilding the stock. Thus, in the long term, the status quo alternative may have even greater significant impacts for all pelagic longline participants.

Non-Ridgeback LCS Quota Reduction

NMFS proposes to separate the current LCS management unit into ridgeback and non-ridgeback LCS and to reduce the quota for non-ridgeback LCS by 66 percent (by weight). This alternative is expected to minimize adverse economic impacts on LCS fishermen by allowing higher harvest levels than those maintained if the LCS management unit were kept as a single unit. This measure should rebuild ridgeback LCS stocks consistent with the Magnuson-Stevens Act requirements to rebuild overfished fisheries and to consider the impacts of fishery resources on communities. NMFS estimates that 53 participants may cease business operations due to this alternative.

NMFS considered other alternatives, including keeping the LCS management unit as a single group, with status quo reduced, and zero harvest levels, as well as implementing a phased-in quota for non-ridgeback LCS. Some of these quota alternatives, such as a closure, would meet the management objectives of rebuilding LCS stocks, and would have significant negative economic impacts in the short term, but would have economic benefits in the long term. Other alternatives considered, such as status quo, would have little or no negative economic impacts in the short term, but they would have significant negative economic impacts in the long term if the stock continued to decline. Additionally, the status quo alternative may possibly have no positive economic benefits and would not meet the statutory objectives to rebuild the LCS stock. NMFS chose the alternative that minimizes the short and long term economic impacts while also rebuilding LCS stocks.

Limited Access to the Atlantic Swordfish and Shark Fisheries

The proposed limited access system would affect all current permit holders in the Atlantic swordfish and shark fisheries and those vessels fishing for Atlantic tunas with longlines. The intent of limited access is to exclude only those fishermen whose logbook records indicate they are neither active nor dependent on the swordfish and shark fisheries except that tuna longliners would automatically receive a swordfish or shark limited access permit to authorize landing of incidental catch. The proposed limited access program for swordfish is not expected to have a significant economic impact on a substantial number of small entities. However, a similar analysis indicates that, due to the proposed limited access system for the shark fishery, a significant number of shark vessels (48) would be forced to cease business operations. NMFS found that many of these vessels were directing for sharks in 1997 (the year used in the analysis) but had left the fishery in 1998, and, therefore, would not qualify under the proposed limited access system. Thus, NMFS believes that many of the vessels that the analysis indicates would not be eligible for permits may have already left the fishery due to circumstances other than limited access. Because this limited access system is not intended to remove any active entity dependent on the fishery, NMFS may reconsider the requirement of having held a permit during the open season in 1998 for sharks, based on comments received on this proposed rule.

The other alternatives regarding the implementation of limited access for swordfish and shark fisheries include a range of permit and landings history (eligibility) alternatives, incidental harvest limits, and permit transfer and vessel upgrade restrictions. While these alternatives might have lesser economic impacts on the fishery participants, NMFS believes those alternatives may be inconsistent with the objectives of removing inactive permits and limiting increases in the harvesting capacity of the fleet.

The draft HMS RIR/IRFA provides further discussion of the economic effects of all the alternatives considered in the draft HMS FMP.

To ensure that the impacts of the Amendment 1 to the Billfish FMP are fully analyzed, NMFS has prepared an IRFA pursuant to 5 U.S.C. 603 without regard to whether the proposed action would have a significant economic impact on a substantial number of small entities. A summary of the IRFA follows:

Adjustment to Billfish Retention Limit

NMFS proposes to institute a retention limit of one Atlantic billfish per vessel per trip with an additional provision that would reduce the retention limit for blue and/or white marlin to zero if landing limits for Atlantic blue marlin and/or white marlin are reached (26.2 mt and 2.48 mt, respectively). Cumulative landings would be determined from the most recent tournaments and from other state or federal data sources. Implementation of a zero retention limit, or just the possibility of such, may affect participation in Atlantic billfish tournaments. NMFS has received indications that tournaments may be canceled or may experience a significant reduction in participation if fishermen are not allowed to land a billfish that meets the legal size constraints. The zero retention limit provision was included in this proposed rule to avoid exceeding the 1997 ICCAT recommended landing levels for blue and white marlin. In other words, this measure would allow recreational fishermen to land billfish until the landing limits are reached. NMFS believes that this measure, while it may reduce tournament participation in the short-term, will aid in rebuilding the stocks, thus increasing participation in the long term.

NMFS considered other alternatives to reduce the landings of Atlantic billfish, including prohibiting possession of Atlantic billfish by all

U.S.-flagged recreational vessels. This alternative was not selected because it was considered to be too drastic in lowering landings unnecessarily. In addition, the mortality of Atlantic billfish recreationally caught by U.S. anglers is small relative to Atlantic-wide mortality levels. Thus, the short- and long-term negative economic impacts experienced by entities who rely on the billfish recreational fishery would exceed any advantages of this measure on rebuilding billfish stocks. This alternative would also put U.S. fishermen at a disadvantage compared with fishermen from other countries.

Another alternative considered would allow Atlantic blue marlin and Atlantic white marlin to be landed only during fishing tournaments and from charter vessels. All other recreational landings of Atlantic marlin (this alternative did not include sailfish) would be prohibited. Although this alternative might minimize any negative economic impacts on tournament sponsors and charter vessel owners, NMFS rejected this alternative because it would have a discriminatory impact on private vessels operating outside tournaments.

The last alternative considered would prohibit landing of billfish in conjunction with a tournament to be released (i.e., require all tournaments to be ''no-kill''). Atlantic billfish could still be landed during other recreational efforts. NMFS believes that this alternative would not reduce Atlantic billfish landings or economic impacts because Atlantic billfish tournaments are currently moving toward alternative means to measure angler success in catching billfish.

Adjustment to a Higher Minimum Size Limit

NMFS considered other alternatives to reduce the landings of Atlantic billfish, including the minimum sizes implemented in the interim rule. This alternative would also provide NMFS the authority to increase the minimum size limits in season, rather than decreasing the retention limits to ensure compliance with the ICCAT landings limits for marlins. NMFS believes that this alternative could restrict landings to the allowable level without undue economic impacts because very large Atlantic billfish could still be landed in tournaments or for mounting purposes by private anglers. In this way, the potential for landing a very large billfish would still provide an incentive for fishing activity. Implementation of this alternative would require an accurate monitoring system for NMFS to provide sufficient notice of size limit adjustments to tournaments.

The draft RIR/IRFA for Amendment 1 to the Billfish FMP provides further discussion of the economic impacts of all the alternatives considered.

This proposed rule contains new and revised collection-of-information requirements, subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), and restates several current requirements. The new and revised collections have been submitted to OMB for approval. In particular, six new reporting requirements would include position reports from a vessel-monitoring system for all pelagic longline vessels; gear marking and vessel identification requirements for longline and shark net gear, and for handgear and harpoon floats; permits for all HMS Charter/Headboat vessels; observer requirements for HMS Charter/Headboat vessels if selected; logbooks for all Atlantic tuna vessels and HMS Charter/Headboat vessels; and revised reporting procedures for EFPs. The following requirements have been approved by OMB or have been submitted to OMB for approval:

1. Requirement for HMS Charter/Headboat Permits in § 635.4, estimated at 30 minutes per initial permit application and 6 minutes per renewal, has been submitted for OMB clearance in association with this proposed rule. However, no additional burden is anticipated as nearly all HMS charter/headboats are permitted under currently approved permitting collections (0648–0202; 0648–0205; 0648–0327), any of which will serve to meet this requirement.

2. Atlantic tunas vessel permits in § 635.4 (approved under OMB control number 0648–0327), estimated at 30 minutes per initial permit application and 6 minutes per renewal; and Atlantic tunas dealer permits in § 635.4 (approved under OMB control number 0648–0202), estimated at 5 minutes per permit action.

3. Shark and swordfish vessel permits in § 635.4 (approved under OMB control number 0648–0205), estimated at 20 minutes per permit action; and shark and swordfish dealer permits in § 635.4 (approved under OMB control number 0648–0205), estimated at 5 minutes per permit action. Importer permitting requirements for swordfish in § 635.4, estimated at 5 minutes per application, for which a proposed rule published on October 13, 1998 (63 FR 54661), have since been approved by OMB under 0648–0205.

4. Dealer reporting and recordkeeping requirements for Atlantic bluefin tuna in § 635.5 (approved under OMB control number 0648–0239), estimated at 3 minutes for daily reports, 14 minutes per bi-weekly report of fish purchases, and 1 minute to affix tags and label containers.

5. Dealer reporting and recordkeeping requirements for swordfish, sharks, and Atlantic tunas in § 635.5 (approved under OMB control numbers 0648–0013 and/or 0648–0239) estimated at 15 minutes per bi-weekly report of fish purchases and 3 minutes per negative report. Importer reporting requirements for swordfish in § 635.5, estimated at 15 minutes per bi-weekly report, for which a proposed rule published on October 13, 1998 (63 FR 54661), have since been approved by OMB under 0648–0013.

6. Vessel reporting and recordkeeping requirements for swordfish and sharks in § 635.5 (currently approved under OMB control number 0648–0016) estimated at 10 minutes per logbook entry, including the attachment of tally sheets, and 2 minutes for ''no-fishing'' reports. NMFS has submitted a request to OMB for vessel reporting requirements for Atlantic tunas and HMS charter boats in § 630.5 estimated at 12 minutes per logbook entry and 2 minutes for a negative catch report. NMFS intends to randomly select 10 percent of the tuna vessels and all HMS charter boats on an annual basis. While NMFS intends to consolidate HMS logbooks under a new information collection, there will be an initial trial period for tuna vessels and HMS charter/headboats with the pelagic logbook forms currently approved under 0648–0016. After evaluation of the program, NMFS will request OMB approval to issue logbooks tailored to the specific reporting requirements of individual fishery segments

7. Fishing tournament registration and selective reporting in § 635.5 (approved under OMB control number 0648–0323) estimated at 10 minutes per report.

8. Swordfish and shark limited access permit documentation requirements in § 635.16 (approved under OMB control number 0648–0325) estimated at 1.5 hours per response.

9. Vessel identification requirements for permitted HMS vessels in § 635.6 estimated at 45 minutes per vessel, have been submitted to OMB for approval.

10. HMS gear marking requirements in § 635.6, estimated at 15 minutes per action and pertaining to longline gear (terminal floats and hi-flyers), shark nets (terminal floats) and harpoon and handgear floats, have been submitted to OMB for approval.

11. Notification for at-sea observer requirements for Atlantic tuna, swordfish, and shark vessels in § 635.7, estimated at 2 minutes per response, has

been consolidated and submitted for OMB approval.

12. Position reporting and communication from a vessel monitoring system in § § 635.9 and 635.69, estimated at 0.033 seconds per position report or 5 minutes per vessel per year, 4 hours for installation, and 2 hours for annual maintenance, has been submitted to OMB for clearance.

13. BFT purse seine inspection requests in § 635.21 (approved under OMB control number 0648–0202) estimated at 5 minutes per request.

14. Angler reporting of trophy BFT in § 635.23 (approved under OMB control number 0648–0239) estimated at 3 minutes per report, and Angler reporting of school and medium tuna in § 635.5 (approved under OMB control number 0648–0328) estimated at 5 minutes per response.

15. HMS catch and release program requirements in § 635.26 (approved under OMB control number 0648–0247) estimated at 2 minutes per tagging card.

16. Documentation requirements for sale of billfish in § 635.31 (approved under OMB control number 0648–0216) estimated at 20 minutes for dealers purchasing from vessels and 2 minutes for subsequent purchasers.

17. Swordfish Certificate of Eligibility in § 635.46, estimated at 60 minutes per document, for which a proposed rule published on October 13, 1998 (63 FR 54661), has since been approved under OMB control number 0648-0363. Bluefin Tuna Statistical Document in § 635.42 (approved under OMB control number 0648–0040) estimated at 20 minutes per document.

18. Revised application and reporting requirements under EFPs in § 635.32, estimated at 30 minutes per application, 5 minutes per fish collection report, and 30 minutes per annual summary report, have been submitted for OMB clearance.

19. Archival tag reporting requirements in § 635.33, estimated at 1.5 hours for implantation reports and 30 minutes per fish catch report, have been approved by OMB under control number 0648–0338.

20. Bluefin tuna statistical documents in § 635.42, estimated at 20 minutes per fish import report, and government validation of BSDs in § 635.44, estimated at 2 hours per occurrence, have been approved by OMB under control number 0648–0040.

Written requests for purse seine allocations for Atlantic tunas as required under § 635.27 are not currently approved by OMB. Requests for purse seine allocations are not subject to the PRA because, under current regulations, a maximum of five vessels could be subject to reporting under this requirement. Since it is impossible for 10 or more respondents to be involved, the information collection is exempt from the PRA clearance requirement.

Certificate of eligibility requirements for imports of fish subject to trade restrictions under § 635.40 are not currently approved by OMB. These regulations were required under ATCA and were originally issued prior to the enactment of the PRA. NMFS would consult with OMB prior to implementing any trade restrictions under this section. While ATCA and the implementing regulations at § 635.40 authorize unilateral trade action by the United States, it is more likely that multilateral action would be taken upon a recommendation of ICCAT. In such case, notice and comment rulemaking procedures under ATCA would apply and OMB clearance for information collections would be requested prior to issuance of a proposed rule.

Public comment is sought regarding whether these proposed new or revised collections-of-information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Highly Migratory Species Management Division and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a 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.

NMFS initiated formal consultation for all HMS fisheries on September 25, 1996, under section 7 of the ESA. NMFS requested an additional formal consultation on the HMS FMP and Billfish Amendment on May 12, 1998. The consultation request concerned the possible effects of management measures in the Amendment 1 to the Billfish FMP and the HMS FMP, including implementation of AOCTRP measures for the pelagic longline fishery. In a BO issued on May 29, 1997, NMFS concluded that operation of the harpoon fishery is not likely to adversely affect the continued existence of any endangered or threatened species under NMFS jurisdiction and that operation of the longline fishery may adversely affect, but may not jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. Conversely, it was concluded that driftnet fishing for swordfish in the Northeast and Mid-Atlantic and for sharks in the Southeast jeopardized the continued existence of the northern right whale. NMFS proposed on October 20, 1998 (63 FR 55998), to prohibit the use of driftnets in the Atlantic swordfish fishery. Another rulemaking implemented a take reduction plan for Atlantic large whales in the southeastern United States under the MMPA (62 FR 39157, July 22, 1997). This proposed rule, if implemented, would further reduce the likelihood of interactions between HMS fishing gears and northern right whales and endangered sea turtles through gear modifications and educational workshops for pelagic longline fishermen that were recommended by the AOCTRT.

This proposed rule has been determined to be significant for purposes of E.O. 12866.

List of Subjects

50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

50 CFR Parts 600, 630, 635, 644, and 678

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: January 12, 1999.

Rolland A. Schmitten,

Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR chapters II and VI are proposed to be amended as follows:

50 CFR Chapter II

PART 285—ATLANTIC TUNAS FISHERIES [REMOVED]

1. Under the authority of 16 U.S.C. 971 *et seq.*, part 285 is removed.

50 CFR Chapter VI

PART 630—ATLANTIC SWORDFISH FISHERY [REMOVED]

PART 644—ATLANTIC BILLFISHES [REMOVED]

PART 678—ATLANTIC SHARKS [REMOVED]

2. Under the authority of 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*, parts 630, 644, and 678 are removed.

PART 600–MAGNUSON-STEVENS ACT PROVISIONS

3. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

4. In § 600.10, the definitions for ''Albacore'', ''Angling'', ''Atlantic tunas'', ''Atlantic Tunas Convention Act'', ''Bigeye tuna'', ''Billfish'', ''Bluefin tuna'', ''Blue marlin'', ''Carcass'', ''Catch limit'', ''Charter vessel'', ''Fillet'', ''Fish weir'', ''Headboat'', ''Land'', ''Longbill spearfish'', ''Pelagic longline'', ''Person'', ''Postmark'', ''Pound net'', ''Purchase'', ''Round'', ''Sailfish'', ''Sale or sell'', ''Shark net'', ''Skipjack tuna'', ''Strikenet for sharks'', ''Swordfish'', ''Trip'', ''White marlin'', and ''Yellowfin tuna'' are added in alphabetical order to read as follows:

§ 600.10 Definitions.

* * * * *

Albacore means the species *Thunnus alalunga*, or a part thereof.

* * * * *

Angling means fishing for or catching of, or the attempted fishing for or catching of, fish by any person (angler) with a hook attached to a line that is hand-held or by rod and reel made for this purpose.

* * * * *

Atlantic tunas means bluefin tuna, albacore, bigeye tuna, skipjack tuna and yellowfin tuna found in the Atlantic Ocean.

Atlantic Tunas Convention Act means the Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971h.

* * * * *

Bigeye tuna means the species *Thunnus obesus*, or a part thereof.

Billfish means blue marlin, longbill spearfish, sailfish, or white marlin.

Bluefin tuna means the species *Thunnus thynnus*, or a part thereof.

Blue marlin means the species *Makaira nigricans*, or a part thereof.

Carcass means a fish that has been gilled and/or gutted and the head and some or all fins have been removed, but that is otherwise in whole condition.

Catch limit means the total allowable harvest or take from a single fishing trip or day, as defined in this section.

* * * * *

Charter vessel means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire.

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Fillet means to remove slices of fish flesh from the carcass by cuts made parallel to the backbone.

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Fish weir means a large catching arrangement with a collecting chamber that is made of non-textile material (wood, wicker) instead of netting as in a pound net.

* * * * *

Headboat means a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire.

* * * * *

Land means to begin offloading fish, to offload fish, or to arrive in port or at a dock, berth, beach, seawall, or ramp.

Longbill spearfish means the species *Tetrapturus pfluegeri*, or a part thereof.

* * * * *

Pelagic longline means a suspended monofilament longline with greater than 3 hooks or leaders that is supported along its length by floats and is marked on the surface by high-flyers. It is a rebuttable presumption that a longline marked with floats and high-flyers in water depths greater than 50 fathoms (91 m) is a pelagic longline.

Person means any individual, partnership, corporation, or association subject to the jurisdiction of the United States.

* * * * *

Postmark means independently verifiable evidence of the date of mailing, such as a U.S. Postal Service postmark, United Parcel Service, or other private carrier postmark, certified mail receipt, overnight mail receipt, or a receipt issued upon hand delivery to a representative of NMFS authorized to collect fishery statistics.

Pound net means a set net. The trap portion is composed of netting with a vertical side, a top, a cover, and non-return valves fitted inside. This may be moored with anchors and casks and held open with stretcher poles or floats.

* * * * *

Purchase means the act or activity of buying, trading, or bartering, or attempting to buy, trade, or barter.

* * * * *

Round means a whole fish—one that has not been gilled, gutted, beheaded, or definned.

* * * * *

Sailfish means the species *Istiophorus platypterus*, or a part thereof.

Sale or *sell* means the act or activity of transferring property for money or credit, trading, or bartering, or attempting to so transfer, trade, or barter.

* * * * *

Shark net, sometimes called a shark gillnet or shark driftnet, means a flat net with webbing of 5 inches or greater stretched mesh and a twine size of 0.52 mm diameter or greater. The shark net is unattached to the ocean bottom, whether or not it is attached to a vessel, and it is designed to be suspended vertically in the water to entangle the head or other body parts of a shark that attempts to pass through the meshes.

Skipjack tuna means the species *Katsuwonus pelamis*, or a part thereof.

* * * * *

Strikenet for sharks means to fish with strikenet gear and to land or have on board an amount of shark that exceeds the recreational catch limit.

* * * * *

Swordfish means the species *Xiphias gladius*, or a part thereof.

* * * * *

Trip means the time period that begins when a fishing vessel departs from a dock, berth, beach, seawall, ramp, or port to carry out fishing operations and that terminates with a return to a dock, berth, beach, seawall, ramp, or port.

* * * * *

White marlin means the species *Tetrapturus albidus*, or a part thereof.

Yellowfin tuna means the species *Thunnus albacares*, or a part thereof.

5. Section 600.15 is amended by redesignating paragraphs (a)(2) through (a)(6) as paragraphs (a)(5) through (a)(9), by redesignating paragraphs (a)(7) through (a)(11) as paragraphs (a)(11) through (a)(15), and by adding paragraphs (a)(2) through (a)(4) and paragraph (a)(10) to read as follows:

§ 600.15 Other acronyms.

(a) * * *

(2) *ATCA*–Atlantic Tunas Convention Act

(3) *BFT* (Atlantic bluefin tuna) means the subspecies of bluefin tuna, *Thunnus thynnus thynnus*, or a part thereof, that is found in the Atlantic Ocean.

(4) *BSD* means the ICCAT bluefin tuna statistical document.

* * * * *

(10) *ICCAT* means the International Commission for the Conservation of Atlantic Tunas.

* * * * *

6. Part 635 is added to read as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

Subpart A—General
Sec.
635.1 Purpose and scope.
635.2 Definitions.
635.3 Relation to other laws.

635.4 Permits and fees.
635.5 Recordkeeping and reporting.
635.6 Vessel and gear identification.
635.7 At-sea observer coverage.
635.8 Educational workshops.
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Appendix A to Part 635—Species Tables

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 635.1 Purpose and scope.

(a) *Atlantic tunas, billfish, and swordfish*. The regulations in this part govern the conservation and management of Atlantic tunas, billfish, and Atlantic swordfish under the authority of the Magnuson-Stevens Act and ATCA. They implement the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and in the Fishery Management Plan for Atlantic Billfishes. The Atlantic tunas regulations govern conservation and management of Atlantic tunas in the management area and apply to a person or vessel subject to the jurisdiction of the United States. The Atlantic billfish regulations govern conservation and management in the management area and apply to a person or vessel subject to the jurisdiction of the United States. The swordfish regulations govern conservation and management of North and South Atlantic swordfish in the management unit. North Atlantic swordfish are managed under the authority of both ATCA and the Magnuson-Stevens Act. South Atlantic swordfish are managed under the sole authority of ATCA. The swordfish regulations apply to a person or vessel subject to the jurisdiction of the United States.

(b) *Shark*. The regulations in this part govern sharks under the authority of the Magnuson-Stevens Act and implement management measures in the Fishery Management Plan for Atlantic HMS. The shark regulations in this part govern conservation and management of sharks in the management area and apply to a person or vessel subject to the jurisdiction of the United States.

§ 635.2 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, ATCA, and § 600.10 of this chapter, the terms used in this part have the following meanings:

Archival tag means a device that is implanted or affixed to a fish to electronically record scientific information about the migratory behavior of that fish.

Atlantic HMS means Atlantic tunas, billfish, oceanic sharks, and swordfish.

Atlantic Ocean, as used in this part, includes the North and South Atlantic Oceans, the Gulf of Mexico, and the Caribbean Sea.

Bottom longline means a monofilament longline with greater than 3 hooks or leaders that is maintained on the ocean floor along its length by weights and is marked on the surface by marker buoys and/or high flyers.

BSD tag means the numbered tag affixed to a BFT issued by any country in conjunction with a catch statistics information program and recorded on a BSD.

Cape Cod Bay closed area means the area bounded by lines connecting the following coordinates: 42°04.8' N. lat., 70°10' W. long.; 42°12' N' lat., 70°15' W. long; 42°12' N. lat., 70° 30' W. long.; 41°46.8' N. lat., 70°30' W. long.; and on the south and east by the interior shore line of Cape Cod, MA.

Certificate of Eligibility (COE) means the certificate that accompanies a shipment of imported swordfish indicating that the swordfish or swordfish parts are not from the Atlantic Ocean or if they are, are derived from a swordfish weighing more than 33 lb (15 kg) dw.

CFL (curved fork length) means the length of a fish measured from the tip of the upper jaw to the fork of the tail along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

CK means the length of a fish measured along the body contour, i.e., a curved measurement, from the cleithrum to the anterior portion of the caudal keel. The cleithrum is the semicircular bony structure at the posterior edge of the gill opening. The measurement must be made from the point on the cleithrum that provides the shortest possible measurement along the body contour.

Convention means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro, Brazil, on May 14, 1966, 20 U.S.T. 2887, TIAS 6767, including any amendments or protocols thereto, which are binding upon the United States.

Conventional tag means a numbered, flexible ribbon that is implanted or affixed to a fish that is released back into the ocean. The tag allows the identification of that fish in the event it is recaptured.

Dealer tag means the numbered, flexible, self-locking ribbon issued by NMFS for the identification of BFT sold to a permitted dealer as required under § 635.5 (b)(2)(ii).

Dehooking device means a device intended to remove a hook imbedded in a fish in order to release the fish with minimum damage.

Downrigger means a piece of equipment attached to a vessel and with a weight on a cable that is in turn attached to hook-and-line gear to maintain lures or bait at depth while trolling, and that has a release system to retrieve the weight by rod and reel or by manual, electric, or hydraulic winch after a fish strike on the hook-and-line gear.

Dress means to remove head, viscera, and fins, but does not include removal of the backbone, halving, quartering, or otherwise further reducing the carcass.

Dressed weight (dw) means the weight of a fish after it has been dressed.

EFP means an exempted fishing permit issued pursuant to § 600.745 of this chapter and to § 635.32.

Eviscerated means a fish that has only the alimentary organs removed.

Export means shipment of fish or fish products to a destination outside the customs territory of the United States for which a Shipper's Export Declaration (Customs Form 7525) is required. Atlantic HMS destined from one foreign country to another, which transits the United States and for which a Shipper's Export Declaration is not

required to be filed, will not be considered an export under this definition.

Exporter means the principal party responsible for effecting export from the United States as listed on the Shipper's Export Declaration (Customs Form 7525) or any authorized electronic medium available from U.S. Customs.

First transaction in the United States means the time and place at which the swordfish, is filleted, cut into steaks, or processed in any way that physically alters it after being landed in or imported into the United States.

Fishing record means all records of navigation and operations, as well as all records of catching, harvesting, transporting, landing, purchase, or sale.

Fishing vessel means any vessel engaged in fishing, processing, or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

Fishing year means—

(1) For Atlantic tunas, billfish, and swordfish—June 1 through May 31 of the following year; and

(2) For shark—January 1 through December 31.

FL (fork length) means the straight-line measurement of a fish from the tip of the snout to the fork of the tail. The measurement is not made along the curve of the body.

Florida Straits means the area off the east coast of Florida between 26° N. lat. and 28° N. lat. and 78° W. long. and 81° W. long.

Giant BFT means an Atlantic BFT measuring 81 inches (206 cm) CFL or greater.

Great South Channel closed area means the area bounded by lines connecting the following coordinates: 41°40' N. lat., 69°45' W. long.; 41°00' N. lat., 69°05' W. long.; 41°38' N. lat., 68°13' W. long.; and 42°10' N. lat., 68°31' W. long.

Highly migratory species (HMS) means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; oceanic sharks (listed in Appendix A to this part); white marlin; blue marlin; sailfish; and longbill spearfish.

ILAP means an initial limited access permit issued pursuant to § 635.4.

Import means the release of HMS from a nation's Customs' custody and entry into the territory of that nation. HMS are imported into the United States upon release from U.S. Customs' custody pursuant to filing an entry summary document (Customs Form 7501) or any authorized electronic medium. HMS destined from one foreign country to another, which transit the United States and for which an entry summary is not required to be filed, are not considered an import under this definition.

Importer, for the purpose of HMS imported into the United States, means the importer of record as declared on U.S. Customs Form 7501 or any authorized electronic medium.

Intermediate country means a country that exports to the United States HMS previously imported by that nation. Shipments of HMS through a country on a through bill of lading or in another manner that does not enter the shipments into that country as an importation do not make that country an intermediate country under this definition.

LAP means a limited access permit issued pursuant to § 635.4.

Large coastal shark means one of the species, or a part thereof, listed in paragraph (a) of Table 1 in Appendix A to this part.

Large medium BFT means a BFT measuring 73 to < 81 inches (185 to < 206 cm) CFL.

Large school BFT means a BFT measuring 47 to < 59 inches (119 to < 150 cm) CFL.

LJFL (lower jaw-fork length) means the straight-line measurement of a fish from the tip of the lower jaw to the fork of the caudal fin. The measurement is not made along the curve of the body.

Management area (1) For Atlantic tunas, blue marlin, longbill spearfish, and white marlin, means the Atlantic Ocean,

(2) For sailfish, means the Atlantic Ocean north of 5° N. lat. and west of 30° N. long.,

(3) For North Atlantic swordfish, means the Atlantic Ocean north of 5° N. lat.,

(4) For South Atlantic swordfish, means the Atlantic Ocean south of 5° N. lat., and

(5) For sharks, means the western north Atlantic ocean, including the Gulf of Mexico and the Caribbean Sea.

Mid-Atlantic Bight means the area off the mid-Atlantic states between 35° N. lat. and 43° N. lat. to 71° W. long.

Non-ridgeback shark means one of the species, or a part thereof, listed in paragraph (a)(2) of Table 1 in Appendix A to this part.

North Atlantic swordfish or north Atlantic Swordfish stock means those swordfish in the Atlantic Ocean north of 5° N. lat.

Office Director means the Director of the Office of Sustainable Fisheries, NMFS.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Pelagic shark means one of the species, or a part thereof, listed in paragraph (c) of Table 1 in Appendix A to this part.

PFCFL (pectoral fin curved fork length) means the length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

Prohibited shark means one of the species, or a part thereof, listed in paragraph (d) of Table 1 in Appendix A to this part.

Regional Administrator (RA) means the director of the NMFS Regional Office in either the Northeast region (Gloucester, MA) or the Southeast region (St. Petersburg, FL), whichever is applicable.

Restricted-fishing day (RFD) means a day, beginning at 0000 hours and ending at 2400 hours local time, during which a person aboard a vessel for whom a General Category Permit for Atlantic Tunas has been issued may not fish for, possess, or retain a BFT.

Ridgeback shark means one of the species, or a part thereof, listed in paragraph (a)(1) of Table 1 in Appendix A to this part.

School BFT means a BFT measuring 27 to < 47 inches (69 to < 119 cm) CFL.

Shark means one of the species, or a part thereof, listed in Tables 1 and 2 in Appendix A to this part.

Small coastal shark means one of the species, or a part thereof, listed in paragraph (b) of Table 1 in Appendix A to this part.

Small medium BFT means a BFT measuring 59 to < 73 inches (150 to < 185 cm) CFL.

South Atlantic swordfish or south Atlantic swordfish stock means those swordfish in the Atlantic Ocean south of 5° N. lat.

Southeastern United States closed area means the coastal waters between 28°00' N. lat. and 30°15' N. lat. from the coast to 5 nm (9 km) offshore; and coastal waters between 30°15' N. lat. and 31°15' N. lat. from the coast to 15 nm (28 km) offshore.

Tournament means any fishing competition involving Atlantic HMS in which participants must register or otherwise enter or in which a prize or award is offered for catching such fish.

Trip limit means the total allowable take from a single trip as defined in this section.

Weighout slip means a document provided by a person who weighs fish or parts thereof that are landed from a fishing vessel to the owner or operator of the vessel. A weighout slip for sharks prior to or as part of a commercial transaction involving shark carcasses or

fins must record the weights of carcasses and any detached fins. A document, such as a ''tally sheet,'' ''trip ticket,'' or ''sales receipt,'' that contains such information is considered a weighout slip.

Young school BFT means an Atlantic BFT measuring less than 27 inches (69 cm) CFL.

§ 635.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and in paragraphs (b) and (c) of this section.

(b) In accordance with regulations issued under the Marine Mammal Protection Act of 1972, as amended, it is unlawful for a commercial fishing vessel, a vessel owner, or a master or operator of a vessel to engage in fisheries for HMS in the Atlantic Ocean, unless the vessel owner or authorized representative has complied with specified requirements including, but not limited to, registration, exemption certificates, decals, and reports, as contained in part 229 of this title.

(c) General provisions on facilitation of enforcement, penalties, and enforcement policy applicable to all domestic fisheries are set forth in §§ 600.730, 600.735, and 600.740 of this chapter, respectively.

(d) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing, or exempted educational activity, as specified in § 600.745 of this chapter or in § 635.32.

§ 635.4 Permits and fees.

(a) *Permits.* (1) Each permit issued by NMFS authorizes certain activities, and persons may not conduct these activities from a vessel without the appropriate permit, unless otherwise authorized by NMFS.

(2) The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish for, take, retain, or possess any Atlantic HMS and must make such permit available for inspection upon request by NMFS. The owner or operator of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection, all valid vessel permits.

(3) Limited access vessel permits issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the takings provision of the Fifth Amendment of the U.S. Constitution. Rather, such permits represent only a harvesting privilege that may be revoked, suspended, or amended subject to the requirements of the Magnuson-Stevens Act or other applicable law.

(4) A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(5) A dealer permit issued under this section, or a copy thereof, must be available at each of the dealer's places of business. A dealer must present the permit or a copy for inspection upon the request of a NMFS-authorized officer.

(6) Upon transfer of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's Atlantic tunas, shark or swordfish permit to the receiving dealer. The permit must be presented prior to completing the landing report specified at § 635.5 (a)(1), (a)(2) and (b)(2)(i).

(7) *Sanctions and denials.* A permit issued under this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(8) *Alteration.* A vessel or dealer permit that is altered, erased, or mutilated is invalid.

(9) *Replacement.* NMFS will issue a replacement permit. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (h) of this section, may be charged for issuance of the replacement permit.

(b) *Fees.* NMFS may charge a fee for each application for a permit or each transfer or replacement of a permit. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified in the instructions provided with each application form. Each applicant must include the appropriate fee with each application or request for transfer or replacement. A permit will not be issued to anyone who fails to pay the fee.

(c) *HMS Charter/Headboat Permits.* (1) Vessels that are used as charter boats or headboats to fish for, take, retain, or possess any Atlantic HMS must be permitted to do so. Such permit requirement may be met by the HMS Charter/Headboat Permit issued under this § 635.4 or by a Charter/Headboat Permit issued under § § 622.4 or 648.4.

(2) The operator of a charter vessel or headboat that has been issued an HMS Charter/Headboat Permit must also have a valid merchant marine license or uninspected passenger vessel license while fishing for or possessing Atlantic HMS.

(d) *Atlantic Tunas Vessel Permits.* (1) The owner or operator of each vessel used to fish for or take Atlantic tunas or on which Atlantic tunas are retained or possessed must obtain, in addition to any other required permits, one and only one of six category permits: Angling, General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons on board a vessel with a valid Atlantic Tunas Vessel Permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, and size classes applicable to the permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel's valid permit is in the General, Harpoon, Charter/Headboat, Longline, Purse Seine, or Trap Category of the Atlantic Tunas Permit. Persons may not sell Atlantic tunas caught on board a vessel with a permit in the Angling Category.

(3) Except for purse seine vessels for which that permit has been issued under this section, a vessel owner may change the category of the vessel's permit no more than once each year and only from January 1 through May 15. From May 16 through December 31, the vessel's permit category may not be changed, regardless of a change in the vessel's ownership.

(4) An Atlantic Tunas Longline Category Permit can be obtained for a vessel only if the owner or operator of the vessel has both a shark directed or incidental catch limited access permit and a swordfish directed or incidental catch limited access permit.

(5) An owner of a vessel with an Atlantic Tunas Permit in the Purse Seine Category may transfer the permit to another vessel that he or she owns or to a vessel owned by someone else. In either case, a written request for transfer must be submitted to NMFS, to a designated address, accompanied by an application for the new vessel and the existing permit. NMFS will issue no more than 5 Atlantic Tunas Purse Seine Category Permits.

(e) *Commercial Shark Vessel Limited Access Permits.* (1) The owner or operator of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained or possessed with an intention to sell or that are sold must obtain, in addition to any other required permits, only one of two types of commercial limited access shark permits: shark directed limited access permit or shark incidental limited access permit. See § 635.16

regarding the initial issuance of these two types of permits. It is a rebuttable presumption that the owner or operator of a vessel on which sharks are possessed in excess of the recreational catch limits are intended to be sold.

(2) A commercial limited access permit for shark is not required if the vessel is recreational fishing under recreational catch limits, is operating under a shark EFP, or is fishing exclusively within state waters.

(3) As of June 1, 1999, the only valid Federal commercial vessel permits for shark are those that have been issued under the limited access criteria specified in § 635.16.

(4) An owner or operator issued a permit pursuant to this part must agree, as a condition of such permit, that the vessel's shark fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the EEZ, landward of the EEZ, or outside the EEZ, and without regard to where such shark or gear are possessed, taken, or landed. However, when a vessel fishes in the waters of a state that has more restrictive regulations on shark fishing, those more restrictive regulations may be applied by that state in its waters.

(f) *Commercial Swordfish Vessel Limited Access Permits*. (1) The owner or operator of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained or possessed with an intention to sell or that are sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish permits: swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. See § 635.16 regarding the initial issuance of these three types of permits.

(2) A commercial Federal permit for swordfish is not required if the vessel is recreational fishing.

(3) As of June 1, 1999, the only valid commercial Federal vessel permits for swordfish are those that have been issued under the limited access criteria specified in § 635.16.

(4) A limited access permit for swordfish is valid only when the vessel has on board a valid commercial limited access permit for shark and an Atlantic Tunas Longline Category Permit.

(g) *Dealer permits*—(1) *Atlantic tunas*. A valid dealer permit for Atlantic tunas is required to receive, purchase, trade for, or barter for Atlantic tunas from a fishing vessel of the United States an Atlantic tuna or import or export bluefin tuna, regardless of origin.

(2) *Shark*. A valid dealer permit for shark is required to receive, purchase, trade for, or barter for an Atlantic shark from a fishing vessel of the United States.

(3) *Swordfish*. A valid dealer permit for swordfish is required to receive, purchase, trade for, or barter for an Atlantic swordfish from a fishing vessel of the United States or import a swordfish, regardless of origin.

(h) *Applications for permits*. Except for ILAPs, an owner or operator or dealer must submit a complete application and required supporting documents at least 30 days before the date on which the permit is to be made effective. Application forms and instructions for their completion are available from the Office Director (ILAP) or the RA (Dealer Permit and LAP).

(1) *Atlantic Tunas Vessel and HMS Charter/Headboat Permits*. (i) An owner must provide all information concerning his or her identification, vessel, gear used, fishing areas, fisheries participated in, the corporation or partnership owning the vessel, and income requirements requested by NMFS and included on the application form.

(ii) An owner must also submit a copy of the vessel's valid U.S. Coast Guard certificate of documentation or, if not documented, a copy of its valid state registration certificate and any other information that may be necessary for the issuance or administration of the permit as requested by NMFS. The owner must submit such information to a designated NMFS address.

(iii) NMFS may require an applicant to provide documentation supporting the application before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (a)(7) of this section.

(2) *Limited access permits for swordfish and shark*. See § 635.16 for the issuance of ILAPs for shark and swordfish. See paragraph (l) of this section for transfers of ILAPs and LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.

(3) *Dealer permits*. (i) An applicant for a dealer permit must provide all the information requested on the application form, including the company name, principal place of business, mailing address, and telephone number.

(ii) An applicant must also submit a copy of each state wholesaler's license held by the dealer and, if a business is owned by a corporation or partnership, the corporate or partnership documents (copy of Certificate of Incorporation and Articles of Association or Incorporation) along with the names, addresses, and telephone numbers of all shareholders owning 5 percent or more of the corporation's stock.

(iii) An applicant must also submit any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(i) *Change in application information*. A vessel owner or operator or dealer must report any change in the information contained in an application for a permit within 30 days after such change. The report must be submitted in writing to the Office Director or the RA. In the case of a vessel permit for Atlantic tunas or an HMS Charter/Headboat Permit, the vessel owner must report the change to NMFS by phone or internet. A new permit will be issued to incorporate the new information, subject to limited access provisions specified in paragraph (l)(2) of this section. For certain informational changes, NMFS may require supporting documentation before a new permit will be issued. If a change in the permit information is not reported within 30 days, the permit is void as of the 31st day after such change.

(j) *Permit issuance*. (1) Except for ILAPs, the Office Director or the RA will issue a permit within 30 days of receipt of a complete and qualifying application. An application is complete when all requested forms, information, and documentation have been received.

(2) NMFS will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(3) For issuance of ILAPs for shark and swordfish, see § 635.16.

(k) *Duration*. A permit issued under this section remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904, the vessel or dealership is sold, or any other information previously submitted on the application changes, as specified in paragraph (i) of this section.

(l) *Transfer*-- (1) *General*. A permit issued under this section is not transferable or assignable to another vessel or owner or operator, or dealer; it is valid only for the vessel and owner or operator, or dealer to which it is issued. If a person acquires a vessel or dealership and wants to conduct activities for which a permit is required, that person must apply for a permit in accordance with the provisions of paragraph (h) of this section; if the acquired vessel is permitted in the

Atlantic tunas fishery in the Purse Seine Category, in accordance with paragraph (d)(5) of this section; or, if the acquired vessel is permitted in either the shark or swordfish fishery, in accordance with paragraph (l)(2) of this section. If the acquired vessel or dealership is currently permitted, an application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

(2) *Shark and swordfish commercial limited access permits.* (i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (l)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section, an owner or operator may transfer a shark or swordfish ILAP or LAP to another vessel that he or she owns or to a vessel owned by another person. Directed handgear ILAPs and LAPs may be transferred to another vessel but only for use with handgear and subject to upgrading restrictions in paragraph (l)(2)(ii) of this section. Incidental catch ILAPs and LAPs are not subject to the requirements specified in paragraphs (l)(2)(ii) and (iii) of this section.

(ii) Limitations are imposed on upgrading the fishing capacity of vessels that have commercial permits for shark or swordfish. These limitations apply to a permitted vessel or to a transfer or replacement vessel when the permit is transferred. Specifically, an owner or operator may not upgrade the permitted vessel or transfer the permit to another vessel if the upgrade or transfer results in an increase in horsepower of more than 20 percent, or an increase in length overall, gross registered tonnage, net tonnage, or hold capacity of more than 10 percent from the horsepower, length overall, gross registered tonnage, net tonnage, or hold capacity of the vessel issued an ILAP. Only one upgrade in each of these vessel characteristics is allowed. Upgrades to a vessel=s length overall, gross registered tonnage, net tonnage, or hold capacity must be made at the same time. However, an upgrade in horsepower may be made separately from an upgrade in the other vessel characteristics listed here.

(iii) No person may own or control more than 5 percent of the vessels that have swordfish directed commercial permits or more than 5 percent of the vessels that have shark directed commercial permits.

(iv) For ILAP or LAP transfers to a replacement vessel, an owner of a vessel issued an ILAP or LAP pursuant to this part must request the RA to transfer the ILAP or LAP to another vessel owned by the same owner, subject to requirements specified in paragraph (l)(2)(ii) of this section, if applicable. The owner must return the current valid ILAP or LAP to the RA with a complete application for a LAP, as specified in paragraph (h) of this section, for the replacement vessel. Copies of both vessels' documentation or state registration must accompany a completed application.

(v) For ILAP or LAP transfers to a different person, the transferee of an ILAP or LAP must request the RA to transfer the original ILAP or LAP, subject to requirements specified in paragraphs (l)(2)(ii) and (iii) of this section, if applicable. The following must accompany the completed application: The original ILAP or LAP with signatures of both parties on the back of the permit, the bill of sale of the ILAP or LAP, and copies of both vessels' documentation or state registration.

(vi) For ILAP or LAP transfers with the sale of the permitted vessel, the transferee of the vessel and ILAP or LAP issued to that vessel must request the RA to transfer the ILAP or LAP, subject to requirements specified in paragraphs (l)(2)(ii) and (iii) of this section, if applicable. The following must accompany the completed application: The original ILAP or LAP with signatures of both parties on the back of the permit, the bill of sale of the ILAP or LAP and the vessel, and a copy of the vessels' documentation or state registration.

(vii) The owner or operator of a vessel issued an ILAP or LAP who sells the permitted vessel, but retains the ILAP or LAP, must notify the RA within 30 days after the sale of the change in application information in accordance with paragraph (i) of this section. If the owner or operator wishes to transfer the ILAP or LAP to a replacement vessel, he/she must apply and follow the procedures in paragraph (l)(2)(iv) of this section.

(viii) As specified in paragraph (f)(4) of this section, a directed or incidental ILAP or LAP for swordfish, a directed or an incidental catch ILAP or LAP for shark, and an Atlantic tuna Longline category permit are required to fish in the swordfish fishery. Accordingly, a LAP for swordfish obtained by transfer without either a directed or incidental catch shark LAP or an Atlantic Tunas Longline Category Permit will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.

(m) *Renewal*—(1) *General.* Persons must apply annually for a vessel or dealer permit for Atlantic tunas, sharks, swordfish and HMS Charter/Headboats. A renewal application must be submitted to the RA at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit provided that the specific requirements for the requested permit are met, all reports required under the Magnuson-Stevens Act have been submitted, including those described in § 635.5, and the applicant is not subject to a permit sanction or denial under paragraph (a)(7) of this section.

(2) *Limited access permits for shark and swordfish.* As of June 1, 2000, the owner or operator of a vessel of the United States that fishes for, possesses, lands, or sells shark or swordfish from the management unit, or takes or possesses such shark or swordfish as incidental catch, must have a LAP issued pursuant to the requirements in § 635.4(e) and (f). However, any ILAP that expires June 30, 2000, is valid through that date. Only valid ILAP or LAP holders in the preceding year are eligible for a LAP.

§ 635.5 Recordkeeping and reporting.

(a) *Vessels*—(1) *Logbooks.* If an owner or operator of an HMS Charter/Headboat vessel, an Atlantic Tunas vessel, or a commercial shark or swordfish vessel, for which a permit has been issued under § 635.4 (a),(c),(d), (e), and (f) respectively, is selected in writing by NMFS, he must maintain a fishing record on a logbook specified by NMFS. Entries are required on the vessel's fishing effort, and the number of fish landed and discarded. Entries on a day's fishing activities must be entered on the form within 24 hours and, for a 1-day trip, before offloading. The owner or operator must submit the form postmarked within 7 days of offloading all Atlantic HMS.

(2) *Weighout slips.* If an owner or operator is required to maintain and submit logbooks under paragraph (a)(1) of this section, and Atlantic HMS harvested on a trip are sold, the owner or operator must obtain and submit copies of weighout slips for those fish. Each weighout slip must show the dealer to whom the fish were transferred, the date they were transferred, and the carcass weight of each fish for which individual weights are normally recorded. For fish that are not individually weighed, a weighout slip must record total weights by species and market category. The owner or operator must also submit copies of weighout slips with the logbook forms required under paragraph (a)(1) of this section.

(b) *Dealers.* Persons who have been issued a dealer permit under § 635.4, must submit reports to NMFS (as prescribed by NMFS) and maintain records as follows:

(1) *Atlantic HMS other than BFT*. (i) Dealers must report Atlantic tunas (including BFT), Atlantic swordfish and swordfish imports, and Atlantic sharks received on the first through the 15th of each month; the report must be submitted to NMFS postmarked not later than the 20th of that month. Reports of such fish received on the 16th through the last day of each month must be postmarked not later than the 5th of the following month. If a dealer did not receive Atlantic tunas, swordfish or swordfish imports, or sharks during a reporting period, he must submit a report to a designated NMFS address so stating, and the report must be postmarked as specified for the reporting period.

(ii) The reporting requirement of paragraph (b)(1)(i) of this section may be satisfied by a dealer if he provides a copy of each appropriate weighout slip and/or sales record, provided such weighout slip and/or sales record by itself or combined with the form available from NMFS includes all of the required information and identifies fish to the species level.

(iii) In lieu of providing a report required under paragraph (b)(1)(i) of this section to NMFS by mail, the dealer may give the report to a state or Federal fishery port agent designated by NMFS. A report given to such port agent must be delivered not later than the prescribed postmark date for the reporting period.

(2) *BFT*—(i) *Reports of BFT*. The dealer must submit a completed landing report to a designated NMFS location by electronic facsimile (fax) or an Interactive Voice Response System on BFT received not later than 24 hours from receipt. The landing report must be signed by the permitted vessel's owner or operator immediately upon transfer of the fish and must verify the name and permit number of the vessel that landed the fish. The dealer must inspect the vessel's permit to verify that the required vessel name and vessel permit number are correctly recorded on the landing report. In addition, the dealer must submit that landing report to the designated NMFS address postmarked within 24 hours of the purchase or receipt of each BFT. The dealer must also submit a biweekly report on forms supplied by NMFS. For BFT received on the first through the 15th of each month, the dealer must submit the biweekly report forms to NMFS postmarked not later than the 20th of that month. Reports of receipt of such BFT received on the 16th through the last day of each month must be postmarked not later than the 5th of the following month.

(ii) *Dealer Tags*. NMFS will issue numbered dealer tags to each person issued a dealer permit for Atlantic tunas under § 635.4. A dealer tag is not transferable and is usable only by the dealer to whom it is issued. Dealer tags may not be reused once affixed to a tuna or recorded on a package, container, or report.

(A) *Affixing dealer tags*. A dealer or a dealer's agent must affix a dealer tag to each BFT purchased or received immediately upon its offloading from a vessel. The dealer or dealer's agent must affix the tag to the tuna between the fifth dorsal finlet and the keel.

(B) *Removal of dealer tags*. A dealer tag affixed to any BFT under paragraph (b)(2)(ii)(A) of this section or a BSD tag affixed to an imported BFT must remain on the tuna until the tuna is cut into portions. If the BFT or BFT parts subsequently are packaged for transport for domestic commercial use or for export, the dealer or BSD tag number must be written legibly and indelibly on the outside of any package or container. Such tag number must be recorded on any document accompanying shipment of BFT for commercial use or export.

(3) *Recordkeeping*. Dealers must retain at their place of business a copy of each written report required under paragraphs (b)(1)(i) and (b)(2)(i) of this section for a period of 2 years from the date on which each report was required to be submitted.

(c) *BFT not sold*. (1) Except as specified in paragraph (c)(2) of this section, persons that catch and land a large medium or giant BFT and do not transfer it to a dealer who has a dealer permit for Atlantic tunas, must contact NMFS enforcement at the time of landing such BFT and, if requested, make the tuna available so that a NMFS enforcement agent may inspect the fish and attach a tag to it.

(2) Persons that catch and land a large medium or giant BFT that is counted against the Angling category quota must report it through the automated catch reporting system by calling 1–888–USA-TUNA. In any state where a NMFS or state-level harvest tag or catch-card reporting program is in effect for school, large school, or small medium BFT, such tags must also be used on large medium and giant BFT reported under this paragraph (c)(2).

(d) *Anglers*. In addition to the requirements in paragraph (c) of this section, the owner of a vessel that has an Angling category permit for Atlantic tunas will be notified by NMFS of the reporting requirements and procedures for school, large school, and small medium BFT. Alternative reporting procedures may be established by NMFS in cooperation with states and may include telephone, dockside or mail surveys, mail-in or phone-in reports, tagging programs, or mandatory BFT check-in stations. A statistically based sampling of persons fishing under the Angling category may be used for these alternative reporting programs. Once notified by NMFS of the reporting requirmeents and procedures, each person so notified must comply with those requirements and procedures.

(e) *Tournament operators*. Persons that conduct a fishing tournament involving scores or awards for the catch of Atlantic HMS, whether or not retained, from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, must notify NMFS of the purpose, dates, and location of the tournament at least 4 weeks prior to commencement of the tournament. If selected for reporting, a tournament operator must maintain and submit to a designated NMFS address a record of catch and effort on forms available from NMFS. Completed forms must be submitted to NMFS postmarked not later than the 7th day after the conclusion of the tournament and must be accompanied by a copy of the tournament rules.

(f) *Inspection*. Any person authorized to carry out enforcement activities under the regulations in this part has authority, without warrant or other process, to inspect, at any reasonable time, catch on board a vessel or on the premises of a dealer, logbooks, catch reports, statistical records, sales receipts, or other records and reports required by this part to be made, kept, or furnished. An owner or operator of a fishing vessel that has been issued a permit under § 635.4 must allow NMFS to inspect and copy any required reports and the records, in any form, on which the completed reports are based. A dealer who has been issued a permit under § 635.4 must allow NMFS to inspect and copy any required reports and the records, in any form, on which the completed reports are based.

(g) *Additional data and inspection*. Additional data on Atlantic HMS may be collected by statistical reporting agents, as designees of NMFS, and by authorized officers. A person who fishes for or possesses an Atlantic HMS is required to make such fish or parts thereof available for inspection by NMFS upon request.

§ 635.6 Vessel and gear identification.

(a) *Vessel number*. For the purposes of this section, a vessel's number is either the vessel's official number issued by the U.S. Coast Guard or an analogous state agency.

(b) *Vessel identification*. (1) An owner or operator of a vessel for which a permit has been issued under § 635.4, must display the vessel's number—

(i) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(ii) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(iii) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) long and at least 10 inches (25.4 cm) in height for all other vessels.

(2) The owner or operator of a vessel for which a permit has been issued under § 635.4 must keep the vessel's number clearly legible and in good repair and ensure that no part of the vessel, its rigging, its fishing gear, or any other material on board obstructs the view of the vessel's number from an enforcement vessel or aircraft.

(c) *Gear identification*. (1) The owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses a handline, harpoon, longline, or shark net, must display the vessel's registration number or Atlantic Tunas permit number on each float attached to a handline or harpoon and on the terminal end floats and high-flyers (if applicable) on a longline or shark net used by the vessel. A high-flyer is a flag, radar reflector, or radio beacon transmitter attached to a longline. The vessel's number must be at least 1 inch (2.5 cm) in height in block arabic numerals in a color that contrasts with the background color of the float or high-flyer.

(2) An unmarked handline, harpoon, longline, or shark net is illegal and may be disposed of in an appropriate manner by NMFS or an authorized officer.

(3) Provisions on gear marking for the southeast U.S. shark driftnet fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in § 229.32 (b) of this title.

§ 635.7 At-sea observer coverage.

(a) NMFS may select for observer coverage any trip of a vessel that has a HMS Charter/Headboat permit, an Atlantic Tunas permit, or a shark or swordfish permit, issued under § 635.4 (a), (c), (d), (e), and (f), respectively. NMFS will advise a vessel owner, in writing, when his or her vessel is selected for observer coverage. The owner or operator of a vessel that is selected must notify NMFS before commencing any fishing trip that may result in the harvest of Atlantic HMS. Notification procedures will be specified in a selection letter sent by NMFS.

(b) The owner or operator of a vessel on which a NMFS-approved observer is embarked must comply with §§ 600.725 and 600.746 of this chapter and:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

§ 635.8 Educational workshops.

No later than June 1, 2000, each operator of a vessel that uses a pelagic longline to fish for Atlantic HMS must attend an educational workshop on measures to reduce the incidental catch of protected species. A certificate of attendance at such workshop must be available on such vessel and made available for inspection upon the request of NMFS.

§ 635.9 Vessel monitoring.

(a) An owner or operator of a vessel that fishes for Atlantic HMS with a pelagic longline must have an operating vessel monitoring system (VMS) unit on board each trip. Only VMS units that have been approved by NMFS for use in the fisheries for Atlantic HMS will meet this requirement.

(b) No person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit, or attempt any of the same.

(c) When a VMS unit fails, or when notified by NMFS that a unit appears to have failed, the vessel owner or operator must communicate to a designated NMFS location the vessel's position at least every 2 hours starting when the failure is discovered or NMFS's notification is received. Each position so reported must be communicated to NMFS within 2 hours of the time of the position. The vessel's owner or operator must replace or repair a failed VMS unit prior to the vessel's next trip.

Subpart B—Limited Access

§ 635.16 Limited access permits.

As of June 1, 1999, the only valid commercial vessel permits for shark and swordfish are those that have been issued under the limited access criteria specified in this section.

(a) *Eligibility requirements for ILAPs*—(1) *Directed permits*. To be eligible for a directed ILAP in the shark or swordfish fishery, a vessel owner or an operator that qualified that vessel for a Federal commercial permit must demonstrate past participation in the respective fishery by having:

(i) Been the owner or qualifying operator of a vessel that was issued a valid permit for the respective fishery at any time during the period July 1, 1994, through December 31, 1997; and

(ii) Documented landings from the respective Federally permitted vessel that he or she owned or was the qualifying operator of at least:

(A) One hundred and two sharks per year for any 2 calendar years during the period January 1, 1991, through December 31, 1997, provided the landings after July 1, 1993, occurred when the permit was valid; or

(B) Twenty-five swordfish per year for any 2 calendar years during the period January 1, 1987, through December 31, 1997, provided the landings occurred when the permit was valid; and

(iii) Been the owner or qualifying operator of a vessel that:

(A) Had a valid Federal shark permit at any time during the period July 1, 1998, through August 4, 1998, or

(B) Had a valid Federal swordfish permit at any time during the period June 1, 1998, through August 31, 1998.

(2) *Incidental catch permits*. To be eligible for an incidental ILAP in the shark or swordfish fishery, a vessel owner or an operator that qualified that vessel for a Federal commercial permit must demonstrate past participation in the respective fishery by having:

(i) Been the owner or qualifying operator of a vessel that was issued a valid permit for the respective fishery at any time during the period July 1, 1994, through December 31, 1997; and

(ii) Documented landings from the respective federally permitted vessel that he or she owned or was the qualifying operator of at least:

(A) Seven sharks during the period January 1, 1991, through December 31, 1997, provided the landings after July 1, 1993, occurred when the permit was valid; or

(B) Eleven swordfish during the period January 1, 1987, through December 31, 1997, provided the

landings occurred when the permit was valid; and

(iii) Been the owner or qualifying operator of a vessel that:

(A) Had a valid Federal shark permit at any time during the period July 1, 1998, through August 4, 1998, or

(B) Had a valid Federal swordfish permit at any time during the period June 1, 1998, through August 31, 1998; and

(iv) Met either the gross income from fishing or the gross sales of fish requirement specified in paragraph (a)(3)(i) or (ii) of this section; or

(v) Been the owner of a vessel that had a permit for Atlantic tuna in the Incidental category at any time from January 1, 1998, through August 31, 1998; or

(vi) Been the owner of a vessel that is eligible for a directed or incidental ILAP for swordfish.

(3) *Handgear permits*. To be eligible for a swordfish handgear ILAP—

(i) The owner's gross income from commercial fishing (i.e., harvest and first sale of fish) or from charter/headboat fishing must be more than 50 percent of his or her earned income, during one of the 3 calendar years preceding the application; or

(ii) The owner's gross sales of fish harvested from his or her vessel must have been more than $20,000, during one of the 3 calendar years preceding the application; or

(iii) The owner must provide documentation of having been issued a swordfish permit for use with harpoon gear; or

(iv) The owner must document his or her historical landings of swordfish with handgear through logbook records, verifiable sales slips or receipts from registered dealers or state landings records.

(b) *Landings histories*. For the purposes of the landings history criteria in paragraphs (a)(1)(ii) and (a)(2)(ii) of this section,

(1) The owner or qualifying operator of a permitted vessel at the time of a landing retains credit for the landing unless ownership of the vessel has been transferred and there is a written agreement signed by both parties to the transfer, or there is other credible written evidence that the original owner transferred the landings history to the new owner.

(2) A vessel's landings history may not be divided among owners. A transfer of credit for landings history must be for the entire record of landings under the previous owner or operator.

(3) Vessel landings histories may not be consolidated among vessels. Owners or operators may not pool landings histories to meet the eligibility requirements.

(4) If more than one person claims eligibility for an ILAP based on a vessel=s ownership or permit or landings history, the applicants claiming the ownership or permit or landings history must determine which person will receive the ILAP. NMFS will issue only one ILAP based on a vessel's ownership or permit or landings history.

(c) *Alternative eligibility requirements for initial permits*. (1) Persons that acquired ownership of a vessel and its landings history after December 31, 1997, are exempt from the requirement to have owned a federally permitted shark or swordfish vessel at any time during the period July 1, 1994, through December 31, 1997. The acquired landings history must meet the criteria for a directed or incidental catch permit specified in paragraph (a)(1)(ii)(A), (a)(1)(ii)(B), (a)(2)(ii)(A) or (a)(2)(ii)(B) of this section, and such persons must have had a valid Federal shark permit at any time during the period July 1, 1998, through August 4, 1998, or a valid Federal swordfish permit at any time during the period June 1, 1998, through August 31, 1998.

(2) If a person first obtained a shark or swordfish permit in 1997, the required shark landings for a directed or incidental catch permit specified in paragraphs (a)(1)(ii) and (a)(2)(ii) are modified as follows:

(i) To qualify for a directed shark or swordfish ILAP, respectively, such persons must document landings from a Federally permitted vessel of at least:

(A) One hundred and two sharks in calendar year 1997, provided such landings occurred when the permit was valid, or

(B) Twenty-five swordfish in calendar year 1997, provided such landings occurred when the permit was valid.

(ii) To qualify for an incidental shark or swordfish catch ILAP, respectively, such persons must document landings from a federally permitted vessel of at least one shark or swordfish in calendar year 1997, provided such landings occurred when the permit was valid.

(d) *Procedures for initial issue of limited access permits*—(1) *Notification of status*. (i) Shortly after the final rule is published, the Division Chief will notify by certified mail each owner or qualifying operator of a vessel that had a valid Federal shark permit during the period July 1, 1998, through August 4, 1998, each owner of a vessel that had a valid Federal swordfish permit during the period June 1, 1998, through August 31, 1998, and each owner of a vessel that had a valid Atlantic tuna Incidental category permit at any time from January 1, 1998, through August 31, 1998, of the initial determination of the owner's eligibility for a directed or incidental catch ILAP. The Division Chief will make the initial determination based on the criteria in paragraphs (a)(1), (a)(2), and (c)(2) of this section and records available to NMFS. The Division Chief will not make initial determinations of eligibility for a vessel permit under the alternative eligibility requirements specified in paragraph (a)(3) or (c)(1) of this section.

(ii) If NMFS determines that all qualifications for a directed or incidental catch ILAP have been met, no further action is required–the appropriate permit for the vessel will be included with the notification. An ILAP issued by NMFS will be valid through the marked expiration date.

(iii) A person must apply to the Division Chief for the appropriate permit if—

(A) He or she does not agree with the initial determination;

(B) He or she believes that he or she qualifies for a directed or incidental catch ILAP but did not receive a letter from the Division Chief regarding eligibility status; or

(C) He or she believes that he or she qualifies for a swordfish handgear permit.

(2) *Applications for ILAPs*. (i) Application forms and instructions are available from the Division Chief. A completed signed application form and required supporting documents must be submitted by the vessel owner or operator; or in the case of a corporate-owned vessel, an officer or shareholder; or in the case of a partnership-owned vessel, a general partner.

(ii) An application for a directed or incidental catch ILAP must be received by the Division Chief no later than 90 days after the final rule is published. An application for an initial swordfish handgear permit must be received by the Division Chief no later than 180 days after the final rule is published. An application received by the Division Chief after these dates will not be considered.

(iii) Each application must be accompanied by documentation showing that the criteria for the requested permit have been met. Vessel landings of sharks through June 30, 1993, may be documented by verifiable sales slips or receipts from registered dealers or by state landings records. Vessel landings of sharks after July 1, 1993, and all vessel landings of swordfish may be documented only by fishing vessel logbook records that NMFS received before March 2, 1998.

NMFS will not count a landing when the vessel did not have a valid Federal permit.

(iv) Information submitted on an application and documentation in support of an application are subject to verification by comparison with Federal, state, and other records and information. Submission of false information or documentation may result in disqualification from initial participation in the shark fishery and may result in Federal prosecution.

(v) If the Division Chief receives an incomplete application in a timely manner, NMFS will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the Division Chief's notification, the application will be considered abandoned.

(3) *Actions on applications*. Within 30 days of receipt of a complete application, the Division Chief will take one of the following actions:

(i) If the eligibility requirements are met, the Division Chief will issue the appropriate ILAP which will be valid through the marked expiration date.

(ii) If the information and documentation presented in the application are insufficient, inconsistent with vessel ownership, landings history, and other information available from NMFS' records, or cannot be verified, the Division Chief will notify the applicant that the information supplied is not adequate to warrant issuance of the requested permit. The applicant will have 30 days to submit to the Division Chief corroborating documents in support of the application or to submit a revised application.

(iii) If, based on the information and documentation supplied with the application, the Division Chief determines that the applicant does not meet the eligibility criteria for the requested vessel permit, the Division Chief will deny the application. Each letter of denial will be sent via certified mail. If, based on the documentation supplied, the Division Chief believes the applicant is qualified for an incidental catch vessel permit instead of the requested directed ILAP, he or she will notify the applicant of the denial of the requested directed ILAP but will issue the incidental catch ILAP.

(4) *Appeals*. (i) If an application for an ILAP is denied or an incidental catch ILAP is issued instead of the requested directed ILAP, the applicant may appeal the denial to the Office Director. The sole grounds for appeal is that the original denial by the Division Chief was based on incorrect or incomplete information. No other grounds will be considered. An appeal must be in writing, must be received by the Office Director within 90 days of the notice of denial, must specify the grounds for the appeal, and must include documentation supporting the grounds for the appeal. Documentation of vessel landings of sharks through June 30, 1993, that the Office Director may consider in support of an appeal are verifiable sales slips or receipts from registered dealers, or state landings records. The only documentation of vessel landings of sharks after July 1, 1993, that the Office Director will consider in support of an appeal are official NMFS logbook records that NMFS received prior to March 2, 1998. The Office Director will not accept vessel landings records of sharks dated after July 1, 1993, from periods in which a vessel did not have a valid Federal shark permit. The only documentation of vessel landings of swordfish that the Office Director will consider in support of an appeal are official NMFS logbook records that NMFS received prior to March 2, 1998. Photocopies of documentation (e.g., permits, logbook reports) will be acceptable for initial submission. The Office Director may request originals at a later date, which would be returned to the appellant via certified mail.

(ii) Upon receipt of a written appeal with supporting documentation, the Office Director may issue a provisional ILAP that is valid for the pendency of the appeal. This provisional permit will be valid only for use with the specified gear and will be subject to all regulations contained in this part.

(iii) The Office Director will appoint an appeals officer who will review the appeal documentation and other available records. The appeals officer will make findings and a recommendation, which shall be advisory only, to the Office Director.

(iv) The Office Director will make a final decision on the appeal and send the appellant notice of the decision by certified mail. The Office Director's decision is the final administrative action of the Department of Commerce on the application.

(v) If the appeal is denied, the provisional permit will become invalid 5 days after receipt of the notice of denial, which NMFS will send by certified mail. If the appeal is accepted, NMFS will issue an appropriate permit.

(5) *Contested eligibility criteria*. If more than one person claims eligibility for an ILAP based on contested vessel's ownership, permit, or landings histories, the owners or operators claiming the ownership/permit/landings histories must determine which person will receive the ILAP. The Division Chief or Office Director will issue only one permit based on a vessel's ownership/permit/landings histories. In the event that the parties are unable to reach resolution, NMFS will not issue a permit to any of the parties.

(e) *Transfers of limited access permits*. For provisions on transfer of limited access permits, see § 635.4(l).

(f) *Renewals of limited access permits*. For provisions on renewal of limited access permits, see § 635.4(m).

Subpart C—Management Measures

§ 635.19 BFT size classes.

The CFL of any BFT found with the head removed will be calculated using the following formula: CFL equals pectoral fin curved fork length (PFCFL) multiplied by a factor of 1.35. The CFL, as taken or determined by conversion of the PFCFL, will be the sole criterion for determining the size class of a beheaded BFT. This formula may be changed if additional information becomes available by filing a notice at the Office of the Federal Register of the new formula.

§ 635.20 Size limits.

(a) *General*. CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas.

(b) *BFT, bigeye tuna, and yellowfin tuna*. (1) No person may take, retain, or possess a BFT, bigeye tuna, or yellowfin tuna in the Atlantic Ocean that is less than 27 inches (69 cm)CFL;

(2) Further, no person may retain or possess a BFT with the head removed that is less than 20 inches (51 cm), PFCFL.

(3) No person may remove the head of a bigeye tuna or yellowfin tuna if the remaining portion is less than 27 inches (69 cm), CFL.

(c) *Billfish*. No person may take a billfish from, or retain or possess a billfish in its management area that is less than the following minimum size limits:

(1) Blue marlin--99 inches (251 cm), LJFL.

(2) White marlin--66 inches (168 cm), LJFL.

(3) Sailfish--63 inches (160 cm), LJFL.

(d) *Sharks*. No person may take, retain, or possess any species classified as a ridgeback LCS shark in or from the Atlantic EEZ, that is less than 54 inches (137 cm), FL, or, if the head and fins have been removed, 30 inches (76 cm), from the forward edge of the cut where the first dorsal fin is removed to the precaudal pit. If the precaudal pit has been removed, such measurement will be to the posterior edge of the carcass.

(e) *Swordfish*. (1) No person may take, retain, or possess a swordfish on board a fishing vessel in the Atlantic Ocean that is less than 29 inches (73 cm), CK. CK length will be the sole criterion for determining the size of Atlantic swordfish caught.

(2) A swordfish or part thereof that weighs less than 33 lb (15 kg), dw, is deemed to have been harvested by a vessel of the United States and in violation of the minimum size if less than 29 inches (73 cm) CK unless it is accompanied by a certificate of eligibility. The certificate should attest that the swordfish was imported, and either harvested from other than the Atlantic Ocean, or that the fish part was derived from an Atlantic swordfish that weighed at least 33 lb (15 kg) dw at harvest. Refer to § 635.46(b) for the requirements related to the certificate of eligibility.

(3) A swordfish or part thereof will be monitored for compliance with the minimum size requirement from the time it is landed in or imported into the United States to the first point of transaction and including the time and place that it is filleted, cut into steaks, or processed in any way that physically alters it.

§ 635.21 Gear operation and deployment restrictions.

(a) *All Atlantic HMS fishing gears*. (1) An Atlantic HMS harvested in its management area that is not retained must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water.

(2) If a billfish is caught by a hook, the fish must be released by cutting the line near the hook or by using a dehooking device, in either case without removing the fish from the water.

(b) *General*. No person may use any gear to fish for Atlantic HMS other than those gears specifically authorized in this part. A vessel using or having on board in the Atlantic Ocean any unauthorized gear may not have on board an Atlantic HMS.

(c) *Pelagic longlines*. (1) From August 1, 1999, through November 30, 1999, no person may deploy a pelagic longline that is more than 24 nautical miles (nm) (44.5 km) in length in the Mid-Atlantic Bight.

(2) No person that fishes in the following areas during the following periods and has a pelagic longline on board may possess Atlantic tunas or swordfish. No person may use a pelagic longline in the following areas and periods:

(i) Southeastern United States closed area—December 1 through March 31.

(ii) Great South Channel closed area--March 1 through June 30.

(iii) Cape Cod Bay closed area—February 1 through April 30.

(iv) Florida Straits —July 1 through September 30.

(3) When the gear being fished by a person aboard a vessel that has a permit for Atlantic HMS hooks or entangles a marine mammal or sea turtle, the operator of the vessel must immediately release the animal, retrieve his fishing gear, and move at least 1 nm (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with regulations in § 229.6 of this title.

(d) *Authorized gear*—(1) *Atlantic tunas*. No person that fishes for, takes, retains, or possesses Atlantic tunas may have on board or use any gear other than that authorized for the category for which the Atlantic tunas permit has been issued for the harvesting vessel. Gear types authorized for each Atlantic tunas permit category are:

(i) *Angling*. Rod and reel (including downriggers) and handline.

(ii) *Charter/Headboat*. Rod and reel (including downriggers), bandit gear, and handline.

(iii) *General*. Rod and reel (including downriggers), handline, harpoon, and bandit gear.

(iv) *Harpoon*. Harpoon.

(v) *Longline*. Longline.

(vi) *Purse Seine*. Purse seine.

(A) *Mesh size*. (*1*) A purse seine used in directed fishing for BFT must have a mesh size equal to or smaller than 4.5 inches (11.4 cm) in the main body (stretched when wet) and must have at least 24–count thread throughout the net.

(*2*) NMFS may exempt an owner or operator from the mesh requirements in paragraph (d)(2)(i) of this section if the exemption will not result in significant injury or mortality to BFT that are encircled by the net but manage to escape.

(B) *Inspection of purse seine vessels*. Persons that own or operate a purse seine vessel conducting a directed fishery for Atlantic tunas must have their fishing gear inspected for mesh size by an enforcement agent of NMFS prior to commencing fishing for the season in any fishery that may result in the harvest of Atlantic tunas. Such persons must request such inspection at least 24 hours before commencement of the first fishing trip of the season. If NMFS does not inspect the vessel within 24 hours of such notification, the inspection requirement is waived. In addition, at least 24 hours before commencement of offloading any BFT after a fishing trip, such persons must request an inspection of vessel and catch by notifying NMFS. If NMFS does not inspect the vessel at offloading, the inspection requirement is waived.

(vii) *Trap*. Pound net and fish weir. Trap gear is authorized for BFT only.

(2) *Billfish*. (i) Persons may possess a billfish in or take a billfish from its management area only if it is harvested by rod and reel. Regardless of how taken, persons may not possess a billfish in or take a billfish from its management area on board a vessel using or having on board a pelagic longline.

(ii) In a hook-and-line fishery for billfish, persons may not use more than one hook per bait or lure.

(3) *Sharks*. (i) No person may possess a shark in or take a shark from its management area by any gear other than rod and reel, longline, or driftnet.

(ii) No person may use a driftnet with a total length of 2.5 km or more to fish for sharks. No person may have on board a vessel a driftnet with a total length of 2.5 km or more.

(iii) Provisions on gear deployment for the southeast U.S. shark net fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in § 229.32 (f) of this title.

(4) *Swordfish*. (i) No person may possess Atlantic swordfish taken by any gear other than rod and reel, harpoon, handline, or longline unless he or she possesses an Incidental LAP for swordfish. A swordfish from its management area may not be taken by a driftnet, and may not be retained, or possessed by a vessel with a driftnet on board.

(ii) A swordfish will be deemed to have been harvested by a driftnet when it is onboard, or offloaded from a vessel using or having onboard a driftnet.

(iii) A swordfish will be deemed to have been harvested by handgear when it is onboard, or offloaded from a vessel using or having onboard handgear if such vessel does not have a longline on board.

§ 635.22 Recreational retention limits.

(a) *General*. Recreational retention limits apply to billfish taken from or possessed in the management area, a shark taken from or possessed in the Atlantic EEZ, and a yellowfin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel trip limit and the cumulative retention limit based on the number of persons aboard. The retention limits apply to a person who fishes in any manner, except a person aboard a vessel that has on board the commercial vessel permit issued under

§ 635.4 for the appropriate species/species group. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters.

(b) *Billfish*. One white marlin, blue marlin or sailfish may be retained per vessel per trip. No longbill spearfish may be retained. NMFS may decrease the retention limit for blue and/or white marlin to zero if NMFS projects that the landings limit for the applicable species will be reached. Such decrease will be based on a review of current landings data, and any other relevant factors. NMFS will file for publication notification of any decrease in retention limit with the Office of the Federal Register at least 3 calendar days prior to the decrease becoming effective.

(c) *Sharks*. (1) *Large coastal sharks, prohibited sharks, small coastal sharks*. None may be retained.

(2) *Pelagic shark*. One pelagic shark per vessel per trip may be retained.

(d) *Yellowfin tuna*. Three yellowfin tunas per person per day may be retained. Regardless of the length of a trip, no more than three yellowfin tuna per person may be retained on board a vessel.

§ 635.23 Retention limits for BFT.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28.

(a) *General category*. (1) A person aboard a vessel that has a General Category Atlantic Tunas Permit may not possess, retain, land, or sell a BFT in the school, large school, or small medium size class.

(2) On an RFD, a person aboard a vessel that has a General Category Atlantic Tunas Permit may not possess, retain, land, or sell a BFT in the large medium or giant size class. On days other than RFDs, when the General Category is open, one large medium or giant BFT may be caught and landed from such vessel per day. NMFS will annually publish a schedule of RFDs in the **Federal Register**. An RFD applies only when the General Category fishery is open.

(3) Regardless of the length of a trip, no more than a single day's retention limit of large medium or giant BFT may be possessed or retained aboard a vessel that has a General Category Atlantic Tunas Permit. On days other than RFDs, when the General Category is open, no person aboard such vessel may continue to fish and the vessel must immediately proceed to port once the applicable limit for large medium or giant BFT is retained.

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will publish notification in the **Federal Register** of any adjustment in the allowable daily retention limit specified in paragraph (b)(2) of this section. NMFS will file such notification at the Office of the Federal Register at least 3 calendar days prior to the change becoming effective.

(b) *Angling category*—(1) *Large medium and giant BFT*. (i) No large medium or giant BFT may be retained, possessed, landed, or sold in the Gulf of Mexico, except one per vessel per year, which may be caught incidentally to fishing for other species.

(ii) One per vessel per year may be retained, possessed, and landed in non-Gulf of Mexico areas.

(iii) When a large medium or giant BFT has been caught and retained under paragraph (b)(1) of this section, no person aboard the vessel may continue to fish and the vessel must immediately proceed to port. Large medium and giant BFT caught by a person aboard a vessel with an Angling Category Atlantic Tunas Permit may not be sold or transferred to any person for a commercial purpose. The owner or operator of the vessel must report the large medium or giant BFT via the automated catch reporting system by telephone within 24 hours of landing.

(2) *School, large school, or small medium BFT*. One per vessel per day may be retained, possessed, or landed. Regardless of the length of a trip, no more than a single day's allowable catch of school, large school, or small medium BFT may be possessed or retained aboard a vessel that has an Angling Category Atlantic Tunas Permit.

(3) *Changes to retention limits*. To provide for maximum utilization of the quota for BFT spread over the longest period of time, NMFS may increase or decrease the retention limit for any size class BFT or change a vessel trip limit to an angler limit and vice versa. Such increase or decrease will be based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will file such notification at the Office of the Federal Register at least 3 calendar days prior to the change becoming effective.

(c) *HMS Charter/Headboat*. (1) When fishing in the Gulf of Mexico, the restrictions applicable to the Angling category specified in paragraphs (b)(1) and (2) of this section apply to a vessel that has an HMS Charter/Headboat permit.

(2) When fishing other than in the Gulf of Mexico when the fishery for the General category is closed, the restrictions applicable to the Angling category specified in paragraphs (b)(1) through (3) of this section apply on a vessel that has an HMS Charter/Headboat permit.

(3) When fishing other than in the Gulf of Mexico and when the fishery under the General category has not been closed under § 635.28, a person aboard a vessel that has an HMS Charter/Headboat permit may fish under either the retention limits applicable to the General category specified in paragraphs (a)(2) and (3) of this section or the retention limits applicable to the Angling category specified in paragraphs (b)(2) and (3) of this section. The size category of the first BFT retained will determine the fishing category applicable to the vessel that day.

(d) *Harpoon category*. A vessel that has a Harpoon Category Atlantic Tunas Permit may retain, possess, or land multiple giant BFTs per day, but only one large medium BFT per vessel per day may be retained, possessed, or landed.

(e) *Purse Seine category*. Persons that own or operate a vessel that has a Purse Seine Category Atlantic Tunas Permit,

(1) May retain, possess, land, or sell large medium BFT in amounts not exceeding 15 percent, by weight, of the giant BFT landed on that trip, provided that the total amount of large medium BFT landed by that vessel during the fishing year does not exceed 10 percent, by weight, of the total amount of giant BFT allocated to that vessel for that fishing year.

(2) May retain, possess or land BFT smaller than the large medium size class that are taken incidentally when fishing for skipjack tuna or yellowfin tuna in an amount not exceeding 1 percent, by weight, of the skipjack tuna and yellowfin tuna landed on that trip. Landings of BFT smaller than the large medium size class may not be sold and are counted against the Purse Seine category BFT quota allocated to that vessel.

(f) *Longline category*. An owner or operator of a vessel that has a Longline Category Atlantic Tunas Permit may retain, possess, land, or sell large medium and giant BFT taken incidentally in fishing for other species. Limits on such retention/possession/landing/sale are as follows:

(1) For landings south of 34°00' N. lat., one large medium or giant BFT per vessel per trip may be landed, provided that for the months of January through April at least 1,500 lb (680 kg), and for the months of May through December at least 3,500 lb (1,588 kg), either dw or round weight, of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold.

(2) For landings north of 34°00' N. lat., landings per vessel per trip of large medium and giant BFT may not exceed 2 percent by weight, either dw or round weight, of all other fish legally caught, retained, and offloaded from the same trip and which are recorded on the dealer weighout slip as sold.

(g) *Trap category*. Persons that own or operate a vessel that has a Trap Category Atlantic Tunas Permit may retain, possess, land, and sell each fishing year only one large medium or giant BFT that is taken incidentally while fishing for other species with a pound net or fish weir.

§ 635.24 Commercial retention limits for sharks and swordfish.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28.

(a) *Sharks*. (1) Persons that own or operate a vessel that has a directed ILAP or LAP for shark issued pursuant to § 635.16 may retain, possess or land no more than 4,000 lb (1,814 kg), dw, of LCS per trip.

(2) Persons that own or operate a vessel that has an incidental catch ILAP or LAP for sharks may retain, possess or land no more than five LCS and 16 SCS and pelagic sharks, combined, per trip.

(b) *Swordfish*. Persons that own or operate a vessel that has an incidental catch permit for swordfish may retain, possess, or land no more than two swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state, except persons that own or operate a vessel in the squid trawl fishery that has such permit may retain, possess, or land no more than five swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state. A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and squid constitute not less than 75 percent by weight of the total fish on board or offloaded from the vessel.

§ 635.26 Catch and release.

(a) *BFT*. (1) Notwithstanding other provisions of this part, an angler may fish for BFT under a tag and release program, provided the angler tags all BFT so caught with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the catching of the tagged BFT. If NMFS-issued or NMFS-approved conventional tags are not on board a vessel, all anglers aboard that vessel are ineligible to fish under the tag and release program.

(2) Persons may obtain NMFS-issued conventional tags, reporting cards, and detailed instructions for their use from the NMFS Cooperative Tagging Center. Persons may use a conventional tag obtained from a source other than NMFS to tag BFT, provided the use of such tags is registered each year with the Cooperative Tagging Center and the NMFS program manager has approved the use of a conventional tag from that source. An angler using an alternative source of tags wishing to tag BFT may contact the NMFS Cooperative Tagging Center at the Southeast Fishery Science Center.

(3) An angler registering for the HMS tagging program is required to provide his or her name, address, phone number and, if applicable, the identity of the alternate source of tags.

(b) *Sharks*. Notwithstanding other provisions of this part, a person may fish for white sharks (*Carcharodon carcharias*), blue sharks (*Prionace glauca*), or Atlantic sharpnose sharks (*Rhizoprionodon terraenovae*) with rod and reel under a catch and release program, provided the person tags and releases such fish to the sea immediately with a minimum of injury.

§ 635.27 Quotas.

(a) *BFT*. Consistent with ICCAT recommendations, NMFS has divided the fishing year's total amount of BFT that may be caught, retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories of Atlantic Tunas permits and the HMS Charter/Headboat permit holders. Allocations of quota are according to the following percentages: General - 47.1 percent; Angling - 19.7 percent, which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent; Purse Seine - 18.6 percent or 250 mt, whichever is less; Longline - 8.1 percent; and Trap - 0.1 percent. In addition, NMFS is holding in reserve 2.5 percent of the quota of BFT for inseason adjustments, to compensate for overharvest in any category other than the Angling category school BFT subquota or for fishery independent research. NMFS may apportion a quota allocated to any category to specified fishing periods or to geographic areas. BFT quotas are specified in whole weight.

(1) *General category quota*. (i) Catches from vessels for which General Category Atlantic Tunas Permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota. See § 635.23(c)(3) regarding catches by vessels with an HMS Charter/Headboat permit that are counted against the General category quota. The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category quota is 47.1 percent of the overall U.S. quota, available for periods as follows:

(A) June 1 through August 31—60 percent;

(B) September 1 through September 30—30 percent; and

(C) October 1 through May 31—10 percent.

(ii) NMFS will adjust each period's quota based on overharvest or underharvest in the prior period.

(iii) When the remainder of the fishing year's quota is projected to be 10 mt, NMFS will file a notification at the Office of the Federal Register that sets aside the remaining quota for an area comprising the waters north of 38°47' N. lat. and south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running south-southeast 150 degrees true. The daily catch limit for this set-aside area will be one large medium or giant BFT per vessel per day. Upon the effective date of the set-aside, fishing for, possessing, retaining, or landing large medium or giant BFT must cease in all waters outside the set-aside area.

(iv) The remainder of each preceding category may be caught, retained, possessed, and landed north of 38° 47' N. lat.

(2) *Angling category quota*. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which Angling Category Atlantic Tunas Permit or an HMS Charter/Headboat permit have been issued is 19.7 percent of the overall U.S. BFT quota. No more than 2.3 percent of the Angling category quota may be large medium or giant BFT and no more than 8 percent of the overall U.S. BFT quota may be school BFT. The Angling category includes the school BFT held in reserve described under paragraph (a)(7)(ii) of this section.

The size class subquotas for BFT are further subdivided as follows:

(i) Under paragraph (a)(7)(ii) of this section, 47.2 percent of the school BFT Angling category quota, minus the school BFT quota held in reserve may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(ii) 47.2 percent of the large school/small medium BFT Angling category quota, may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(iii) 66.7 percent of the Large medium and Giant BFT Angling category quota may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels for which Longline category Atlantic tunas permits have been issued is 8.1 percent of the overall U.S. quota. No more than 78.9 percent of the Longline Category quota may be caught, retained, possessed, or landed in the area south of 34°00' N. lat.

(4) *Purse Seine category quota.* (i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Purse Seine Category Atlantic Tunas Permits have been issued is 18.6 percent of the overall U.S. quota or 250 mt, whichever is less. The purse seine fishery under this quota commences on August 15 each year.

(ii) An owner or operator of a vessel for which a Purse Seine Category Atlantic Tunas Permit has been issued must apply in writing to NMFS for an allocation of BFT from the Purse Seine category quota. The application must be postmarked no later than April 15 for an allocation of the quota that becomes available on August 15.

(iii) On or about May 1, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel owners so requesting. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine Category Atlantic Tunas permits. An owner of a purse seine vessel intending to fish for more than one allocation in any fishing season must provide written notice of such intent to NMFS 15 days before commencing fishing. An owner of a purse seine vessel who transfers his or her allocation to another purse seine vessel may not use his or her vessel in any fishery in which BFT might be caught for the remainder of the fishing year after his or her allocation is transferred.

(iv) An owner of a vessel for which a Purse Seine Category Atlantic Tunas Permit has been issued may apply to NMFS to permanently consolidate Purse Seine Category vessel permits issued under § 635.4. Upon written approval of consolidation by NMFS, the Purse Seine Category Atlantic Tunas Permit of a transferring vessel will be canceled, and the receiving owner may apply for allocations of BFT commensurate with the number of consolidated permits. An owner of a purse seine vessel whose permit is canceled through consolidation may not use his or her vessel in any fishery in which BFT might be caught.

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels for which Harpoon Category Atlantic Tunas Permits have been issued is 3.9 percent of the overall U.S. quota.

(6) *Trap category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Trap Category Atlantic Tunas Permits have been issued is 0.1 percent of the overall U.S. BFT quota.

(7) *Reserve.* (i) The total amount of BFT that is held in reserve for inseason adjustments and fishery-independent research using quotas or subquotas other than the Angling category school BFT subquota, is 2.5 percent of the overall U.S. BFT quota. NMFS may allocate any portion of this Reserve for inseason adjustments to any category quota in the fishery, other than the Angling category school BFT subquota.

(ii) The total amount of school BFT that is held in reserve for inseason adjustments and fishery independent research is 18.5 percent of the total school BFT quota for the Angling category as described under paragraph (a)(2) of this section; which is in addition to the amounts specified in paragraph (a)(7)(i) of this section. NMFS may allocate any portion of the school BFT held in reserve for inseason adjustments to the Angling category.

(iii) NMFS will file notification of any inseason adjustment at the Office of the Federal Register before such allocation is to become effective. Before making any such adjustment, NMFS will consider the following factors:

(A) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock.

(B) The catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made.

(C) The projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year.

(D) The estimated amounts by which quotas for other gear categories of the fishery might be exceeded.

(E) Effects of the transfer on BFT rebuilding and overfishing.

(F) Effects of the transfer on accomplishing the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks.

(8) *Inseason adjustments.* Within a fishing year, NMFS may transfer quotas among categories or, as appropriate, subcategories. If it is determined, based on the factors in paragraphs (a)(7)(iii)(A) through (F) of this section and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take that quota, NMFS may transfer inseason any portion of the remaining quota of that fishing category to any other fishing category or to the reserve as specified in paragraphs (a)(7)(i) and (ii) of this section. NMFS will file a notification of any inseason adjustment with the Office of the Federal Register before such transfer is to become effective.

(9) *Annual adjustments.* If NMFS determines, based on landings statistics and other available information, that a BFT quota in any category, or, as appropriate, subcategory, has been exceeded or has not been reached, NMFS may subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year, provided that the total of the adjusted quotas and the reserve is consistent with a recommendation of ICCAT regarding country quotas. NMFS will file at the Office of the Federal Register a notice of the amount to be subtracted or added and the basis for the quota reductions or increases.

(b) *Shark*—(1) *Commercial quotas.* The commercial quotas for shark specified in paragraphs (b)(1)(i) through (iv) of this section apply to persons fishing aboard vessels for which commercial Federal vessel permits for shark have been issued under § 635.4 and to persons who sell shark harvested solely from state waters. Commercial quotas are specified for each of the categories of large coastal shark, small coastal shark, and pelagic shark.

(i) *Large coastal sharks.* The annual commercial quota for large coastal sharks is 860 mt dw, apportioned between ridgeback and non-ridgeback shark and divided between two semiannual fishing seasons, January 1 through June 30, and July 1 through December 31. The length of each season will be determined based on the projected catch rates, available quota,

and other relevant factors. NMFS will file a notice of each season's length at the Office of the Federal Register in a timely manner. The quotas for each fishing season (unless otherwise specified in the **Federal Register**) are as follows:

(A) Ridgeback shark—321 mt dw.

(B) Non-ridgeback shark—109 mt dw.

(ii) *Small coastal shark*. The annual commercial quota for small coastal shark is 359 mt dw, divided between two equal semiannual periods, January 1 through June 30, and July 1 through December 31. The quota for each semiannual period is 179.5 mt, dw.

(iii) *Pelagic sharks*. The annual commercial quotas for pelagic sharks are 30 mt dw for porbeagle sharks and 550 mt dw for all other pelagic sharks (unless otherwise specified in the **Federal Register**). These quotas are divided between two equal semiannual periods, January 1 through June 30, and July 1 through December 31. The quotas for each semiannual period are as follows:

(A) Porbeagle sharks—15 mt dw.

(B) Pelagic sharks, other than porbeagle sharks—225 mt dw.

(iv) *Annual adjustments*. (A) NMFS will adjust the next year's semiannual quotas for large coastal, small coastal, and pelagic sharks to reflect actual catches during any semiannual period. For example, a commercial quota underage or overage in the season that begins January 1 will result in an equivalent increase or decrease in the following year's quota for that season, provided that the annual quotas are not exceeded. NMFS will file a notice of any adjustment at the Office of the Federal Register.

(B) The annual quota for dead discards of blue shark, which is a prohibited shark, is 545 mt whole weight (273 mt dw). NMFS will reduce the annual commercial quota for pelagic shark for the next fishing year by the amount that this quota is exceeded.

(C) Sharks taken or discarded dead are counted against the applicable directed fishery quota. Sharks taken and landed from state waters are counted against the applicable directed fishery quota.

(v) *Public display quota*. The annual quota for persons who collect sharks under an EFP is 60 mt whole weight (43 mt dw).

(2) [Reserved]

(c) *Swordfish*. (1) Consistent with ICCAT recommendations, the fishing year's total amount of swordfish that may be caught, retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction is divided into quotas for the North Atlantic swordfish stock and the South Atlantic swordfish stock. The quota for the North Atlantic swordfish stock is further divided into semi-annual directed fishery quotas and an incidental catch quota for fishermen targeting other species. A swordfish from the North Atlantic swordfish stock landed before the effective date of a closure of the directed fishery by a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued is counted against the directed fishery quota. A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental catch permit for swordfish has been issued, landed consequent to recreational fishing, or landed after the effective date of a closure of the directed fishery from a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued is counted against the incidental catch quota. The entire quota for the South Atlantic swordfish stock is reserved for longline vessels for which a directed fishery permit for swordfish has been issued; retention of swordfish caught incidental to other fishing activities is prohibited in the Atlantic Ocean south of 5° N. lat.

(i) *North Atlantic swordfish stock*. (A) The annual directed fishery quota for the North Atlantic swordfish stock is 2073.4 mt dw, divided into two equal semiannual quotas of 1036.6 mt dw, one for the period June 1 through November 30, and the other for the period December 1 through May 31 of the following year.

(B) The annual incidental catch quota for the North Atlantic swordfish stock is 300 mt dw.

(ii) *South Atlantic swordfish stock*. The annual directed fishery quota for the South Atlantic swordfish stock is 289 mt dw. Incidental harvest of swordfish is prohibited in the Atlantic Ocean south of 5° N. lat.

(2) *Inseason adjustments*. (i) NMFS may adjust the December 1 through May 31 semiannual directed fishery quota to reflect actual catches during the June 1 through November 30 semiannual period, provided that the fishing year's directed fishery quota is not exceeded.

(ii) If NMFS determines that the annual incidental catch quota will not be taken before the end of the fishing year, the excess quota may be allocated to the directed fishery quota.

(iii) If NMFS determines that it is necessary to close the directed swordfish fishery prior to the scheduled end of a semi-annual season, any estimated overharvest or underharvest of the directed fishery quota for that semi-annual period will be used to adjust the annual incidental catch quota accordingly.

(iv) NMFS will file a notice at the Office of the Federal Register of any inseason swordfish quota adjustment and its apportionment made under this paragraph (c)(3) of this section.

(3) *Annual adjustments*. (i) As necessary, NMFS will reevaluate the quotas specified in paragraphs (c)(1) and (2) of this section based on consideration of the following factors:

(A) Swordfish stock abundance assessments;

(B) Swordfish stock age and size composition;

(C) Catch and effort in the swordfish fishery; and

(D) Consistency with ICCAT recommendations.

(ii) Except for the carryover provisions of paragraph (c)(3)(iii) of this section, NMFS will file a notice of any adjustment at the Office of the Federal Register, providing for a minimum 30-day comment period.

(iii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that area. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual periods. NMFS will file a notice at the Office of the Federal Register of any adjustment or apportionment made under this paragraph (c)(3)(iii) of this section.

§ 635.28 Closures.

(a) *BFT*. (1) When a BFT quota, other than the Purse Seine category quota specified in § 635.27(a)(4), is reached, or is projected to be reached, NMFS will file a notice of closure at the Office of the Federal Register. On and after the effective date and time of such notification, for the remainder of the fishing year, fishing for, retaining, possessing, or landing BFT under that quota is prohibited until the opening of the subsequent quota period.

(2) From August 15 through December 31, the owner or operator of a vessel that has been allocated a portion of the Purse Seine category quota under § 635.27(a)(4) may fish for BFT, yellowfin, bigeye, albacore, or skipjack tuna from January 1 through August 14. Landings of BFT taken incidental to fisheries targeting other Atlantic tunas or in any fishery in which BFT might be caught will be deducted from the individual vessel's quota for the following fishing season (i.e., August 15 through December 31). Upon reaching its individual vessel allocation of BFT, the vessel may not participate in a directed purse seine fishery for Atlantic

tunas for the remainder of the fishing year.

(3) If NMFS determines that variations in seasonal distribution, abundance, or migration patterns of BFT, or the catch rate in one area, precludes anglers in another area from a reasonable opportunity to harvest a portion of the Angling and Charter/Headboat categories quota, NMFS may close all or part of the fishery under that category and may reopen it at a later date if NMFS determines that BFT have migrated into the other area. In determining the need for any such temporary or area closure, NMFS will consider the following factors:

(i) The usefulness of information obtained from catches of a particular geographic area of the fishery for biological sampling and for monitoring the status of the stock;

(ii) The current year catches from the particular geographic area relative to the catches recorded for that area during the preceding 4 years;

(iii) The catches from the particular geographic area to date relative to the entire category and the likelihood of closure of that entire category of the fishery if no allocation is made;

(iv) The projected ability of the entire category to harvest the remaining amount of BFT before the anticipated end of the fishing season.

(b) *Shark*. (1) The commercial fishery for large coastal shark will remain open for fixed semiannual seasons, as specified at § 635.27(b)(1)(i). From the effective date and time of a season closure until an additional quota becomes available, the fishery for large coastal sharks is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to § 635.4.

(2) When a semiannual quota for small coastal sharks or pelagic sharks specified in § 635.27(b)(1)(ii) and (iii) is reached, or is projected to be reached, NMFS will file for publication a notification to that effect with the Office of the Federal Register. NMFS will file a notification of closure at the office of the **Federal Register** at least 5 days before the closure becomes effective. From the effective date and time of the closure until an additional quota becomes available, the fishery for the appropriate shark species group is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant § 635.4.

(3) When the fishery for a shark species group is closed, a vessel that has a commercial Federal permit for sharks may not possess or sell a shark of that species group, and a permitted shark dealer may not purchase from a fishing vessel a shark of that species group, whether or not the fishing vessel has a commercial permit for shark, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage.

(c) *Swordfish*—(1) *Directed fishery closure*. When the annual or semiannual directed fishery quota specified in § 635.27(c)(1)(i) or (c)(2) is reached, or is projected to be reached, NMFS will file for publication (at least 14 days before the closure becomes effective) a notification to that effect with the Office of the Federal Register. From the effective date and time of the closure until additional directed fishery quota becomes available, the directed fishery for the appropriate stock is closed and the following catch limits apply:

(i) When the directed fishery for the North Atlantic swordfish stock is closed,

(A) No more than 15 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel using or having on board a longline. However, legally taken swordfish from the South Atlantic swordfish stock may be possessed in the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel with a longline provided the harvesting vessel does no fishing on that trip in the Atlantic Ocean north of 5° N. lat. and reports positions with a vessel monitoring system, subject to the provisions in § 635.69. NMFS may change this incidental catch retention limit upon filing for publication notification of the change with the Office of the Federal Register. The effective date of such change will be at least 14 days after the date such notification is filed. Changes in the incidental catch limits will be based upon the length of the directed fishery closure and the estimated rate of catch by vessels fishing under the incidental catch quota.

(B) No swordfish may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel that has been issued a handgear permit under § 635.4(f)(1).

(ii) When the directed fishery for the South Atlantic swordfish stock is closed, swordfish from that stock taken incidental to fishing for other species may not be retained.

(2) *Incidental catch closure*. When the annual incidental catch quota specified in § 635.27(c)(1)(ii) is reached, or is projected to be reached, NMFS will file for publication a notification to that effect with the Office of the Federal Register. From the effective date and time of such notification until an additional incidental catch quota becomes available, no swordfish may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state, and a swordfish in or from the Atlantic Ocean north of 5° N. lat. may not be sold. However, legally taken swordfish from the South Atlantic swordfish stock may be possessed in the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel with a longline, provided the harvesting vessel does not fish on that trip in the Atlantic Ocean north of 5° N. lat. and submits position reports from a vessel monitoring ystem as specified in § 635.69.

§ 635.29 Transfer at sea.

(a) Persons may not transfer an Atlantic tuna, billfish, or swordfish at sea in the Atlantic Ocean, regardless of where the fish was harvested. However, an owner or operator of a vessel for which a Purse Seine Category Atlantic Tunas Permit has been issued under § 635.4 may transfer large medium and giant BFT at sea from the net of the catching vessel to another vessel for which a Purse Seine Category Atlantic Tunas Permit has been issued, provided the amount transferred does not cause the receiving vessel to exceed its vessel allocation.

(b) Persons may not transfer a shark at sea in the EEZ regardless of where the shark was harvested, and persons may not transfer at sea a shark taken in the EEZ regardless of where the transfer takes place.

§ 635.30 Possession at sea and landing.

(a) *Atlantic tunas*. (1) Persons that own or operate a fishing vessel that possesses an Atlantic tuna in the Atlantic Ocean or that lands an Atlantic tuna in an Atlantic coastal port must maintain such Atlantic tuna through offloading either—

(i) In round form; or

(ii) Eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached.

(2) Persons that own or operate a purse seine vessel must have each large medium and giant BFT in the vessel's catch weighed, measured, and the information recorded on the required landing cards at the time of offloading and prior to transporting such BFT from the area of offloading.

(b) *Billfish*. Persons that own or operate a fishing vessel that possesses a billfish in its management area or lands a billfish in an Atlantic coastal port must maintain such billfish with its

head, fins, and bill intact through offloading. Persons may eviscerate such billfish, but it must otherwise be maintained whole.

(c) *Shark*. (1) The practice of ''finning,'' i.e., removing only the fins and returning the remainder of the shark to the sea, is prohibited in the EEZ and on board a vessel for which a commercial vessel permit for shark has been issued. The prohibition on finning applies to all species of sharks. For a list of species known to occur in the U.S. EEZ, refer to Tables 1 and 2 of Appendix A to this part.

(2) Persons that own or operate a vessel that has been issued a commercial permit for shark may not fillet a shark at sea. Persons may eviscerate and remove the head and fins, but must retain the fins with the dressed carcasses. While on board and when offloaded, the wet shark fins may not exceed 5 percent of the weight of the shark carcasses.

(3) Persons that own or operate a vessel that has been issued a commercial permit that lands shark in an Atlantic coastal port, must have all fins weighed in conjunction with the weighing of the carcasses at the vessel's first point of landing. Such weights must be recorded on the weighout slips specified in § 635.5(a)(2). Persons may not possess a shark fin on board a fishing vessel after the vessel's first point of landing. The wet fins may not exceed 5 percent of the weight of the carcasses.

(4) Persons aboard a vessel that does not have a commercial permit for shark must maintain a shark in or from the EEZ intact through landing—the head, tail, or fins may not be removed. The shark may be bled.

(d) *Swordfish*. Persons that own or operate a fishing vessel that possesses a swordfish in the Atlantic Ocean or lands a swordfish in an Atlantic coastal port, must maintain such swordfish in round or dressed form through off-loading. However, a swordfish that is damaged by shark bites may be retained and offloaded if the remainder of the carcass is at least 29 inches (73 cm) CK.

§ 635.31 Restrictions on sale and purchase.

(a) *Atlantic tunas*. (1) Persons that own or operate a vessel that possesses an Atlantic tuna may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit, or a General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas. Persons may not sell a BFT smaller than the large medium size class. However, a large medium or giant BFT taken by a person on a vessel with an HMS Charter/Headboat permit fishing in the Gulf of Mexico, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may not be sold (See § 635.23(c)). Persons may sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas.

(2) Dealers may purchase Atlantic tunas only from a vessel that has a valid commercial permit for Atlantic tunas in the appropriate category.

(3) Dealers or seafood processors may not purchase or sell a BFT smaller than the large medium size class unless it is lawfully imported and is accompanied by a BSD, as specified in § 635.42(a).

(4) A BFT in the possession of a dealer or seafood processor is deemed to be from the Atlantic Ocean. However, a BFT will not be deemed to be from the Atlantic Ocean if—

(i) It was landed in a Pacific state and remains in the state of landing, or

(ii) It is accompanied by a BSD, as specified in § 635.42(a).

(b) *Billfish*. (1) Persons may not sell or purchase a billfish caught in its management area.

(2) A billfish or a closely related species, namely, black marlin, *Makaira indica*, striped marlin, *Tetrapturus audax*, or shortbill spearfish, *Tetrapturus angustirostris*, or a part thereof, in the possession of a dealer or seafood processor is considered, for purposes of this part, to be a billfish from its Atlantic Ocean management area. However, a billfish or a closely related species will not be considered to be from its management area if—

(i) It was landed in a Pacific state and remains in the state of landing, or

(ii) It is accompanied by a Certificate of Eligibility that documents that it was harvested from other than its management area.

(c) *Shark*. (1) Persons that own or operate a vessel that possesses a shark in or from the EEZ may sell such shark only if the vessel has a valid commercial permit for shark. Persons may possess and sell a shark only when the fishery for that species group has not been closed, as specified in § 635.28(b)(3).

(2) Persons that own or operate a vessel on which a shark in or from the EEZ or state waters is possessed, may sell such shark only to a dealer that has a valid permit for shark.

(3) Persons that own or operate a fishing vessel may not sell fins from a shark harvested in the EEZ, or harvested in the Atlantic Ocean by a vessel for which a commercial permit for shark has been issued, that are disproportionate to the weight of shark carcasses landed; i.e., the fins may not exceed 5 percent of the weight of the carcasses.

(4) Only dealers that have a valid permit for shark may purchase a shark from the owner or operator of a fishing vessel. Dealers may purchase a shark only from an owner or operator of a vessel who has a valid commercial permit for shark, except that dealers may purchase a shark from an owner or operator of a vessel who fishes exclusively in state waters and, thus, does not have a commercial permit for shark. Dealers may purchase a shark from an owner or operator of fishing vessel only when the fishery for that species group has not been closed, as specified in § 635.28(b)(3).

(5) Dealers may not purchase from an owner or operator of a fishing vessel shark fins that are disproportionate to the weight of shark carcasses landed, i.e., the fins may not exceed 5 percent of the weight of the carcasses.

(d) *Swordfish*. (1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed, may sell such swordfish only if the vessel has a valid commercial permit for swordfish. Persons may sell such swordfish only to a dealer that has a valid permit for swordfish.

(2) Dealers may purchase a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel who has a valid commercial permit for swordfish.

§ 635.32 Specifically authorized activities.

(a) Consistent with the provisions of § 600.745 of this chapter, NMFS may authorize, for the conduct of scientific research, the acquisition of information and data, public display, or the reduction of bycatch, economic discards or regulatory discards, activities otherwise prohibited by the regulations contained in this part. Activities subject to the provisions of this section may include, but are not limited to, scientific research resulting in, or likely to result in, the take, harvest or incidental mortality of Atlantic HMS, exempted fishing and exempted educational activities, or programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks. Such activities must be authorized in writing and are subject to all conditions specified in any letter of authorization, exempted fishing permit or scientific research permit issued in response to requests for authorization. For the purposes of all regulated species covered under this part, NMFS has the sole authority to issue permits, authorizations, and acknowledgments.

For the purposes of all regulated species covered under this part, other than Atlantic sharks, the requirements of § 600.745(a) and (c)(1) of this chapter are mandatory. If a regulated species landed or retained under the authority of this section is subject to a quota, the fish shall be counted against the quota category as specified in the written authorization.

(b)(1) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid shark EFP is required to fish for, take, retain, or possess a shark in or from the Atlantic EEZ for the purposes of public display under the shark public display quota specified in § 635.27(b)(2). A valid shark EFP must be on board the harvesting vessel, must be available when the shark is landed, must be available when the shark is transported to the display facility, and must be presented for inspection upon request of an authorized NMFS employee. A shark EFP is valid for the specific time, area, gear, and species specified on it.

(2) To be eligible for a shark EFP, a person must provide all information concerning his or her identification, numbers by species of sharks to be collected, when and where they will be collected, vessel(s) and gear to be used, description of the facility where they will be displayed, and any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(3) Written reports on fishing activities and disposition of catch must be submitted to NMFS for each fish collected within 24 hours of the collection. An annual written summary report of all fishing activities and disposition of all fish collected under the permit must also be submitted to NMFS. Specific reporting requirements will be provided by NMFS with the EFP.

§ 635.33 Archival tags.

(a) *Implantation report.* Any person affixing or implanting an archival tag into a regulated species must obtain authorization from NMFS pursuant to § 635.32. Persons so authorized to conduct archival tag implantation must provide a written report to NMFS indicating the type and number of tags, the species and approximate size of the fish as well as any additional information requested in the authorization.

(b) *Landing.* Notwithstanding other provisions of this part, persons may catch, possess, retain, and land an Atlantic HMS in which an archival tag has been implanted or affixed, provided such persons comply with the requirements of paragraph (c) of this section.

(c) *Landing report.* Persons that retain an Atlantic HMS that has an archival tag must contact NMFS, prior to or at the time of landing; furnish all requested information regarding the location and method of capture; and, as instructed, remove the archival tag and return it to NMFS or make the fish available for inspection and recovery of the tag by a NMFS scientist, enforcement agent, or other person designated in writing by NMFS.

(d) *Quota monitoring.* If an Atlantic HMS landed under the authority of paragraph (b) of this section is subject to a quota, the fish will be counted against the applicable quota for the species consistent with the fishing gear and activity which resulted in the catch. In the event such fishing gear or activity is otherwise prohibited under applicable provisions of this part, the fish shall be counted against the reserve quota established for that species.

§ 635.34 Adjustment of management measures.

(a) Consistent with the Convention, ATCA, and this part, NMFS may change the commencement date for BFT fishing for any vessel permit or quota category. Such change may be made when NMFS determines that the changed date will enable scientific research on the status of the stock to be conducted more effectively and will not prevent the quotas for the affected fishery from being reached, based on historical catch data or other relevant information. NMFS will file a notice at the Office of the Federal Register of any change in a commencement date at least 60 days before commencement of the affected fishery.

(b) NMFS may adjust the catch limits for BFT, as specified in § 635.23, and the quotas for BFT, shark, and swordfish, as specified in § 635.27.

(c) In accordance with the framework procedures in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfishes, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: optimum yield; total allowable catch; quotas; recreational and commercial catch limits, including target catch requirements; size limits; fishing years or fishing seasons; species in the management unit and the specification of the species groups to which they belong; permitting and reporting requirements; monitoring and tracking programs; time/area restrictions; allocations among user groups; gear restrictions; effort limitations; and actions to implement ICCAT recommendations, if appropriate.

Subpart D—Restrictions on Imports

§ 635.40 Restrictions to enhance conservation.

(a) *Determinations.* Upon a determination by NMFS that species of fish subject to regulation or under investigation by ICCAT (yellowfin, bigeye, BFT, swordfish, billfishes, albacore and skipjack tunas, and bonito) are ineligible for entry into the United States under 16 U.S.C. 971d(c)(4) or (c)(5), NMFS, with the approval of the Secretary and the concurrence of the Secretary of State, will publish a finding to that effect in the **Federal Register**. Effective upon the date of filing of such finding in the **Federal Register**, every shipment of fish in any form of the species found to be ineligible will be denied entry unless it is established by satisfactory proof pursuant to paragraph (b) of this section that a particular shipment of such fish is eligible for entry. Entry will not be denied and no such proof will be required for any such shipment that, on the date of such publication, was in transit to the United States on board a vessel operating as a common carrier.

(b) *Proof of admissibility.* (1) For the purposes of paragraph (a) of this section and section 6(c) of ATCA, a shipment of fish in any form of the species under regulation or under investigation by ICCAT offered for entry, directly or indirectly, from a country named in a finding published under paragraph (a) of this section is eligible for entry if the shipment is accompanied by a completed certificate of eligibility attached to the invoice certifying that the fish in the shipment:

(i) Are not of the species specified in the published finding;

(ii) Are of the species named in the published finding, but were not taken in the regulatory area; or

(iii) Are of the species named in the published finding, but are products of an American fishery and are lawfully taken in conformity with applicable conservation laws and regulations and landed in the country named in the published finding solely for transshipment.

(2) If the fish are offered for entry under paragraph (b)(1)(i) or (b)(1)(ii) of this section, the certificate must be executed by a duly authorized official of the country named in the published finding and the certificate must be validated by a consular officer or consular agent of the United States.

Such validation must be attached to the certificate of eligibility.

(3) If the fish are offered for entry under paragraph (b)(1)(iii) of this section, the certificate must be executed by a consular officer or consular agent of the United States and be accompanied by the declaration(s) required by 19 CFR 10.79. The ''Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries'' required by 19 CFR 10.79 must contain a further statement as follows: ''We further declare that the said fish were caught by us in full compliance with part 635, title 50, Code of Federal Regulations, and such other conservation laws and regulations as were applicable at the time the fishing operation was in progress.''

(c) *Removal of import restrictions.* Upon a determination by NMFS that the conditions no longer exist that warranted the imposition of import restrictions in the finding published pursuant to paragraph (a) of this section, NMFS, with the approval and the concurrence of the Secretary of State, will remove the import restriction through notification in the **Federal Register** effective on the date of filing of the notification. The restriction will be removed, provided that, for 1 year from such date of publication, every shipment of fish in any form that was subject to the finding published pursuant to paragraph (a) of this section will continue to be denied entry, unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States certifying that no portion of the shipment is composed of fish taken prior to or during the import restriction.

§ 635.41 Species subject to documentation requirements.

Imports into the United States and exports or re-exports from the United States of all BFT or BFT products, regardless of ocean area of catch, are subject to the documentation requirements of this subpart.

(a) Documentation is required for BFT identified by the following item numbers from the Harmonized Tariff Schedule:

(1) Fresh or chilled BFT, excluding fillets and other fish meat, No. 0302.39.00.20.

(2) Frozen BFT, excluding fillets, No. 0303.49.00.20.

(b) In addition, BFT products in other forms (e.g., chunks, fillets, canned) listed under any other item numbers from the Harmonized Tariff Schedule are subject to the documentation requirements of this subpart, except that fish parts other than meat (e.g., heads, eyes, roe, guts, tails) may be allowed entry without said statistical documentation.

635.42 Documentation requirements.

(a) *BFT imports.* (1) Imports of all BFT products into the United States must be accompanied at the time of entry (filing of Customs Form 7501 or electronic equivalent) by an original completed approved BSD with the information and exporter's certification specified in § 635.43(a). Such information must be validated as specified in § 635.44(a) by a responsible government official of the country whose flag vessel caught the tuna (regardless of where the fish are first landed).

(2) BFT imported into the United States from a country requiring a BSD tag on all such tuna available for sale must be accompanied by the appropriate BSD tag issued by that country, and said BSD tag must remain on any tuna until it reaches its final import destination. If the final import destination is the United States, the BSD tag must remain on the tuna until it is cut into portions. If the tuna portions are subsequently packaged for domestic commercial use or re-export, the BSD tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(3) A dealer who sells BFT that was previously imported into the United States for domestic commercial use must provide on the original BSD that accompanied the import shipment the correct information and importer's certification specified in § 635.43(a)(13) and must note on the top of the BSD the entry number assigned at the time of filing the entry summary. The original of the completed BSD must be postmarked and mailed by said dealer to NMFS within 24 hours of the time the tuna was imported into the United States.

(b) *BFT exports.* (1) A dealer who exports BFT that was harvested by U.S. vessels and first landed in the United States must complete an original numbered BSD issued to that dealer by NMFS. Such an individually numbered document is not transferable and may be used only once by the dealer to which it was issued to report on a specific export shipment. A dealer must provide on the BSD the correct information and exporter certification specified in § 635.43(a). The BSD must be validated as specified in § 635.44(b). A list of such officials may be obtained by contacting NMFS. A dealer requesting U.S. Government validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export shipment.

(2) A dealer who re-exports BFT that was previously imported into the United States through filing an entry summary (Customs Form 7501 or electronic equivalent) must provide on the original BSD that accompanied the import shipment the correct information and intermediate importer's certification specified in § 635.43(a)(13) and must note on the top of the BSD the entry number assigned at the time of filing the entry summary. This requirement does not apply to BFT destined from one foreign country to another which transits the United States and for which an entry summary (Customs Form 7501 or electronic equivalent) is not filed and for which a Shipper's Export Declaration for in-transit merchandise (Customs Form 7513 or electronic equivalent) is filed.

(3) A dealer must submit the original of the completed BSD to accompany the shipment of BFT to its export or re-export destination. A copy of the BSD completed as specified under paragraph (b)(1) or (b)(2) of this section must be postmarked and mailed by said dealer to NMFS within 24 hours of the time the tuna was exported or re-exported from the United States.

(c) *Recordkeeping.* A dealer must retain at his or her principal place of business a copy of each BSD required to be submitted to NMFS pursuant to this section for a period of 2 years from the date on which it was submitted to NMFS.

§ 635.43 Contents of documentation.

(a) A BSD, to be deemed complete, must state:

(1) The document number assigned by the country issuing the document.

(2) The name of the country issuing the document, which must be the country whose flag vessel harvested the BFT, regardless of where the tuna is first landed.

(3) The name of the vessel that caught the fish and the vessel's registration number, if applicable.

(4) The name of the owner of the trap that caught the fish, if applicable.

(5) The point of export, which is the city, state or province, and country from which the BFT is first exported.

(6) The product type (fresh or frozen) and product form (round, gilled and gutted, dressed, fillet, or other).

(7) The method of fishing used to harvest the fish (e.g., purse seine, trap, rod and reel).

(8) The ocean area from which the fish was harvested (western Atlantic,

eastern Atlantic, Mediterranean, or Pacific).

(9) The weight of each fish (in kilograms for the same product form previously specified).

(10) The identifying BSD tag number, if landed by vessels from countries with tagging programs.

(11) The name and license number of, and be signed and dated in the exporter's certification block by, the exporter.

(12) If applicable, the name and title of, and be signed and dated in the validation block by, a responsible government official of the country whose flag vessel caught the tuna (regardless of where the tuna are first landed) or by an official of an institution accredited by said government, with official government or accredited institution seal affixed, thus validating the information on the BSD.

(13) As applicable, the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by each intermediate and the final importer.

(b) An approved BSD may be obtained from NMFS to accompany exports of BFT from the United States. A BFT dealer in a country that does not provide an approved BSD to exporters may obtain an approved BSD from NMFS to accompany exports to the United States.

(c) A dealer who exports bluefin tuna to the United States may use the approved BSD obtainable from NMFS or a document developed by the country of export, if that country submits a copy to the ICCAT Executive Secretariat and NMFS concurs with the ICCAT Secretariat's determination that the document meets the information requirements of the ICCAT recommendation. In such case, NMFS will provide a list of countries for which BSDs are approved, with examples of approved documents, to the appropriate official of the U.S. Customs Service. Effective upon the date indicated in such notice to the U.S. Customs Service, shipments of BFT or BFT products offered for importation from said country(ies) may be accompanied by either that country's approved BSD or by the BSD provided to the foreign country exporter by NMFS.

§ 635.44 Validation requirements.

(a) *Imports*. The approved BSD accompanying any import of BFT, regardless of whether the issuing country is a member of ICCAT, must be validated by a government official from the issuing country, unless NMFS waives this requirement for that country following a recommendation to do so by the ICCAT Secretariat. NMFS will furnish a list of countries for which government validation requirements are waived to the appropriate official of the U.S. Customs Service. Such list will indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate BSDs for that country.

(b) *Exports*. The approved BSD accompanying any export of BFT from the United States must be validated by a U.S. Government official, except pursuant to a waiver, if any, specified on the form and accompanying instructions, or in a letter to the permitted dealer from NMFS. Any waiver of government validation will be consistent with ICCAT recommendations concerning validation of BSDs. If authorized, such waiver of government validation may include:

(1) Exemptions from government validation for fish with individual BSD tags affixed pursuant to § 300.26 of this title or § 635.5(b)(2)(ii); or

(2) Validation by non-government officials authorized to do so by NMFS under paragraph (c) of this section.

(c) *Authorization for non-government validation*. An institution or association seeking authorization to validate BSDs accompanying exports from the United States must apply in writing to NMFS for such authorization. The application must indicate the procedures to be used for verification of information to be validated, list the names, addresses, and telephone/fax numbers of individuals to perform validation, and provide an example of the stamp or seal to be applied to the BSD. NMFS, upon finding the institution or association capable of verifying the information required on the BSD, will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate BSDs accompanying exports from the United States. The effectiveness of such authorization will be delayed as necessary for NMFS to notify the ICCAT Secretariat of non-government institutions and associations authorized to validate BSDs.

§ 635.45 Import restrictions for Belize, Honduras, and Panama.

All shipments of BFT or BFT products in any form harvested by a vessel of Belize, Honduras, or Panama will be denied entry into the United States unless a validated BSD required under §§ 635.41 through 635.44, shows that a particular shipment of such BFT was exported from Belize or Honduras prior to August 20, 1997, or exported from Panama prior to January 1, 1998.

§ 635.46 Import restrictions on swordfish.

The policies and procedures contained in § 635.40, which implement the provisions of section (6)(c) of ATCA with respect to import controls and which specify procedures for the establishment of restrictions on imports of tuna, apply to swordfish taken from the north and south Atlantic stocks.

(a) *General*. To facilitate enforcement of domestic regulations, a swordfish, or part thereof, less than the minimum size specified at § 635.20(e) may not be imported, or attempted to be imported, into the United States unless it is accompanied by a certificate of eligibility attesting either that the swordfish was harvested from an ocean area other than the Atlantic Ocean or that the fish part was derived from a swordfish harvested from the Atlantic Ocean that weighed at least 33 lb (15 kg) dw at harvest.

(b) *Certificate of eligibility*. (1) A shipment of swordfish in any form offered for import into the United States, directly or indirectly, from any country is admissible only if accompanied by a certificate of eligibility. Such a certificate is required for swordfish identified by any item number from the Harmonized Tariff Schedule including but not limited to the following:

(i) Fresh or chilled swordfish steaks, No. 0302.69.20.41.

(ii) Fresh or chilled swordfish, excluding steaks, No. 0302.69.20.49.

(iii) Frozen swordfish steaks, No. 0302.79.20.41.

(iv) Frozen swordfish, excluding fillets, steaks and other fish meat, No. 0302.79.20.49.

(v) Frozen swordfish, fillets, No. 0304.20.60.92.

(2) The certificate of eligibility required under this section must indicate the flag state of the harvesting vessel, the ocean area of harvest and, if the shipment contains swordfish or parts thereof less than the minimum size specified at § 635.20(e), the reason such swordfish is eligible for entry, as specified in paragraph (a) of this section. The certificate must be attached to the invoice accompanying the swordfish shipment from the point of import into the United States to and including the time and place that it is filleted, cut into steaks, or processed in any way that physically alters it.

(3) The certificate of eligibility required under this section must

include the name and title of a responsible government official of the country exporting the swordfish to the United States and must be signed and dated by that official with official government seal affixed, thus validating the information on flag vessel and ocean area of harvest.

(4) A certificate of eligibility may refer to swordfish taken from only one ocean area of harvest (Atlantic, Pacific, or Indian) and by vessels under the jurisdiction of only one nation. If a shipment contains swordfish taken from more than one ocean area, or swordfish harvested by several vessels from different flag states, a separate certificate must accompany the shipment for each ocean area of harvest and for each flag state of the harvesting vessels.

(5) A model certificate of eligibility is available from NMFS. An equivalent form may be used provided it contains all the information required under this section.

Subpart E—International Port Inspection

§ 635.50 Basis and purpose.

The regulations in this subpart implement the ICCAT port inspection scheme. The text of the ICCAT port inspection scheme may be obtained from NMFS.

§ 635.51 Authorized officer.

For the purposes of this subpart, an authorized officer is a person appointed by an ICCAT contracting party that has accepted the port inspection scheme to serve as an authorized inspector for ICCAT, and who possesses an identification card so stating issued by the authorized officer's national government. A list of such contracting parties may be obtained from NMFS.

§ 635.52 Vessels subject to inspection.

(a) All U.S. fishing vessels or vessels carrying tuna, and their catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures by an authorized officer when landing or transshipping tuna or when making a port call at a port of any ICCAT contracting party that has accepted the port inspection scheme.

(b) A tuna vessel, or a vessel carrying tuna, that is registered by any of the ICCAT contracting parties that have accepted the port inspection scheme, and the vessel's catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures when landing or transshipping tuna or when making a port call in the United States.

(c) A vessel entering a port because of force majeure is exempt from inspection by an authorized officer of any of the ICCAT contracting parties that have accepted the port inspection scheme.

(d) The master of a tuna vessel or a vessel carrying tuna must cooperate with a NMFS authorized officer during the conduct of an inspection. Inspections will be carried out so that the vessel suffers minimum interference and inconvenience, and so that degradation of the quality of catch is avoided.

§ 635.53 Reports.

(a) Apparent violations shall be reported on a standardized ICCAT form or form produced by the national government which collects the same quality of information. The NMFS authorized officer must sign the form in the presence of the master of the vessel, who is entitled to add or have added to the report any observations, and to add his own signature. The authorized officer should note in the vessel's log that the inspection has been made.

(b) Copies of the report form must be sent to the flag state of the vessel within 10 days. Flag states will consider and act on reports of apparent violations by foreign inspectors on a similar basis as the reports of their national inspectors in accordance with their national legislation. The vessel's flag state will notify ICCAT of actions taken to address the violation.

§ 635.54 Ports of entry.

NMFS shall monitor the importation of BFT and swordfish into the United States. If a NMFS official determines that the diversity of handling practices at certain ports at which BFT or swordfish is being imported into the United States allow for circumvention of the Bluefin Tuna Statistical Document or Certificate of Eligibility requirement, he/she may designate, after consultation with the U.S. Customs Service, those ports at which Pacific or Atlantic bluefin tuna or swordfish from any source may be imported into the United States. NMFS shall announce through filing at the Office of the Federal Register the names of ports so designated and the effective dates of entry restrictions.

Subpart F—Enforcement

§ 635.69 Vessel monitoring systems.

(a) *General.* (1) Owners or operators of vessels fishing with pelagic longlines for swordfish, tunas, or sharks must submit an automatic position report with date, unique identifier vessel number, and speed and heading data to NMFS every hour beginning when the vessel leaves port to begin a fishing trip or at any time swordfish, sharks, or tunas are possessed on board the vessel.

(2) If a vessel operator is notified by NMFS that his system is not transmitting position reports, he may be ordered to return to port and may not commence fishing until position reports are sent once an hour for 24 hours.

(b) *Hardware specifications.* (1) The VMS hardware must contain an integrated global positioning system with an accuracy to within 100 meters, and must be tamper-proof.

(2) The hardware must be able to perform the following functions:

(i) Transmit automatically generated position reports, event-driven position reports, internet e-mail text messages when optional input interface is connected, and safety and distress alerts and messages,

(ii) Receive e-mail text messages,

(iii) Have the ability to remotely create new message types and to remotely create message templates or forms,

(iv) Allow for variable reporting intervals between 5 minutes and 24 hours,

(v) Have the ability to store 100 position reports in local memory when the hardware is unable to transmit.

(3) The hardware must have an onboard visible or audible alarm that indicates malfunctioning.

(4) The hardware must function uniformly within the entire area of geographic coverage of the vessel. Vessels that fish outside the geographic area of the VMS will be in violation of § 635.9.

(c) *Communications specifications.* (1) The communications service provider must have the ability to:

(i) Transmit automatically generated position reports, event driven position reports, safety and distress alerts and messages, and e-mail text messages when an optional input interface is connected,

(ii) Create new message types and message templates or forms,

(iii) Perform two-way communications for delivery and acceptance of data, supporting messages, position reports, queries, and administrative functions,

(iv) Attach a date and time stamp when the position report is sent to NMFS,

(v) Accommodate a near real-time system for 95 percent of transmissions or a store and forward system for two way messaging,

(vi) Provide auto-forwarding or auto-delivery of messages.

(2) The communications service provider must provide service secure from tampering or interception, including the eading of passwords and data.

§ 635.70 Penalties.

(a) *General.* See § 600.735 of this chapter.

(b) *Civil procedures for Atlantic tuna.* Because of the perishable nature of Atlantic tuna when it is not chilled or frozen, an authorized officer may cause to be sold, for not less than its reasonable market value, unchilled or unfrozen Atlantic tuna that may be seized and forfeited under ATCA and this part.

§ 635.71 Prohibitions.

In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person subject to the jurisdiction of the United States to violate any other provision of this part, ATCA, the Magnuson-Stevens Act, or any other rules promulgated under ATCA or the Magnuson-Stevens Act.

(a) *General.* It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Falsify information required on an application for a permit submitted under §§ 635.4 or 635.16.

(2) Fish for, catch, possess, retain, or land an Atlantic HMS without a valid permit on board the vessel, as specified in § 635.4.

(3) Purchase, receive, or transfer for commercial purposes any Atlantic HMS landed by owners or operators of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer for commercial purposes any Atlantic HMS without a valid dealer permit issued under § 635.4.

(4) Sell, offer for sale, or transfer an Atlantic tuna, shark, or swordfish other than to a dealer that has a valid dealer permit issued under § 635.4.

(5) Fail to possess and make available a permit on board the permitted vessel, as specified in § 635.4(a).

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in § 635.5.

(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(f).

(8) Fail to make available for inspection an Atlantic HMS or its area of custody, as specified in § 635.5(g).

(9) Fail to report the catching of any Atlantic HMS to which a conventional tag has been affixed under a tag and release program.

(10) Falsify or fail to display and maintain vessel and gear identification, as specified in § 635.6.

(11) Fail to comply with the requirements for at-sea observer coverage, as specified in § 635.7 and § 600.746 of this chapter.

(12) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay, or prevent, by any means, any authorized officer in the conduct of any search, inspection, seizure or lawful investigation made in connection with enforcement of this part.

(13) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part;

(14) Fail to attend an educational workshop or to present for inspection a certificate of attendance at an educational workshop, as specified in § 635.8.

(15) Tamper with, or fail to operate and maintain a vessel monitoring system unit, as specified in §§ 635.9 and 635.69.

(16) Fish for or possess Atlantic tunas or swordfish with a driftnet on board, as specified in § 635.21 (b), (d)(1), and (d)(4)(ii).

(17) Fail to retrieve fishing gear and move after an interaction with a marine mammal or sea turtle, as specified in § 635.21(c)(3).

(18) Fail to release an Atlantic HMS in the manner specified in § 635.21(a).

(19) Fail to report the retention of an Atlantic HMS that has an archival tag, as specified in § 635.33.

(20) Fail to maintain an Atlantic HMS in the form specified in § 635.30.

(21) Fish for, catch, retain, or possess an Atlantic HMS that is less than its minimum size limit specified in § 635.20.

(22) Fail to comply with the restrictions on use of a pelagic longline or shark net specified in § 635.21 (c), (d)(3)(ii), and (d)(3)(iii).

(23) Import any BFT or swordfish in a manner inconsistent with any ports of entry designated by NMFS as authorized by § 635.54.

(24) Dispose of fish or parts thereof or other matter in any manner after any communication or signal from an authorized officer, or after the approach of an authorized officer.

(b) *Atlantic tunas.* It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Engage in fishing with a vessel that has a permit for Atlantic tuna under § 635.4, unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings any BFT under control (secured to the catching vessel or on board) with no assistance from another vessel, except as shown by the operator that the safety of the vessel or its crew was jeopardized or other circumstances existed that were beyond the control of the operator.

(2) Import or export bluefin tuna without a dealer permit, as specified in § 635.4(b)(2).

(3) Fish for, catch, retain, or possess a BFT less than the large medium size class by a vessel other than one that has on board an Angling category Atlantic tunas permit, an HMS Charter/Headboat permit, or a Purse Seine category Atlantic tunas permit as authorized under § 635.23 (b), (c), and (e)(2).

(4) Fail to inspect a vessel's permit, fail to affix a dealer tag to a large medium or giant BFT, or fail to use such tag properly, as specified in § 635.5(b)(2)(ii).

(5) Fail to report a large medium or giant BFT that is not sold, as specified in § 635.5(c).

(6) As an angler, fail to report a BFT, as specified in § 635.5(d).

(7) Fish for, catch, retain, or possess a BFT with gear not authorized for the category permit issued to the vessel or to have on board such gear when in possession of a BFT, as specified in § 635.21(d)(1).

(8) Fail to request an inspection of a purse seine vessel, as specified in § 635.21(d)(1)(vi)(B).

(9) Fish for or catch BFT in a directed fishery with purse seine nets without an allocation made under § 635.27(a)(4).

(10) Fish for or catch any Atlantic tunas in a directed fishery with purse seine nets from August 15 through December 31 if there is no remaining BFT allocation made under § 635.27 (a)(4).

(11) Exceed the recreational catch limit for yellowfin tuna, as specified in § 635.22(d).

(12) Exceed a catch limit for BFT specified for the appropriate permit category, as specified in § 635.23.

(13) As a vessel with a General category Atlantic tuna permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT on a commercial fishing day, as specified in § 635.23(a)(3).

(14) As a vessel with an Angling category Atlantic tunas permit or an HMS Charter/Headboat permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT or fail to report such catch, as specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

(15) As a vessel with an Angling category Atlantic tunas permit or an HMS Charter/Headboat permit, sell,

offer for sale, or attempt to sell a large medium or giant BFT after fishing under the circumstances specified in § 635.23(b)(1)(iii) and (c)(1) through (3).

(16) Retain a BFT caught under the catch and release program specified in § 635.26.

(17) As a vessel with a Purse Seine category Atlantic tuna permit, catch, possess, retain, or land BFT in excess of its allocation of the Purse Seine category quota, or fish for BFT under that allocation prior to August 15, as specified in § 635.27(a)(4).

(18) As a vessel with a Purse Seine category Atlantic tunas permit, land BFT smaller than the large medium size class except as specified under § 635.23(e)(2).

(19) Fish for, retain, possess, or land a BFT when the fishery is closed, as specified in § 635.28(a), except as may be authorized for catch and release under § 635.26.

(20) Approach to within 100 yd (91.5 m) of the cork line of a purse seine net used by a vessel fishing for Atlantic tuna, or for a purse seine vessel to approach to within 100 yd (91.5 m) of a vessel actively fishing for Atlantic tuna, except that two vessels that have Purse Seine category Atlantic tuna permits may approach closer to each other.

(21) Transfer at sea an Atlantic tuna, except as may be authorized for the transfer of BFT between purse seine vessels, as specified in § 635.29(a).

(22) As the owner or operator of a purse seine vessel, fail to comply with the requirements for weighing, measuring, and information collection specified in § 635.30(a)(2).

(23) Fish for, catch, possess, or retain a BFT from the Gulf of Mexico except as specified under § 635.23(f)(1), or if taken incidental to recreational fishing for other species and retained in accordance with § 635.23(b) and (c).

(24) Fail to comply with the restrictions on sale and purchase of an Atlantic tuna, as specified in § 635.31(a) and 635.5(b).

(25) Fail to comply with the documentation requirements for imported or exported BFT or BFT products, as specified in § 635.42.

(26) Import a BFT or BFT product into the United States from Belize, Panama, or Honduras other than as authorized in § 635.45.

(27) For any person to refuse to provide information requested by NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of Atlantic tunas.

(c) *Billfish*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Retain a billfish on board a vessel with a pelagic longline on board or harvested by gear other than rod and reel, as specified in § 635.21(d)(2).

(2) Use more than one hook per bait or lure in a hook-and-line fishery for billfish, as specified in § 635.21(d)(2)(ii).

(3) Exceed the vessel trip limit for billfish specified in § 635.22(b)(1).

(4) Transfer a billfish at sea, as specified in § 635.29(a).

(5) Fail to maintain a billfish in the form specified in § 635.30(b).

(6) Sell or purchase a billfish, as specified in § 635.31(b).

(d) *Shark*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Exceed a recreational catch limit for shark, as specified in § 635.22(c).

(2) Exceed a trip limit for shark, as specified in § 635.24(a).

(3) Retain, possess, or land a shark of a species group when the fishery for that species group is closed, as specified in § 635.28(b)(1) and (2).

(4) Sell or purchase a shark of a species group when the fishery for that species group is closed, as specified in § 635.28(b)(3).

(5) Transfer a shark at sea, as specified in § 635.29(b).

(6) Remove the fins from a shark, or from one of the additional shark species listed in Table 2 in Appendix A to this part, and discard the remainder, or otherwise fail to maintain a shark in its proper form, as specified in § 635.30(c)(1) through (c)(4).

(7) Have on board a fishing vessel, sell, or purchase shark fins that are disproportionate to the weight of shark carcasses, as specified in § 635.30(c)(2) and (3).

(8) Fail to have shark fins and carcasses weighed and recorded, as specified in § 635.30(c)(3).

(9) Fail to comply with the restrictions on sale and purchase of a shark, as specified in § 635.31(c).

(10) Retain, possess, sell, or purchase a prohibited shark.

(11) Falsify information submitted under § 635.16(d)(2) or (d)(4) in support of an application for an ILAP or an appeal of NMFS's denial of an initial limited access permit for shark.

(e) *Swordfish*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Purchase, barter for, trade for, or import a swordfish without a dealer permit, as specified in § 635.4(g)(3).

(2) Fail to comply with the restrictions on use of a pelagic longline specified in § 635.21(b) and (c).

(3) When the directed fishery for swordfish is closed, exceed the limits specified in § 635.28(c)(1)(i) and (ii).

(4) When the incidental catch fishery for swordfish is closed, possess, land, sell, or purchase a swordfish, as specified in § 635.28(c)(2).

(5) Transfer at sea a swordfish, as specified in § 635.29(a).

(6) Fail to maintain a swordfish in the form specified in § 635.30(d).

(7) Fail to comply with the restrictions on sale and purchase of a swordfish, as specified in § 635.31(d).

(8) Fish for North Atlantic swordfish from, or possess or land North Atlantic swordfish on board a vessel, using or having on board gear other than pelagic longline, harpoon, rod and reel, or handline.

(9) Fish for swordfish from the South Atlantic swordfish stock using any gear other than pelagic longline.

(10) Fail to comply with the documentation requirements for the importation of a swordfish, or part thereof, that is less than the minimum size, as specified in § 635.46.

(11) Falsify information submitted under § 635.16(d)(2) or (d)(4) in support of an application for an ILAP or an appeal of NMFS's denial of an initial limited access permit for swordfish.

Appendix A to Part 635—Species Tables

Table 1 of Appendix A to Part 635—Sharks

(a) Large coastal sharks:
(1) Ridgeback sharks:
Sandbar, *Carcharhinus plumbeus*
Silky, *Carcharhinus falciformis*
(2) Non-ridgeback sharks:
Blacktip, *Carcharhinus limbatus*
Bull, *Carcharhinus leucas*
Great hammerhead, *Sphyrna mokarran*
Lemon, *Negaprion brevirostris*
Nurse, *Ginglymostoma cirratum*
Scalloped hammerhead, *Sphyrna lewini*
Smooth hammerhead, *Sphyrna zygaena*
Spinner, *Carcharhinus brevipinna*
Tiger, *Galeocerdo cuvieri*.
(b) Small coastal sharks:
Atlantic sharpnose, *Rhizoprionodon terraenovae*
Blacknose, *Carcharhinus acronotus*
Bonnethead, *Sphyrna tiburo*
Finetooth, *Carcharhinus isodon*
(c) Pelagic sharks:
Oceanic whitetip, *Carcharhinus longimanus*
Porbeagle, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Thresher, *Alopias vulpinus*.
(d) Prohibited sharks:

Atlantic angel, *Squatina dumerili*
Basking, *Cetorhinus maximus*
Bigeye sand tiger, *Odontaspis noronhai*
Bigeye sixgill, *Hexanchus vitulus*
Bigeye thresher, *Alopias superciliosus*
Bignose, *Carcharhinus altimus*
Blue, *Prionace glauca*
Caribbean reef, *Carcharhinus perezi*
Caribbean sharpnose, *Rhizoprionodon porosus*
Dusky, *Carcharhinus obscurus*
Galapagos, *Carcharhinus galapagensis*
Longfin mako, *Isurus paucus*
Narrowtooth, *Carcharhinus brachyurus*
Night, *Carcharhinus signatus*
Sand tiger, *Odontaspis taurus*
Sevengill, *Heptranchias perlo*
Sixgill, *Hexanchus griseus*
Smalltail, *Carcharhinus porosus*
Whale, *Rhincodon typus*
White, *Carcharodon carcharias*

Table 2 of Appendix A to Part 635—Additional Shark Species

Catsharks–Scyliorhinidae
Blotched catshark, *Scyliorhinus meadi*
Broadgill catshark, *Apristurus riveri*
Chain dogfish, *Scyliorhinus retifer*
Deepwater catshark, *Apristurus profundorum*
Dwarf catshark, *Scyliorhinus torrei*
Iceland catshark, *Apristurus laurussoni*
Marbled catshark, *Galeus arae*
Smallfin catshark, *Apristurus parvipinnis*
Dogfish sharks—Squalidae
Bigtooth cookiecutter, *Isistius plutodus*
Blainville's dogfish, *Squalus blainvillei*
Bramble shark, *Echinorhinus brucus*
Broadband dogfish, *Etmopterus gracilispinnis*
Caribbean lanternshark, *Etmopterus hillianus*
Cookiecutter shark, *Isistius brasiliensis*
Cuban dogfish, *Squalus cubensis*
Flatnose gulper shark, *Deania profundorum*
Fringefin lanternshark, *Etmopterus schultzi*
Great lanternshark, *Etmopterus princeps*
Green lanternshark, *Etmopterus virens*
Greenland shark, *Somniosus microcephalus*
Gulper shark, *Centrophorus granulosus*
Japanese gulper shark, *Centrophorus acuus*
Kitefin shark, *Dalatias licha*
Lined lanternshark, *Etmopterus bullisi*
Little gulper shark, *Centrophorus uyato*
Portuguese shark, *Cetroscymnus coelolepis*
Pygmy shark, *Squaliolus laticaudus*
Roughskin spiny dogfish, *Squalus asper*
Smallmouth velvet dogfish, *Scymnodon obscurus*
Smooth lanternshark, *Etmopterus pusillus*
Spiny dogfish, *Squalus acanthias*
Sawsharks—Pristiophoridae
American sawshark, *Pristiophorus schroederi*
Smoothhound Sharks—Triakiidae
Florida smoothhound, *Mustelus norrisi*
Smooth dogfish, *Mustelus canis*

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Wednesday
January 20, 1999

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 52

Federal Acquisition Regulation; Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program; Corrections; Interim Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

RIN 9000–AI20

[FAC 97–10; FAR Case 97–307 Correction]

Federal Acquisition Regulation; Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program; Corrections

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule, correcting amendments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing amendments to FAC 97–10, FAR case 97–307, Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program, published in the **Federal Register** at 63 FR 70265, December 18, 1998, to correct the language concerning the HUBZone Empowerment Contracting Program. For those interested in the FAR loose-leaf page reflecting this correction, please access the page from our Internet Webpage at http://www.arnet.gov/far/loadmain52.html or http://www.arnet.gov/far/facframe.html.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Duarte at (202) 501–4225, General Services Administration, FAR Secretariat, Washington, DC 20405.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: January 13, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Accordingly, 48 CFR Part 52 is corrected as follows:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 41 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. In section 52.219–8, paragraph (c)(3) of the clause is revised to read as follows:

§ 52.219–8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.

* * * * *

Utilization of Small Business Concerns (Jan. 1999)

* * * * *

(c) * * *

(3) *Small business concern owned and controlled by socially and economically disadvantaged individuals* means a small business concern that represents, as part of its offer, that it meets the definition of a small disadvantaged business concern in 13 CFR 124.1002.

[FR Doc. 99–1174 Filed 1–19–99; 8:45 am]

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federal register

Wednesday
January 20, 1999

Part IV

Department of Education

34 CFR Part 650

Jacob K. Javits Fellowship Program; Inviting Applications for New Awards for Fiscal Year (FY) 1999; Final Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 650

Jacob K. Javits Fellowship Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Jacob K. Javits Fellowship Program to incorporate changes made by the Higher Education Amendments of 1998. These final regulations are needed to reflect changes made by recently enacted legislation.

EFFECTIVE DATE: These regulations take effect February 19, 1999.

FOR FURTHER INFORMATION CONTACT: Melissa Burton, U.S. Department of Education, 400 Maryland Avenue, SW., Suite 600 Portals Building, Washington, DC 20202–5247. Telephone: (202) 401–9779. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: These final regulations incorporate statutory changes made by the Higher Education Amendments of 1998 (Pub. L. 105–244, enacted October 7, 1998). The changes include revising the authority citations; amending the selection criteria for students to include financial need; providing the Secretary with the option of entering into a contract with a nongovernmental entity to administer the program; and revising the general provisions to read that no institutional payment will be made to a school or department of divinity for an individual who is studying for a religious vocation.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The regulations further the objectives of this Goal by implementing a program that affords students the opportunity to become experts in their chosen fields through graduate education and to more effectively compete in a global economy.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act, 5 U.S.C. 553, it is customary for the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the changes in this document do not establish any new substantive rules, but simply incorporate recent statutory amendments affecting the Jacob K. Javits Fellowship Program. Therefore, the Secretary has determined that publication of a notice of proposed rulemaking is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Under this program fellowships are awarded to individuals. Individuals are not included in the definition of small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

The Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) via the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free, at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Part 650

Colleges and universities, Education Fellowships, Grant programs, and Reporting and recordkeeping requirements.

Dated: January 12, 1999.

Maureen McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Number 84.170 Jacob K. Javits Fellowship Program)

The Secretary amends title 34 of the Code of Federal Regulations by amending part 650 as follows:

PART 650—JACOB K. JAVITS FELLOWSHIP PROGRAM

1. The authority citation for part 650 is revised to read as follows:

Authority: 20 U.S.C. 1134–1134d, unless otherwise noted.

§ 650.1 [Amended]

2. The authority citation following § 650.1(a) is removed.

§§ 650.1, 650.3, 650.10, 650.31 and 650.35 [Amended]

3. The authority citation for §§ 650.1, 650.3, 650.10, 650.31, and 650.35 is revised to read as follows:

(Authority: 20 U.S.C. 1134)

§§ 650.2, 650.4, 650.30, 650.34 and 650.40 [Amended]

4. The authority citation for §§ 650.2, 650.4, 650.30, 650.34, and 650.40 is revised to read as follows:

(Authority: 20 U.S.C. 1134–1134d)

§§ 650.5, 650.32, 650.41–650.43 [Amended]

5. The authority citation for §§ 650.5, 650.32, 650.41, 650.42, and 650.43 is revised to read as follows:

(Authority: 20 U.S.C. 1134b)

§ 650.20 [Amended]

6. The authority citation for § 650.20 is revised to read as follows:

(Authority: 20 U.S.C. 1134a)

§ 650.33 [Amended]

7. The authority citation for § 650.33 is revised to read as follows:

(Authority: 20 U.S.C. 1134, 1134c)

§§ 650.36, 650.37 and 650.44 [Amended]

8. The authority citation for §§ 650.36, 650.37, and 650.44 is revised to read as follows:

(Authority: 20 U.S.C. 1134c)

§ 650.1 [Amended]

9. Section 650.1(a) is amended by adding ‘‘, financial need,’’ after the word ‘‘achievement’’.

10. Section 650.2(a) is amended by removing ‘‘, other than a school or department of divinity,’’ and by adding ‘‘, and is not studying for a religious vocation,’’ after the word ‘‘degree’’; and paragragh (d)(1)(iv) is revised to read as follows:

§ 650.2 Who is eligible to receive a fellowship?

* * * * *

(d)(1) * * *

(iv) A citizen of any one of the Freely Associated States; or

* * * * *

§ 650.4 [Amended]

11. Section 650.4 is amended by removing the definition of ‘‘School or department of divinity’’; and by removing ‘‘, other than a school or department of divinity,’’ in the definition of ‘‘Institution of higher education’’.

§ 650.20 [Amended]

12. Section 650.20(c) is amended by adding ‘‘, or in the event the Secretary contracts with a non-governmental entity to administer the program, that non-governmental entity,’’ after the word ‘‘Board’’.

§ 650.30 [Amended]

13. Section 650.30 is amended by removing ‘‘, other than a school or department of divinity, which is’’.

§ 650.41 [Amended]

14. Section 650.41(a) is amended by removing ‘‘1993–1994’’ and adding, in its place, ‘‘1998–1999’’; and by removing ‘‘$9,000’’ and adding, in its place, ‘‘$10,222’’.

[FR Doc. 99–1145 Filed 1–19–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No. 84.170]

Jacob K. Javits Fellowship Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Purpose of Program: To award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise to undertake graduate study leading to a doctoral degree or a Master of Fine Arts (MFA) at accredited institutions of higher education in selected fields of the arts, humanities, or social sciences. This program supports the National Education Goal for Adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Eligibility is limited to students who at the time of application have not yet completed their first year of graduate study or will be entering graduate school in academic year 1999–2000. Eligibility is limited to students who are eligible to receive any grant, loan, or work assistance and intend to pursue a doctoral degree or MFA degree in fields selected by the Jacob K. Javits Fellowship Board at accredited institutions of higher education in the U.S. Students must be U.S. citizens or nationals, permanent residents of the U.S., or a citizen of any one of the Freely Associated States.

Applications Available: January 25, 1999.

Deadline for Transmittal of Applications: March 19, 1999.

Available Funds: $1,106,000.

Note: If increased program funds become available, additional awards will be made.

Estimated Range of Awards: The Secretary has determined that the fellowship stipend for academic year 1999–2000 is $15,000, which is equal to the level of support that the National Science Foundation is providing for its graduate fellowships, or the fellow's financial need, as determined by Part F of Title IV of the Higher Education Act, whichever is less. The institutional payment for academic year 1998–1999 was $10,222. The Secretary will adjust the institutional payment prior to the issuance of grant awards based on the Department of Labor's projection in December 1998 of the Consumer Price Index for 1999.

Estimated Average Size of the Awards: $25,300.

Estimated Number of Awards: 43 individual fellowships.

Project Period: Up to 48 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except as provided in 34 CFR 650.3(b)), 77, 82, 85 and 86; and (b) The regulations for this program in 34 CFR part 650 (see amendments to these regulations published elsewhere in this issue of the **Federal Register**).

Note: Currently, section 701(a) of the HEA requires that fellowship funds be made available to students in the year following the year that the funds were appropriated.

The Department expects to request a technical amendment to this provision. However, if an amendment is not enacted fellowships will not be available until the Fall of 2000.

For further information or applications: Contact Melissa Burton, Jacob K. Javits Fellowship Program, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5247. Telephone: (202) 260–3574. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1134–1134d.

Dated: January 12, 1999.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 99–1144 Filed 1–19–99; 8:45 am]

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