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Wednesday
May 5, 1999

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WASHINGTON, DC

WHEN: May 18, 1999 at 9:00 am.

WHERE: Office of the Federal Register
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Washington, DC
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Presidential Documents

Title 3—

The President

Executive Order 13121 of April 30, 1999

Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting Trade Transactions Involving the Federal Republic of Yugoslavia (Serbia and Montenegro) in Response to the Situation in Kosovo

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, in order to take additional steps with respect to the continuing human rights and humanitarian crisis in Kosovo and the national emergency described and declared in Executive Order 13088 of June 9, 1998, hereby order:

Section 1. *Amendment to Executive Order 13088.* (a) Section 1(a) of Executive Order 13088 of June 9, 1998, is revised to read as follows:

''**Section 1.** (a) Except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)), and in regulations, orders, directives, or licenses that may hereafter be issued pursuant to this order, all property and interests in property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are hereby blocked.''

(b) Section 2 of Executive Order 13088 is hereby revoked, and a new section 2 is added to read as follows:

''**Sec. 2.** Except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)) and in regulations, orders, directives, or licenses that may hereafter be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, the following are prohibited:

''(a) the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, to the Federal Republic of Yugoslavia (Serbia and Montenegro) or the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Government of the Republic of Serbia, or the Government of the Republic of Montenegro, of any goods (including petroleum and petroleum products), software, technology (including technical data), or services;

''(b) the importation into the United States, directly or indirectly, of any goods, software, technology (including technical data), or services from the Federal Republic of Yugoslavia (Serbia and Montenegro) or owned or controlled by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Government of the Republic of Serbia, or the Government of the Republic of Montenegro; and

''(c) any transaction or dealing by a United States person, wherever located, in goods, software, technology (including technical data), or services, regardless of country of origin, for exportation, reexportation, sale, or supply to, or exportation from or by, the Federal Republic of Yugoslavia (Serbia and Montenegro) or the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Government of the Republic of Serbia, or the Government of the Republic of Montenegro. This prohibition includes, without limitation, purchase, sale, transport, swap, or brokerage transactions in such items, and approving, financing, insuring, facilitating, or guaranteeing any such transactions.''

(c) Section 4 of Executive Order 13088 is revised to read as follows:

''**Sec. 4.** Any transaction by a United States person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order is prohibited. Any conspiracy formed to violate the prohibitions of this order is prohibited.''

(d) Section 7 of Executive Order 13088 is revised to read as follows:

''**Sec. 7.** (a) The Secretary of the Treasury, in consultation with the Secretary of State, shall give special consideration to the circumstances of the Government of the Republic of Montenegro and persons located in and organized under the laws of the Republic of Montenegro in the implementation of this order.

''(b) The Secretary of the Treasury, in consultation with the Secretary of State, shall give special consideration to the humanitarian needs of refugees from Kosovo and other civilians within the Federal Republic of Yugoslavia (Serbia and Montenegro) in the implementation of this order.

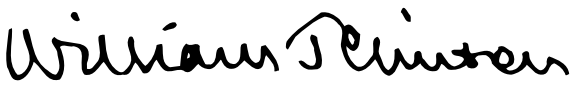
''(c) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby directed to authorize commercial sales of agricultural commodities and products, medicine, and medical equipment for civilian end use in the territory of the Federal Republic of Yugoslavia (Serbia and Montenegro) under appropriate safeguards to prevent diversion to military, paramilitary, or political use by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Government of the Republic of Serbia, or the Government of the Republic of Montenegro.''

Sec. 2. *Preservation of Authorities.* Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under the authority of IEEPA, except as hereafter terminated, modified, or suspended by the issuing Federal agency.

Sec. 3. *No rights or privileges conferred.* Nothing contained in this order shall confer any substantive or procedural right or privilege on any person or organization, enforceable against the United States, its agencies or its officers.

Sec. 4. *(a) Effective date.* This order is effective at 12:01 a.m. eastern daylight time on May 1, 1999.

(b) *Transmittal; Publication.* This order shall be transmitted to the Congress and published in the **Federal Register**.



THE WHITE HOUSE,
April 30, 1999.

[FR Doc. 99–11410
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Rules and Regulations

Federal Register
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Wednesday, May 5, 1999

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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV99–929–1 IFR]

Cranberries Grown in the States of Massachusetts, et al.; Temporary Suspension of a Provision on Producer Continuance Referenda Under the Cranberry Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule requests comments on the temporary suspension of an order provision requiring a producer continuance referendum to be conducted on the marketing order for cranberries during the month of May 1999. The industry currently is experiencing unsettled marketing conditions due to a surplus of product. A temporary delay in holding the continuance referendum will allow the Cranberry Marketing Committee (Committee) to finalize the development of a plan to improve the marketing situation, hold producer meetings throughout the production area to update them on the situation, and begin implementing the plan.

DATES: The suspension of the last sentence in § 929.69 paragraph (d) is effective May 6, 1999, through May 31, 1999. Comments must be received by May 20, 1999 to be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Fax # (202) 720–5698 or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, room 2530–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–2491; Fax: (202) 720–5698 or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; Telephone (202) 720–2491; Fax: (202) 720–5698; or E-mail: Jay.Guerber@usda.gov. You may also view the marketing agreements and orders small business compliance guide at the following website: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 929 [7 CFR Part 929], as amended, regulating the handling of cranberries grown in 10 states. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This action temporarily suspends a provision in § 929.69(d) of the order which specifies the month and year when a continuance referendum should be conducted to determine if producers favor continuance of the cranberry marketing order. This action was unanimously recommended by the Committee at its March 15, 1999, meeting.

Section 929.69(d) of the order provides that the Secretary shall conduct a referendum during the month of May 1975 to ascertain whether continuance of the order is favored by the producers, and that the Secretary shall conduct such a referendum during the month of May of every fourth year thereafter. The next continuance referendum is scheduled to be conducted in May 1999. The last continuance referendum was held in May 1995.

Section 929.69(b) of the order authorizes the Secretary to terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

At its March 15, 1999, meeting, the Committee recommended delaying the May 1999 referendum because the cranberry industry currently is experiencing significant marketing problems. Over the last few months, inventories of cranberry juice have been at record levels and producer prices have dropped significantly.

The Committee reported that, over the last five years, the industry has enjoyed increasing demand for cranberry products, primarily due to the success of numerous cranberry juice based beverages. However, such success has

attracted additional production. With increased production and a leveling of demand, carry-out stocks of cranberry juice and juice products are at record levels and are predicted to increase significantly over the next few years. The Committee reported that carryout stocks at the end of August were approximately 1.2 million (mill.) barrels (bbls) in 1997, 2.1 mill. bbls in 1998, and are projected to be 2.7 and 3.2 mill. bbls in 1999 and 2000, respectively. The Committee also reported that, in recent months, producer prices have responded to this surplus by dropping from $70–80/barrel to $38/barrel.

The Committee plans a series of producer meetings throughout the 10-State production area to inform producers about positive actions being undertaken by the Committee to help strengthen marketing conditions. Some of these actions include proposing amendments to the order, and filing an application with the Department's Foreign Agricultural Service for Market Access Program funds to help the industry further develop export markets for cranberries and cranberry products. The industry also is working with Congress on amendments to the Act to include reporting requirements for processors and importers, and adding cranberries to the list of commodities with the authority to establish marketing research projects, including paid advertising, to more effectively promote cranberries and cranberry products.

The Committee believes that a temporary delay in holding the continuance referendum will provide time for its actions to help stabilize the current marketing situation. The Committee further believes that holding a continuance referendum in May 1999, given the current unsettled marketing situation, would not provide a true indicator of support for and the value of the order.

Pursuant to § 929.69(b), this action suspends provisions in § 929.69(d) to postpone the May 1999 continuance referendum under the cranberry marketing order. The Department currently plans to conduct a producer continuance referendum in May 2000. However, a final decision on holding that referendum will not be made until the spring of 2000. The Committee traditionally meets each year during the months of February or March to assess the current marketing situation and prospects for the upcoming season. The Committee's assessment of marketing conditions at that time will be used in making the final decision. In accordance with § 929.69(d) of the order, a continuance referendum is required to be held in May 2003.

The Regulatory Flexibility Act and Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of cranberries who are subject to regulation under the order and approximately 1,100 producers of cranberries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This action temporarily suspends a provision in the order requiring a producer referendum to be held in May 1999 to determine whether producers favor continuance of the order.

Section 929.69(d) of the order provides that the Secretary shall conduct a referendum during the month of May 1975 to ascertain whether continuance of the order is favored by the producers, and that the Secretary shall conduct such a referendum during the month of May of every fourth year thereafter. The next continuance referendum is scheduled to be conducted in May 1999. The last continuance referendum was held in May 1995.

Section 929.69(b) of the order authorizes the Secretary to terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

At its March 15, 1999, meeting, the Committee recommended delaying the May 1999 referendum because the cranberry industry currently is experiencing significant marketing problems. Over the last few months, inventories of cranberry juice have been at record levels and producer prices have dropped significantly.

The Committee reported that, over the last five years, the industry has enjoyed increasing demand for cranberry products, primarily due to the success of numerous cranberry juice based beverages. However, such success has attracted additional production. With increased production and a leveling of demand, carry-out stocks of cranberry juice and juice products are at record levels and are predicted to increase significantly over the next few years. The Committee reported that carryout stocks at the end of August were approximately 1.2 million (mill.) barrels (bbls) in 1997, 2.1 mill. bbls in 1998, and are projected to be 2.7 and 3.2 mill. bbls in 1999 and 2000, respectively. The Committee also reported that, in recent months, producer prices have responded to this surplus by dropping from $70–80/barrel to $38/barrel.

The Committee plans a series of producer meetings throughout the 10-State production area to inform producers about positive actions being undertaken by the Committee to help strengthen marketing conditions. Some of these actions include proposing amendments to the order, and filing an application with the Department's Foreign Agricultural Service for Market Access Program funds to help the industry further develop export markets for cranberries and cranberry products. The industry also is working with Congress on amendments to the Act to include reporting requirements for processors and importers, and adding cranberries to the list of commodities with the authority to establish marketing research projects, including paid advertising, to more effectively promote cranberries and cranberry products.

The Committee believes that a temporary delay in holding the continuance referendum will provide time for its actions to help stabilize the current marketing situation. The Committee further believes that holding a continuance referendum in May 1999, given the current unsettled marketing situation, would not provide a true indicator of support for and the value of the order.

Pursuant to § 929.69(b), this action suspends provisions in § 929.69(d) to postpone the May 1999 continuance referendum under the cranberry marketing order. The Department currently plans to conduct a producer continuance referendum in May 2000. This should serve as an alternative to just suspending the May 1999 continuance referendum. However, a

final decision on holding that referendum will not be made until the spring of 2000. The Committee traditionally meets each year during the months of February or March to assess the current marketing situation and prospects for the upcoming season. The Committee's assessment of marketing conditions at that time will be used in making the final decision. In accordance with § 929.69(d) of the order, a continuance referendum is required to be held in May 2003.

This rule will not impose any additional recordkeeping requirements on either small or large cranberry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by Part 929 have been previously approved by OMB and assigned OMB Number 0581–0103.

Committee meetings are widely publicized throughout the cranberry industry and are open to all industry members and entities (including both small and large business entities) and other interested persons—who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Like all Committee meetings, the March 1999 meeting was a public meeting and all entities, both large and small, were able to express their views on these issues. The Committee itself is composed of eight members, of which seven members are growers and one represents the public.

After consideration of all available information, and pursuant to section 929.69(b), it is found that the second sentence in section 929.69(d), does not tend to effectuate the declared policy of the Act for the period specified herein and should be temporarily suspended.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 60 days after publication in the **Federal Register** because: (1) The suspension needs to be effective as soon as possible since the month of May is specified in the order as the period in which to conduct a continuance referendum; and (2) this rule provides a 15-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 929.69, paragraph (d), the words, ''The Secretary shall conduct such a referendum during the month of May of every fourth year thereafter.'' are suspended effective May 6, 1999, through May 31, 1999.

Dated: April 29, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–11230 Filed 5–4–99; 8:45 pm]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. 99–26]

RIN 3069–AA–82

Amendment of Affordable Housing Program Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation governing the operation of the Affordable Housing Program (AHP or Program) to make certain technical revisions clarifying Program requirements and improving the operation of the AHP.

DATES: The interim final rule shall be effective on June 4, 1999. The Finance Board will accept written comments on this interim final rule on or before July 6, 1999.

ADDRESSES: Mail comments to Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, NW, Washingon DC 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Deputy Director, (202) 408–2848, or Janet M. Fronckowiak, Associate Director, (202) 408–2575, Program Assistance Division, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(1) of the Federal Home Loan Bank Act (Bank Act) requires each Federal Home Loan Bank (Bank) to establish a Program to subsidize the interest rate on advances to members of the Federal Home Loan Bank System engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. *See* 12 U.S.C. 1430(j)(1). The Finance Board is required to promulgate regulations governing the operation of the Program. *See id.*

On August 4, 1997, the Finance Board published a final AHP regulation adopting comprehensive revisions to the Program, *see* 12 CFR part 960, which, among other changes, authorized the 12 Banks, rather than the Finance Board, to approve applications for AHP subsidies beginning January 1, 1998. *See* 62 FR 41812 (Aug. 4, 1997). On May 20, 1998, the Finance Board published an interim final rule amending the regulation to make certain technical revisions clarifying Program requirements and improving the operation of the AHP. *See* 63 FR 27668 (May 20, 1998). The interim final rule was adopted as a final rule, with several changes, and will become effective June 1, 1999.

In the course of implementing the changes to the Program under the recent revisions to the AHP regulation, the Banks and Finance Board staff have identified a number of additional technical issues whose resolution would clarify Program requirements and improve the effectiveness of the Program. This interim final rule addresses those issues. Although the interim final rule will become effective 30 days after the date of publication in the **Federal Register**, the Finance Board requests comment on all aspects of the interim final rule during a 60-day comment period.

II. Analysis of the Interim Final Rule

A. Timing of Submission of Amendments to Bank AHP Implementation Plans to the Finance Board—§ 960.3(b)(4)

Section 960.3(b)(1) of the AHP regulation requires each Bank's board of directors to adopt a written AHP implementation plan setting forth the requirements specified in the regulation. *See* 12 CFR 960.3(b)(1). Each Bank is required to provide its Advisory Council an opportunity to review and make recommendations on the Bank's AHP implementation plan and any subsequent amendments to the plan prior to adoption of the plan or amendments. *See id.* § 960.3(b)(3). Section 960.3(b)(4) of the AHP regulation provides that:

> A Bank shall submit its initial AHP implementation plan, and any amendments, to the Finance Board and the Bank's Advisory Council at least 60 days prior to distributing requests for applications for AHP subsidies for the funding period in which the plan, or amendments, will be effective.

See id. § 960.3(b)(4). The Banks adopted their initial plans under the revised AHP regulation for the first AHP funding period in 1998, and have been submitting amendments to such plans to the Finance Board for subsequent AHP funding periods.

The 60-day requirement in the regulation was intended to give the Advisory Councils and the Finance Board sufficient time to review the implementation plans and amendments prior to distribution by the Banks of AHP application materials to the public. However, the Banks have indicated that the 60-day requirement is unworkable as a practical matter because, among other reasons, the Banks' Advisory Councils generally meet only quarterly. By the time the Advisory Councils have met and made their recommendations to the Banks' boards, and the Banks' boards have adopted the amendments, the Banks are approaching their target dates for sending out AHP application materials to the public. Requiring the Banks then to send their final plan amendments to the Finance Board and the Advisory Councils 60 days prior to the distribution of the AHP application materials to the public would delay distribution of the AHP application materials, which in turn would deprive potential applicants of adequate notice of the AHP application requirements before the applications would be due at the Bank. To avoid this result, the Finance Board in 1998 issued a number of waivers of the 60-day requirement so that the Banks could meet their target AHP application distribution dates.

While the 60-day period was useful for the initial plan review under the newly revised AHP regulation, Finance Board staff's experience has been that subsequent amendments to the plans have not required a 60-day review period. In any case, the administrative convenience afforded by a 60-day review period is outweighed by the needs of the users of the Program for timely distribution of AHP application materials. Therefore, the Finance Board has decided to amend the AHP regulation to correct this timing problem. Accordingly, the interim final rule amends § 960.3(b)(4) to require that the Banks submit any amendments of their AHP implementation plans to the Finance Board within 30 days after the date the Bank's board of directors approves the amendments. The interim final rule also deletes the requirement that the Banks' final plan amendments be sent to the Advisory Councils 60 days prior to the Banks' distribution of the AHP application materials, since the Advisory Councils already will have had an opportunity to review the proposed plan amendments pursuant to § 960.3(b)(3).

B. Timing of Appraisals for Member Real Estate Owned (REO) Properties and Properties Upon Which a Member Holds a Mortgage or Lien—§ 960.5(b)(2)(ii)(B)

Section 960.5(b)(2)(ii)(B) of the AHP regulation provides that:

> The purchase price of property or services, as reflected in the project's development budget, sold to the project by a member providing AHP subsidy to the project, or, in the case of property, upon which such member holds a mortgage or lien, may not exceed the market value of such property or services as of the date the purchase price for the property or services was agreed upon. In the case of real estate owned property sold to a project by a member providing AHP subsidy to a project, or property sold to the project upon which the member holds a mortgage or lien, the market value of such property is deemed to be the ''as-is'' or ''as-rehabilitated'' value of the property, whichever is appropriate, *as reflected in an independent appraisal of the property performed within six months prior to the date the purchase price for the property was agreed upon.*

See id. § 960.5(b)(2)(ii)(B) (emphasis added).

Section 960.5(b)(2)(ii)(B) is intended to ensure that the AHP subsidy is passed on to the ultimate borrower (subsidy pass-through requirement), as required by the Bank Act, and thus that the project has a need for the AHP subsidy, by requiring that the purchase price of the property not exceed its current market value (*i.e.*, that the subsidy is not recouped by the member to discharge its mortgage or lien through an excessive purchase price paid for the property by the project). *See* 12 U.S.C. 1430(j)(9)(E); 12 CFR 960.5(b)(2)(ii)(B). The AHP regulation requires this determination to be made based on an appraisal of the market value of the property performed within six months prior to the date the purchase price of the property was agreed upon (*i.e.*, the sales contract). *See* 12 CFR 960.5(b)(2)(ii)(B). If the purchase price of the property exceeds the current market value, then the project sponsor is paying more than necessary for the property, the member is receiving more than necessary, and the project does not need the AHP subsidy.

In 1998, several Banks received applications for AHP funding involving member REO property or property upon which the member held a mortgage or lien, for which no independent appraisals of the property had been performed within six months prior to the date the purchase price for the property was agreed upon, as required by § 960.5(b)(2)(ii)(B). In some instances, the sponsors had agreed to a purchase price for the property or had purchased the property two to three years before the AHP application due date, with no anticipation that they later would be applying for AHP funds in connection with the property. Due to the fees of $5,000 or more typically charged for independent appraisals and the limited predevelopment funds available to pay for such appraisals, many non-profit sponsors with limited financial resources conduct in-house analyses or rely upon tax assessment values to determine the market value of properties. Sponsors are especially reluctant to obtain an independent appraisal when they may never exercise the option to purchase the property. In short, given the way many sponsors acquire property, the requirements of § 960.5(b)(2)(ii)(B) for obtaining an independent appraisal of the property within six months prior to the date the purchase price for the property was agreed upon are not practical or cost effective in the affordable housing industry.

A reasonable alternative is to require that the sponsor obtain an independent appraisal of the property within six months prior to the date the Bank disburses AHP subsidies to the project. This would avoid the timing problem discussed above but still require a current appraisal to ensure that the purchase price of the property does not exceed its current market value.

Accordingly, the interim final rule amends § 960.5(b)(2)(ii)(B) to require that the independent appraisal of the

property obtained by the sponsor be performed within six months prior to the date the Bank disburses AHP subsidy to the project. The interim final rule also amends this section to require that the independent appraisal be completed by a State certified or licensed appraiser, as defined in 12 CFR 564.2(j) and (k), in order to ensure a more accurate evaluation of the property value.

C. Inclusion of the Creation of Permanent Owner-Occupied Housing Under the Housing for Homeless Households Scoring Criterion—§ 960.6(b)(4)(iv)(D)

Under § 960.6(b)(4)(iv)(D) of the AHP regulation, an application may receive scoring points if it involves the creation of rental housing, excluding overnight shelters, reserving at least 20 percent of the units for homeless households, or the creation of transitional housing for homeless households permitting a minimum of six months occupancy. *See id.* § 960.6(b)(4)(iv)(D). The regulation inadvertently omitted the creation of permanent owner-occupied housing, which was included in the proposed rule amending the AHP regulation. *See* 61 FR 57799, 57824 (Nov. 8, 1996). There have been a number of innovative and successful initiatives to move households directly from homeless shelters into permanent homeownership through self-help and other social services programs. Citing such programs, a Bank commenting on the May 20, 1998 interim final rule urged the Finance Board to endorse the inclusion of the creation of permanent owner-occupied housing under the housing for homeless households scoring criterion.

Accordingly, the interim final rule amends § 960.6(b)(4)(iv)(D) to include the creation of permanent owner-occupied housing reserving at least 20 percent of the units for homeless households under the housing for homeless households scoring criterion.

D. Specific Inclusion of the Creation of ''Visitable'' Housing Under the Special Needs Scoring Criterion—§ 960.6(b)(4)(iv)(F)(1)

Under § 960.6(b)(4)(iv)(F)(*1*) of the AHP regulation, a Bank may choose as one of its scoring criteria under the First District Priority scoring category the following:

> *Special Needs.* The creation of housing in which at least 20 percent of the units are reserved for occupancy by households with special needs, *such as* the elderly, mentally or physically disabled persons, persons recovering from physical abuse or alcohol or drug abuse, or persons with AIDS.

See 12 CFR 960.6(b)(4)(iv)(F)(*1*) (emphasis added). The use of the words ''such as'' indicates that the specific list of special needs housing in the regulation is not exclusive, allowing a Bank the option to select other types of special needs housing not specifically mentioned but of the general types included in the list.

The creation of housing that is ''visitable'' by persons with physical disabilities who are not occupants of such housing may be considered a type of special needs housing that a Bank has the option of adopting under the special needs scoring criterion. Although amendment of the AHP regulation to allow a Bank to adopt such a ''visitable'' housing criterion is not necessary, the interim final rule amends § 960.6(b)(4)(iv)(F)(*1*) to specifically include ''visitable'' housing because the Finance Board believes it is important to increase awareness of this significant special needs housing as an option for the Banks to consider in adopting their scoring criteria under the First District Priority scoring category.

The interim final rule amends § 960.1 to include a definition of ''visitable,'' based on the definition of ''visitable'' adopted by the Department of Housing and Urban Development, which is as follows:

> In either owner-occupied or rental housing, at least one entrance is at-grade (no steps) and approached by an accessible route such as a sidewalk, and the entrance door and all interior passage doors are at least 2 feet, 10 inches wide, offering 32 inches of clear passage space.

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

IV. Paperwork Reduction Act

This interim final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

V. Notice and Public Participation

The Finance Board for good cause finds that the notice and public comment procedure required by the Administrative Procedure Act is impracticable, unnecessary or contrary to the public interest in this instance, because the changes made by this interim final rule are technical in nature and apply only to the Banks. *See* 5 U.S.C. 553(b)(3)(B).

List of Subjects in 12 CFR Part 960

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends title 12, chapter IX, part 960, Code of Federal Regulations, as follows.

PART 960—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 960 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

2. Section 960.1 is amended by adding in alphabetical order the following definition to read as follows:

§ 960.1 Definitions.

* * * * *

Visitable means, in either owner-occupied or rental housing, at least one entrance is at-grade (no steps) and approached by an accessible route such as a sidewalk, and the entrance door and all interior passage doors are at least 2 feet, 10 inches wide, offering 32 inches of clear passage space.

3. Section 960.3 is amended by revising paragraph (b)(4) to read as follows:

§ 960.3 Operation of Program and adoption of AHP implementation plan.

* * * * *

(b) * * *

(4) *Submission of plan amendments to the Finance Board.* A Bank shall submit any amendments of its AHP implementation plan to the Finance Board within 30 days after the date the Bank's board of directors approves such amendments.

* * * * *

4. Section 960.5 is amended by revising the second sentence of paragraph (b)(2)(ii)(B) to read as follows:

§ 960.5 Minimum eligibility standards for AHP projects.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) * * * In the case of real estate owned property sold to a project by a member providing AHP subsidy to a project, or property sold to the project upon which the member holds a mortgage or lien, the market value of such property is deemed to be the ''as-is'' or ''as-rehabilitated'' value of the property, whichever is appropriate, as reflected in an independent appraisal of the property performed by a State certified or licensed appraiser, as defined in 12 CFR 564.2(j) and (k), within six months prior to the date the

Bank disburses AHP subsidy to the project.

* * * * *

5. Section 960.6 is amended by revising paragraphs (b)(4)(iv)(D) and (b)(4)(iv)(F)(*1*) to read as follows:

§ 960.6 Procedure for approval of applications for funding.

* * * * *

(b) * * *

(4) * * *

(iv) * * *

(D) *Housing for homeless households.* The creation of rental housing, excluding overnight shelters, reserving at least 20 percent of the units for homeless households, the creation of transitional housing for homeless households permitting a minimum of six months occupancy, or the creation of permanent owner-occupied housing reserving at least 20 percent of the units for homeless households.

* * * * *

(F) * * *

(*1*) *Special needs.* The creation of housing in which at least 20 percent of the units are reserved for occupancy by households with special needs, such as the elderly, mentally or physically disabled persons, persons recovering from physical abuse or alcohol or drug abuse, or persons with AIDS; or the creation of housing that is ''visitable'' by persons with physical disabilities who are not occupants of such housing;

* * * * *

Dated: April 14, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–11250 Filed 5–4–99; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–81–AD; Amendment 39–11156; AD 99–10–02]

RIN 2120–AA64

Airworthiness Directives; Avions Pierre Robin Model R2160 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Avions Pierre Robin Model R2160 airplanes. This AD requires inspecting to assure that the fuel filler cap has a 2.5 millimeter (mm) diameter hole drilled through it or that a vinyl piping is connected to the filler neck inside the cabin. If neither of these items exists, this AD requires replacing the fuel filler cap with a fuel filler cap that has a 2.5 mm diameter hole drilled through it. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to detect and correct the installation of improperly designed fuel venting system parts, which could result in an inadequate fuel supply to the engine with loss of engine power.

DATES: Effective June 18, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 18, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 33–3 80 44 20 50; facsimile: 33–3 80 35 60 80. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–81–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Avions Pierre Robin Model R2160 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 2, 1999 (64 FR 10114). The NPRM proposed to require inspecting to assure that the fuel filler cap has a 2.5 millimeter (mm) diameter hole drilled through it or that a vinyl piping is connected to the filler neck inside the cabin. If neither of these items exists, the NPRM proposed to require replacing the fuel filler cap with a fuel filler cap that has the hole drilled through it, part number (P/N) 52.23.07.010 (or FAA-approved equivalent P/N).

Accomplishment of the proposed inspection as specified in the NPRM would be required in accordance with Avions Pierre Robin Service Bulletin No. 135, dated May 17, 1994. Accomplishment of the proposed replacement (if necessary) as specified in the NPRM would be required in accordance with the applicable maintenance manual.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

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

Cost Impact

The FAA estimates that 10 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish both the inspection and replacement (if necessary), and that the average labor rate is approximately $60 per work hour. Parts (if necessary) cost approximately $60 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $1,200, or $120 per airplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3)

will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–10–02 Avions Pierre Robin: Amendment 39–11156; Docket No. 98–CE–81–AD.

Applicability: Model R2160 airplanes, all serial numbers up to and including serial number 249, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct the installation of improperly designed fuel venting system parts, which could result in an inadequate fuel supply to the engine with loss of engine power, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, inspect to assure that the fuel filler cap has a 2.5 millimeter (mm) diameter hole drilled through it or that a vinyl piping is connected to the filler neck inside the cabin. Accomplish this inspection in accordance with Avions Pierre Robin Service Bulletin No. 135, dated May 17, 1994.

(b) If neither of the conditions specified in paragraph (a) of this AD exists, prior to further flight, replace the fuel filler cap with a fuel filler cap that has a 2.5 mm diameter hole drilled through it, part number (P/N) 52.23.07.010 (or FAA-approved equivalent P/N). Accomplish this replacement in accordance with the applicable maintenance manual.

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

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

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

(e) Questions or technical information related to the service information referenced in this AD should be directed to Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 33–3 80 44 20 50; facsimile: 33–3 80 35 60 80. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspection required by this AD shall be done in accordance with Avions Pierre Robin Service Bulletin No. 135, dated May 17, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French AD 94–130(A), dated June 8, 1994.

(g) This amendment becomes effective on June 18, 1999.

Issued in Kansas City, Missouri, on April 27, 1999.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10969 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–79–AD; Amendment 39–11155; AD 99–10–01]

RIN 2120–AA64

Airworthiness Directives; Avions Pierre Robin Model R2160 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Avions Pierre Robin Model R2160 airplanes. This AD requires replacing the wing attachment bolts and associated hardware. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to prevent a wing from separating from the airplane caused by damaged wing attachment bolts, which could result in loss of control of the airplane.

DATES: Effective June 18, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 18, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 33–3 80 44 20 50; facsimile: 33–3 80 35 60 80. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–79–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Avions Pierre Robin Model R2160 airplanes was published

in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 2, 1999 (64 FR 10116). The NPRM proposed to require replacing the wing attachment bolts and associated hardware.

Accomplishment of the proposed replacement as specified in the NPRM would be required in accordance with Avions Pierre Robin NOTE NAV 96–3, dated May 2, 1996.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The manufacturer has informed the FAA that the effectivity of the AD should cover all Model R2160 airplanes up to serial number 299 instead of serial numbers 001 through 264; 266 through 269; and 272 through 288, as published in the NPRM. None of these additional Model R2160 airplanes are registered in the United States. However, the FAA has determined that the AD should still apply to these serial numbered airplanes to assure that the unsafe condition is addressed in the event that any of these airplanes are imported and placed on the U.S. Register. Because the referenced airplanes are not on the U.S. register, adding these serial numbered airplanes to the final rule will not increase the burden upon the public over that already proposed in the NPRM.

The FAA's Determination

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

Differences Between Service Bulletin, French AD, and This AD

Avions Robin Service Bulletin No. 145, rev. 2, dated January 11, 1999, and NOTE NAV 96–3, dated May 2, 1996, specify checking the torque value of the wing attachment bolts at each 100-hour maintenance visit, and French AD 96–051(A) R1, dated June 5, 1996, requires these checks for those airplanes registered for operation in France.

These checks are part of the maintenance schedule and are considered a general maintenance item. Because the FAA has no justification to mandate AD action for general maintenance, this AD only incorporates the replacement of the wing attachment bolts and associated hardware and does not include the torque value checks.

Cost Impact

The FAA estimates that 10 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 40 workhours per airplane to accomplish the replacements, and that the average labor rate is approximately $60 per work hour. Parts cost approximately $200 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $26,000, or $2,600 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety,

Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–10–01 Avions Pierre Robin: Amendment 39–11155; Docket No. 98–CE–79–AD.

Applicability: Model R2160 airplanes, serial numbers 001 through 298, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent a wing from separating from the airplane caused by damaged wing attachment bolts, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, replace the wing attachment bolts and associated hardware, in accordance with Avions Pierre Robin NOTE NAV 96–3, dated May 2, 1996.

(b) As of the effective date of this AD, no person may install, on any affected airplane, wing attachment bolts and associated hardware that are not specified in Avions Pierre Robin NOTE NAV 96–3, dated May 2, 1996, unless the parts are an FAA-approved equivalent to that referenced in the service information.

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

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be

obtained from the Small Airplane Directorate.

(e) Questions or technical information related to the service information referenced in this AD should be directed to Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 33–3 80 44 20 50; facsimile: 33–3 80 35 60 80. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The replacements required by this AD shall be done in accordance with Avions Pierre Robin NOTE NAV 96–3, dated May 2, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French AD 96–051(A) R1, dated June 5, 1996.

(g) This amendment becomes effective on June 18, 1999.

Issued in Kansas City, Missouri, on April 27, 1999.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10968 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–93–AD; Amendment 39–11159; AD 99–10–05]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–145 series airplanes. This action requires replacement of certain flexible joints and O-rings of the rear fuselage with improved flexible joints and new O-rings. This action also requires installation of new support assemblies to attach to the engine bleed line tubing in the area of the rear fuselage to improve the engine bleed line tubing alignment. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent failure of certain flexible joints that attach to the engine bleed lines in the area of the rear fuselage. Failure of these flexible joints could cause damage to the fuel lines leading to the auxiliary power unit, which could result in an increased risk of fire to occur in the rear baggage compartment during flight.

DATES: Effective May 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 1999.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–93–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–145 series airplanes. The DAC advises that failure of certain flexible joints (Gamah joints) in the engine bleed lines has occurred. The cause of the failure has been attributed to the inadequate strength of these flexible joints. These joints could not withstand the hot bleed air pressure produced by both engines and the joints ruptured in an undisclosed area of the airplane and damaged certain airplane systems. This condition, if not detected and corrected, could result in an increased risk of fire to occur in the rear baggage compartment during flight.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–36–0007, Change 03, dated December 9, 1998, which describes procedures for replacement of certain flexible joints (Gamah joints) and O-rings of the rear fuselage with improved flexible joints and new O-rings. The service bulletin also describes procedures for installation of new support assemblies to attach to the engine bleed line tubing in the area of the rear fuselage to improve the engine bleed line tubing alignment. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 98–11–01, dated November 13, 1998, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, 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 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, this AD is being issued to prevent failure of certain flexible joints that attach to the engine bleed lines in the area of the rear fuselage. Failure of these flexible joints could cause damage to the fuel lines leading to the auxiliary power unit, which could result in an increased risk of fire to occur in the baggage compartment during flight. This AD requires accomplishment of the actions specified in the service bulletin described previously.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–93–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–10–05 Empresa Brasileira de Aeronautica S.A. (Embraer): Amendment 39–11159. Docket 99–NM–93–AD.

Applicability: Model EMB–145 series airplanes, serial numbers 145004 through 145075 inclusive; 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of certain flexible joints that attach to the engine bleed lines in the area of the rear fuselage, which could cause damage to the fuel lines leading to the auxiliary power unit, resulting in an increased risk of fire to occur in the rear baggage compartment during flight, accomplish the following:

(a) Within 400 flight hours after the effective date of this AD, replace certain flexible joints (Gamah joints) and O-rings of the rear fuselage with improved flexible joints and new O-rings, and install new support assemblies to attach to the engine bleed line tubing in the area of the rear fuselage to improve the engine bleed line tubing alignment, in accordance with EMBRAER Service Bulletin 145–36–0007, Change 03, dated December 9, 1998.

Note 2: Any replacement of certain flexible joints and new O-rings and installation of new support assemblies that have been accomplished prior to the effective date of this AD, in accordance with EMBRAER Service Bulletin 145–36–0007, dated September 1, 1998, Change 01, dated September 18, 1998, or Change 02, dated November 11, 1998, are considered acceptable for compliance with the applicable action specified in this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small 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, Atlanta ACO.

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

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 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.

Incorporation by Reference

(d) The actions shall be done in accordance with EMBRAER Service Bulletin 145–36–0007, Change 03, dated December 9, 1998. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Brazilian airworthiness directive 98–11–01, dated November 13, 1998.

(e) This amendment becomes effective on May 20, 1999.

Issued in Renton, Washington, on April 28, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11226 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–308–AD; Amendment 39–11158; AD 99–10–04]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace (Jetstream) Model 4101 airplanes, that requires modification of the pulley assemblies of the elevator and rudder control cables on the rear pressure bulkhead. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the pulley assemblies of the elevator and rudder control cables in the event of an elevator or rudder control cable jam, which could result in reduced controllability of the airplane.

DATES: Effective June 9, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 9, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace (Jetstream) Model 4101 airplanes was published in the **Federal Register** on February 18, 1999 (64 FR 8026). That action proposed to require modification of the pulley assemblies of the elevator and rudder control cables on the rear pressure bulkhead.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 60 airplanes of U.S. registry will be affected by this AD, that it will take approximately 60 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $216,000, or $3,600 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–10–04 British Aerospace Regional Aircraft [Formerly JetstreamAircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–11158. Docket 98–NM–308–AD.

Applicability: All Jetstream Model 4101 airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the pulley assemblies of the elevator and rudder control cables in the event of an elevator or rudder control cable jam, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the pulley assemblies

of the elevator and rudder control cables on the rear pressure bulkhead, in accordance with Jetstream Service Bulletin J41–27–052, dated September 11, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, 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.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 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.

Incorporation by Reference

(d) The modification shall be done in accordance with Jetstream Service Bulletin J41–27–052, dated September 11, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 006–09–98.

(e) This amendment becomes effective on June 9, 1999.

Issued in Renton, Washington, on April 28, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11224 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–307–AD; Amendment 39–11157; AD 99–10–03]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, that requires an inspection to detect cracking of the flap control lever and to identify the material from which the lever is made; replacement of the flap control lever with an improved part, if necessary; and repetitive inspections for airplanes having a lever made from certain material. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the flap control lever, which could result in restricted flap movement and consequent reduced controllability of the airplane.

DATES: Effective June 9, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 9, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes was published in the **Federal Register** on February 18, 1999 (64 FR 8027). That action proposed to require an inspection to detect cracking of the flap control lever and to identify the material from which the lever is made; replacement of the flap control lever with an improved part, if necessary; and repetitive inspections for airplanes having a lever made from certain material.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 42 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,520, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–10–03 British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Amendment 39–11157. Docket 98–NM–307–AD.

Applicability: All Model BAC 1–11 200 and 400 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the flap control lever, which could result in restricted flap movement and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a one-time detailed visual inspection of the flap control lever to detect cracking, and to identify the type of aluminum alloy from which the flap control lever is made, in accordance with British Aerospace Alert Service Bulletin 27–A–PM6041, Issue 1, dated August 21, 1998.

(1) If no crack is detected and the lever is made of L97 or L99 aluminum alloy, no further action is required by this AD.

(2) If no crack is detected, and the lever is made of L53 aluminum alloy or the material of the flap control lever cannot be identified, repeat the inspection thereafter at intervals not to exceed 24 months; or prior to further flight, replace the flap control lever with a flap control lever made of L97 or L99 aluminum alloy, in accordance with the alert service bulletin. Following such replacement, no further action is required by this AD.

(3) If any crack is detected, prior to further flight, replace the flap control lever with a flap control lever made of L97 or L99 aluminum alloy, in accordance with the alert service bulletin. After the replacement, no further action is required by this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

(c) Special flight permits may be issued in accordance with § 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.

Incorporation by Reference

(d) The inspections and replacement shall be done in accordance with British Aerospace Alert Service Bulletin 27–A–PM6041, Issue 1, dated August 21, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 003–08–98.

(e) This amendment becomes effective on June 9, 1999.

Issued in Renton, Washington, on April 28, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11223 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–10]

Revision of Class E Airspace; Shreveport, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Shreveport, LA. The development of a Nondirectional Radio Beacon (NDB) or Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), at Shreveport Regional Airport, Shreveport, LA has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Shreveport Regional Airport, Shreveport, LA.

DATES: Effective 0901 UTC, September 9, 1999.

Comments must be received on or before June 21, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–10, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Forth Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Forth Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Shreveport, LA. The development of a NDB or GPS SIAP, at Shreveport Regional Airport, Shreveport, LA has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more about the surface for Instrument Flight Rules (IFR) operations to Shreveport Regional Airport, Shreveport, LA.

Class E airspace designations 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. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. 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 is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this 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. 99–ASW–10.'' 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.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) 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. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 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 14 CFR 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 the 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.

* * * * *

ASW LA E5 Shreveport, LA [Revised]

Shreveport Regional Airport, Shreveport, LA
(Lat. 32°26′48″ N., long. 93°49′32″ W.)
Shreveport, Barksdale AFB, LA
(Lat. 32°30′07″ N., long. 93°39′46″ W.)
Shreveport Downtown Airport, LA
(Lat. 32°32′24″ N., long. 93°44′41″ W.)

That airspace extending upward from 700 feet above the surface within a 9.4-mile radius of Shreveport Regional Airport and within a 8-mile radius of Barksdale AFB and within a 8.1-mile radius of Shreveport Downtown Airport.

* * * * *

Issued in Fort Worth, TX, on April 19, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–11294 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–09]

Revision of Class E Airspace; Galveston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace extending upward from the surface within a 4.1-mile radius of Scholes Field, Galveston, TX. Increased air traffic operations and instrument approaches have made this rule necessary. This action is intended to provide continuous controlled airspace for aircraft operating in the vicinity of Scholes Field, Galveston, TX.

DATES: Effective 0901 UTC, September 9, 1999.

Comments must be received on or before June 21, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–09, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX,

between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace extending upward from the surface within a 4.1-mile radius of Scholes Field, Galveston, TX. Increased air traffic operations and instrument approaches have made this rule necessary. This action is intended to provide continuous controlled airspace for aircraft operating in the vicinity of Scholes Field, Galveston, TX.

Class E airspace designations are published in Paragraph 6002 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. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. 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 argument 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 is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes that FAA-public contract concerned with the substance of this action will be filled 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. 99–ASW–09.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulatory 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 level 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.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) 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. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipate impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 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 14 CFR 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 the 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 6002 Class E airspace areas extending upward from the surface of the earth.

* * * * *

ASW TX E2 Galveston, TX [Revised]

Galveston, Scholes Field, TX

(Lat. 29°15′55″ N., long. 94°51′38″ W.)

That airspace extending upward from the surface within a 4.1-mile radius of Scholes Field

* * * * *

Issued in Fort Worth, TX on April 19, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–11295 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 17, 18 and 150

Revision of Federal Speculative Position Limits and Associated Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) has long established and enforced speculative position limits for futures contracts on various agricultural commodities. On April 7, 1993, the Commission promulgated interim final rules amending Federal speculative position limits. The interim amendments generally maintained the existing speculative position limit levels for the delivery months and increased limit levels for the deferred months at levels below the levels originally proposed. The Commission, as proposed on July 17, 1998, is raising the speculative position limit levels to the levels originally proposed.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5260, or electronically, [PArchitzel@cftc,gov].

SUPPLEMENTARY INFORMATION: In addition, the Commission is codifying various policies relating to the requirement that exchanges set speculative position limits as required by rule 1.61, 17 CFR 1.61. These relate to the levels which the Commission has approved for such rules and to various exemptions from the general requirement that exchanges set speculative position limits for all contract markets. Specifically, the Commission is codifying an exemption permitting exchanges to substitute position accountability rules for position limits for high volume and liquid markets.

The Commission is also amending the applicability of the limited exemption from nonspot month speculative position limits under Commission rule 150.3, 17 CFR 150.3, for entities that authorize independent account controllers to trade on their behalf. Specifically, the Commission is amending the definition of entities eligible for this relief under Commission rule 150.1(d), 17 CFR 150.1(d), to expand the categories of eligible entities and to extend it to the separately organized affiliates of an eligible entity.

Finally, the Commission is amending its rule on aggregation. In particular, the Commission is requiring that limited partners with greater than a 25% ownership interest in a commodity pool the operator of which is exempt from the requirement to register as a commodity pool operator under Commission rule 4.13 aggregate their positions with the pool's. However, the Commission is also amending rule 150.3 to make such a limited partner eligible for relief from speculative position limit levels during nonspot months. The Commission is also amending its rules to clarify that a commodity pool operator's principals and its affiliates are treated the same as the commodity pool operator itself for purposes of the Commission's aggregation rule unless they maintain and enforce procedures for keeping their trading separate and independent from the pool's.

I. Background

Speculative position limits have been a tool for regulation of futures markets for over sixty years. Since the Commodity Exchange Act of 1936, Congress consistently has expressed confidence in the use of speculative position limits as an effective means of preventing unreasonable or unwarranted price fluctuations.[1]

The Commission directly administers speculative position limits on futures contracts for most of the domestic agricultural commodities listed in section 2(a)(1) of the Commodity Exchange Act (Act), 7 U.S.C. 1 *et seq. See,* 17 CFR part 150. Prior to the Act's amendment in 1974 which expanded its scope to all ''services, rights and interests'' in which futures contracts are traded, only these listed commodities were regulated. Both prior to and after the 1974 amendments to the Act, futures markets which traded commodities not so listed applied speculative position limits by exchange rule, if at all. In 1981 the Commission promulgated rule 1.61, requiring exchanges to adopt rules setting speculative position limits for all contract markets not subject to Commission-set speculative position limits. Since then, all contract markets have been subject to speculative position limits set by the Commission or an exchange.[2] The Commission and the exchanges share responsibility for enforcement of speculative position limits.[3]

The Commission periodically has reviewed its policies and rules pertaining to each of the three elements of the regulatory framework for speculative position limits—the levels of the limits, the exemptions from them (in particular, for hedgers), and the policy on aggregating accounts.[4] Most recently, the Commission proposed to raise the levels of Commission-set speculative position limits, to codify a number of broad exemptions from the requirement of rule 1.61 that exchanges establish speculative position limits for

[1] *See,* H.R. Rep. No. 421, 74th Cong., 1st Sess. 1 (1935). *See also,* H.R. Rep. No. 624, 99th Cong., 2d Sess. 44 (1986). Section 4a(1) of the Commodity Exchange Act (Act), 7 U.S.C. 6a(1), makes the explicit finding that:

(e)xcessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity * * *.

and provides the Commission with authority to:

fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent such burden.

[2] Commission rule 1.61, 17 CFR 1.61, requires that, absent an exemption, exchanges adopt and enforce speculative position limits for all contract markets which are not subject to Commission-set limits. In addition, Commission rule 1.61 permits exchanges to adopt and enforce their own speculative position limits for those contracts which have Federal speculative position limits, as long as the exchange limits are not higher than the Commission's.

[3] Section 4a(e) provides that a violation of a speculative position limit established by a Commission-approved exchange rule is also a violation of the Act. Thus, the Commission can directly take enforcement actions against violations of exchange-set speculative position limits as well as those provided under Commission rules.

[4] Initially, for example, the Commission redefined ''hedging'' (42 FR 42748 (August 24, 1977)), raised speculative position limits in wheat (41 FR 35060 (August 19, 1976)), and issued its statement of policy on aggregation of accounts and adoption of related reporting rules (1979 Aggregation Policy), 44 FR 33839 (June 13, 1979).

Subsequently, the Commission modified and updated speculative position limits by issuing a clarification of its hedging definition with regard to the ''temporary substitute'' and ''incidental'' tests (52 FR 27195 (July 20, 1987)) and guidelines regarding the exemption of risk-management positions from exchange-set speculative position limits in financial futures contracts. 52 FR 34633 (September 14, 1987). Moreover, in 1988, the Commission promulgated Commission rule 150.3(a)(4), an exemption from speculative position limits for the position of multi-advisor commodity pools and other similar entities that use independent account controllers. The Commission subsequently amended Commission rule 150.3(a)(4), broadening its applicability to commodity trading advisors and simplifying and streamlining the application process. 56 FR 14308 (April 12, 1991).

In 1991, the Commission solicited public comment on, and subsequently approved, exchange requests for exemptions for futures and option contracts on certain financial instruments from the Commission rule 1.61 requirement that speculative position limits be specified for all contracts. 56 FR 51687 (October 15, 1991).

all contracts not subject to Commission-set limits, to broaden its speculative position limit exemption under rule 150.3 for independent account controllers and to codify its aggregation policy. 63 FR 38525 (July 17, 1998).

The comment period, after a thirty-day extension (63 FR 49883 (Sept. 18, 1998)), closed on October 19, 1998. The nine commenters included three futures exchanges, four industry associations, a professional association and an investment bank. All of the commenters favored expansion of the Commission's speculative position limits to the levels proposed. They expressed a range of opinions, however, about the other rule proposals. Those comments are discussed in greater detail below.

II. Commission Speculative Position Limit Levels

As the Commission noted in its notice of proposed rulemaking, it has updated Commission speculative position limits periodically. In 1992, the Commission last proposed major revisions to both the structure and levels of Commission-set speculative position limits. 57 FR 12766 (April 13, 1992). Departing from its previous practice, the Commission proposed to increase speculative position limit levels based upon the size of a contract market's open interest, in addition to the traditional standard of distribution of speculative traders in the market.[5] 63 FR at 38527. Specifically, the Commission proposed combined futures and option speculative position limits for both a single month and for all-months-combined at the level of 10% of open interest up to an open interest of 25,000 contracts, with a marginal increase of 2.5% thereafter. The Commisson also reiterated its view that spot-month speculative position limit levels are ''based most appropriately on an analysis of current deliverable supplies and the history of various spot-month expirations.'' *Id.*

The Commission received 63 comments in response to the 1992 proposed rules.[6] Typically, commodity pool operators, commodity trading advisors and futures commission merchants strongly favored the amendments. Most agricultural producers and their representative organizations strongly opposed any increase to the speculative position limits. Others, however, recommended that the Commission proceed, but in a more cautious manner. In particular, they recommended that the Commission raise speculative position limits on a phased or test basis. These commenters advocate taking additional time to study the need for, and the possible effects of, further increasing speculative position limits; in their view, the trial implementation of expanded speculative limits would provide such an additional opportunity.

Based on its consideration of the comments received and its favorable administrative experience with the rule's prior amendment, the Commission in April 1993 adopted interim final rules on Commission-set speculative position limits. These interim amendments increased the position limit levels by half of the increase originally proposed, in two steps. 58 FR 18057 (April 7, 1993).

As recounted in the 1998 notice of proposed rulemaking, the administrative experience with the interim rules was positive. 63 FR 38528. Moreover, Commission staff undertook an in-depth study of the possible effects of increasing the speculative position limit levels in these markets and concluded that ''overall the impact of the interim final rules on actual, observed large trader positions was modest, and that any changes in market performance were most likely attributable to factors other than to changes in the rules.'' *Id.*

On July 17, 1998, the Commission again proposed to raise speculative position limit levels for the deferred trading months to the levels originally proposed. The Commission took this action based on the growth in open interest and the size of large traders' positions in these markets. 63 FR 38528.

The commenters uniformly supported the Commission's proposal to raise the speculative position limit levels for the deferred trading months. Based upon the positive administrative experience with the limits at their current levels, the growth in the contract's open interest and distribution of large trader positions, a staff study and analysis finding no adverse effects from the previous increase to the speculative position limit levels, and the consensus of the commenters, the Commission is increasing the speculative position limit levels for the deferred months as initially proposed in 1992 and as recently reproposed.[7]

Despite agreeing that the limit levels should be increased, the Board of Trade of the City of Chicago (CBT) urged the Commission to modify its spread exemption to include spreads between single months across crop-years. The CBT stated that:

> By normalizing inter-crop spread limits with the limits presently permitted for intra-crop spreads, noncommercial traders would be in a position to provide greater market liquidity in deferred new crops and eliminate a possible cause for the reduced liquidity that occurs near the end of a crop year.

Although recognizing that the CBT has been granted ''no-action'' letters by Division of Economic Analysis regarding the prohibition on inter-crop year spreads when the relationship between crop years so warranted, the exchange stated that ''the Commission has refrained from granting 'no actions' generally'' and that, in any event, the no-action process is ''cumbersome, unnecessary, causes confusion and uncertainty for market participants, * * * (and is) necessarily reactive and therefore ineffective because they are initiated only after the spreads have experienced significant price movement.''

As the Commission noted in adopting the interim final rules in 1933,

> Historically, the reason for including the spread exemption in the structure of speculative position limits was the relatively low limit for individual-month limits, especially in comparison to the all-moneys limits. Generally, individual-months limits were set at the same level as the spot-month limits in these contracts. Accordingly, the spread exemption may have been an important means for traders to exceed the relatively low individual-month limit.
>
> The Commission remains unconvinced that the exemption for inter-month spreads should be modified at this time to permit generally such spreads across crop-years in excess of the speculative position limits which are being greatly expanded herein. The Commission remains concerned that depending upon conditions in the underlying case market, the separate legs of inter-crop year spreads may act more like separate outright positions than a spread within the same crop-year. In light of the increases to the limits being adopted herein, the Commission believes that such a modification of the spread exemption should be * * * based upon a demonstrated need for such additional relief.

[5] In proposing these increases to the limit levels, the Commission reasoned that, as the total open interest of a futures market increased, speculative position limit levels could be raised. The Commission therefore applied the open interest criterion by using a formula that specified appropriate increases to the limit level as a percentage of open interest.

[6] Those commenters included three futures exchanges; a futures industry association; four futures commission merchants; 26 commodity pool operators, commodity trading advisors or associations of such entities; 20 groups of firms representing agricultural interests; eight individual agricultural producers; and one exchange member. In addition, the proposed rules were a topic of discussion at the October 19, 1992, meeting of the Commission's Agricultural Advisory Committee.

[7] The Board of Trade of the City of Chicago commented that, in its view, granting ''the exchanges sole responsibility to establish and monitor speculative limits subject to Commission oversight'' would ''result in limits which better reflect and are more responsive to the dynamics of the markets.'' The Commission believes that this suggestion may merit future consideration.

58 FR 17981.

The Commission believes that the reasons for its policy of permitting a spread exemption only for positions within the same crop year remain sound (*see, e.g.,* Division of Economic Analysis Statement of Guidance [1994–1996 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 26 691 (May 15, 1996)), and that none of the reasons advanced by the CBT's comment warrants a reversal of that policy. To the contrary, a number of markets during the intervening years exhibited the very risks that concerned the Commission. In these markets, the risk associated with the individual legs of inter-crop year spread positions did in fact act more like that associated with separate outright positions than that of a spread. Moreover, the Division of Economic Analysis remains flexible in its willingness to entertain requests for ''no-action'' letters relating to inter-crop year spread positions when the economic conditions during a particular crop year so warrant.[8]

Another futures exchange, the Minneapolis Grain Exchange (MGE), noted that it was ''particularly pleased the CFTC determined to maintain a parity of limit levels for the major wheat contract at each domestic exchange which trades such.'' However, the exchange noted that the Commission did not propose an increase for the limit levels for its white wheat contract. Although the exchange was ''not aware of any curtailment of white wheat futures trade activity because of the current speculative position limits,'' it nevertheless noted that activity in the contract might increase with improvements in the Asian economies and therefore ''requests that the CFTC consider at least expanding the deferred white wheat limits proportionally as done with the Hard Red Spring Wheat futures contract.'' The exchange also noted that the durum wheat contract did not have Commission speculative position limits.

The Commission originally proposed the speculative position limit level for each wheat contract market based on the open interest and the distribution of large traders' positions specific to the contract market. 57 FR 12770. Subsequently, in 1993, the Commission's interim final rules provided for parity of levels, but only for each of the domestic futures exchanges' major wheat contacts. The Commission will consider future increases to the speculative position limit levels for the MGE white wheat contract and for all other contracts as open interest or large traders' positions increase. Of course, an exchange may petition the Commission for rulemaking any time that a contract meets the criteria supporting an increase in the levels.[9] *See,* 17 CFR 13.2.

III. Exchange Speculative Position Limit and Exemption Rules

As discussed above, Commission rule 1.61 requires that, absent an exemption, exchanges adopt and enforce rules setting speculative position limits for all contract markets not subject to Commission speculative position limit rules.[10] *See,* 17 CFR § 1.61. The Commission proposed to simplify and reorganize its rules by relocating the substance of rule 1.61's requirements to Part 150 of the Commission's rules, thereby incorporating within that Part all Commission rules relating to speculative position limits. Moreover, the Commission proposed explicitly to incorporate within the rule a number of administrative practices that have developed over time. These included the speculative position limit levels that the staff routinely has recommended be approved by the Commission for newly designated futures and option contracts.

In addition, the Commission proposed to clarify the magnitude of increases to the limit levels that it would approve for traded contracts. As the Commission explained in the notice of proposed rulemaking, the open-interest criterion and numeric formula used by the Commission in its 1991 proposed amendment of Commission-set speculative position limits provided the most definitive guidance by the Commission on acceptable levels for speculative position limits for tangible commodities and, along with several other commonly accepted measures, has been widely followed as a matter of administrative practice when reviewing proposed exchange speculative position limits under Commission rule 1.61.[11] Although rule 1.61 did not include specific criteria for determining acceptable limit levels for new contracts, promulgating the prior administrative practice as a rule will make the applicable standard more transparent and thereby make compliance easier to achieve. Moreover, as noted in the notice of proposed rulemaking, ''promulgating these policies within a single section of the Commission's rules will increase significantly their accessibility and clarify their terms.'' 63 FR 38536.

Specifically, proposed rule 150.5(a) tracks the provisions of rule 1.61(a) and clarifies that exchange speculative position limits are not required for futures and option contracts on major foreign currencies. Proposed rule 150.5(b) makes explicit the speculative position limit levels which the Commission finds appropriate for new contract market designations. As noted in the notice of proposed rulemaking, the proposed limit levels for new contract designations, which are based upon the formula and associated minimum levels used by the Commission in its 1992 proposed rulemaking, have long been used as a matter of informal administrative practice. 63 FR 38530.

The New York Mercantile Exchange (NYMEX) commented generally that the Commission should ''reexamine the appropriate roles of the Commission and the exchanges in pursuing their shared goal of market integrity'' and suggested further that ''futures exchanges are best positioned to establish speculative position limits for their markets and should be given sole responsibility to do so.'' NYMEX expressed concern that:

> Codification of informal practices in proposed new regulation § 150.5 would appear to remove the flexibility that was perceived to be available under the informal procedures. Therefore even if the Commission determines not to undertake an assessment at this time of the appropriate degree of self-regulatory organization responsibilities for speculative position limits, the CFTC, at a minimum, should

[8] Although the last no action letter issued concerning the prohibition on inter-crop year spreads was a number of years ago, the Division of Economic Analysis noted that ''no-action'' relief is appropriate when the spreads between old and new crop year are stable and in full-carry and there is a large crop carryover expected, and requests for future no-action treatment would be considered during crop years that meet these criteria.

[9] The Commission did not propose to establish a Commission-set speculative position limit for the durum contract because that contract was designated after the promulgation of rule 1.61, which requires that designated contract markets set and enforce speculative position limits for contracts not subject to the Commission-set limits. Since then, the Commission has preferred to rely upon the exchanges to set and enforce speculative position limits and has adopted new Commission speculative position limits only for soybean meal and soybean oil. As the Commission explained previously, because of an historical anomaly, only these two contracts among those in the soybean complex were not included under Commission-set limits. 52 FR 38914 (October 20, 1987).

[10] For contract markets that have Commission-set speculative position limits, section 4a(e) of the Act permits exchanges to adopt and enforce their own speculative position limits as long as the exchange limits are not higher than the Commission's.

[11] In addition, in reviewing applications for contract designation for tangible commodities, the staff has relied upon the Commission's formulation providing for a minimum level of 1,000 contracts for nonspot-month speculative position limits. Moreover, the Commission has routinely approved a level of 5,000 contracts for nonspot months in applications for designation of financial futures and energy contracts, and that level has become a rule of thumb as a matter of administrative practice.

consider revising proposed new Regulation § 150.5 to provide exchanges with sufficient flexibility to address the differing conditions in their respective markets.

Specifically, NYMEX, joined by the CBT, questioned reliance on the sole criterion that the speculative position limit not exceed one-quarter of the deliverable supply during the spot month. NYMEX reasoned that the Commission has recognized that the limits that may be appropriate for one commodity may not be appropriate for another.

Guideline No. 1, 17 CFR part 5, appendix A, requires that, in order to become and to remain a designated contract market, the futures contract's ''terms and conditions, as a whole, will result in a deliverable supply which will not be conducive to price manipulation or distortion.'' 17 CFR part 5, appendix A(a)(2)(ii). Administrative practice has long interpreted this provision as requiring a deliverable supply that is at least four times the spot month speculative position limit. 62 FR 60831, 60838 (November 13, 1997). A spot month speculative position limit that exceeds this amount enhances the susceptibility of the contract to market manipulation, price distortion or congestion.[12]

NYMEX suggests that this standard may not be appropriate for nonagricultural tangible or intangible commodities. However, except for cash-settled contracts,[13] Commission staff have used this standard to review every application for contract market designation or proposals to increase existing exchange speculative position limits since 1981, when rule 1.61 was issued.[14] Experience has demonstrated that many commodities, particularly intangible commodities, have sufficiently large deliverable supplies to meet this standard without requiring a spot month level that is lower than the individual month level. For other commodities, however, especially commodities having strong seasonal characteristics, spot month speculative position limits are required to be set at a level lower than the individual month limit for all or some trading months.[15] Accordingly, codification of this standard only makes explicit the standard which, since 1981, has been applied to, and met by, every physical delivery futures contract at the time of initial designation and upon subsequent increases to the spot month speculative position limit.

CBT also suggests that the proposed rule define the methodology for estimating the deliverable supply and that, in proposing such a definition, ''the Commission discuss how deliverable supply is measured; who determines deliverable supply; what constitutes deliverable supply; and when deliverable supply should be measured for the purpose of the rule.'' As noted by CBT, the Commission proposed such a definition as part of the proposed amendments to Guideline No. 1. 63 FR 38537 (July 17, 1998). Guideline No. 1 details the information that an application for contact market designation should include in order to demonstrate compliance with the applicable legal requirements, including the requirement of rule 1.61 that exchanges set speculative position limits. As the Commission discussed at length in that notice of proposed rulemaking, the Commission is proposing explicitly to require exchanges to estimate deliverable supplies for the specified delivery months of a proposed contract. *Id.* at 38539. Moreover, the Commission explained that the exchange should describe the methodology it uses to derive the estimate and should base its estimate ''on statistical data when reasonably available covering an historical period that is representative of actual patterns of production and consumption of the commodity.''[16] *Id.*

In addition to providing greater clarity regarding the speculative position limit levels required at initial designation, proposed rule 150.5(b) would make explicit the conditions for subsequent increases to the deferred trading month levels. The proposed rule includes both a numeric formula for determining the permissible limit level and a descriptive standard. The descriptive standard tracks the standard of Commission rule 1.61—that the level be set ''based on position sizes customarily held by speculative traders on the contract market, the breadth and liquidity of the cash market and the opportunity for arbitrage between the futures market and the cash market.'' *Compare*, proposed rule 150.5(c)(2) and rule 1.61(a)(2). As noted above, the numeric formula is based upon the formula first used by the Commission in 1992 for proposing the speculative position limit levels now being considered.

The Commission proposed that adjustments to a contract market's speculative position limit could be made one year after its initial listing based on either the proposed formula or the descriptive standard. NYMEX suggests that the provision that adjustments be made only after one year

[12] In 1997 the Commission conducted a section 5a(a)(10) proceeding requiring CBT to amend the delivery terms of its corn and soybean futures contracts. In commencing the action, the Commission found that deliverable stocks under the contract terms as then specified frequently had dropped to levels near or below the maximum number of contracts a single speculative trader may hold during the delivery periods of expiring trading months. 61 FR 67998, 68012 (December 26, 1996). The Commission found that, where a single speculator could control all of the deliverable stocks during a contract's delivery month, the contract fails to meet the Act's requirement that its contract's terms ''will tend to prevent or diminish price manipulation, market congestion or the abnormal movement of such commodity in interstate commerce.'' *See*, section 5a(a)(10) of the Act.

[13] Current Guideline No. 1 requires that the contract terms for cash settled contracts not be ''subject to the manipulation or distortion.'' 17 CFR part 5, appendix A(a)(2)(iii). Because some types of commodities which are cash settled may not have deliverable supplies per se, the Commission is modifying the spot month requirement to provide that the spot month level for cash-settled contracts must be set ''no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price.''

[14] CBT commented that the proposed spot month rule was arbitrary, having been ''reversed engineered'' as part of the corn and soybean section 5a(a)(10) proceeding. To the contrary, as discussed above, the proposed rule is based upon long-standing administrative practice and experience. The appropriate measures of adequacy of deliverable supply in a section 5a(a)(10) proceeding, which is initiated upon an affirmative finding that the contracts violate that section of the Act, were discussed in the Commission's orders in that proceeding and should not be confused with the standard of review for new contract applications. 62 FR at 60838.

CBT also commented that, ''before codifying its 'rule-of-thumb' standard for determining speculative position limits for the respective delivery months, the Commission should include in a release for pubic comment a substantive description of the methodology it used to establish the basis for its proposed formula.'' As CBT recognized in its comment, however, the Commission's notice of proposed rulemaking on Guideline No. 1, a companion notice which was referred to in the notice of proposed rulemaking on speculative position limits, noted that the twenty-five percent criterion was based on the Commission's long-standing administrative practice and experience. 63 FR 38537, 38539 (July 17, 1998).

[15] The CBT objects that basing the spot month speculative position limits on an estimate of deliverable supplies which has been calculated separately for each trading month will result in ''different spot month speculative limit levels for each of the months * * * (and) will be extremely confusing and cumbersome to the marketplace.'' However, the rule does not require that the spot month level vary from one trading month to the next, but only that it not exceed one-quarter of estimated deliverable supplies. An exchange can choose how it wishes to structure its limits, whether preferring to have the same limit apply to all months or to have different levels for particular trading months. It is not uncommon today for exchanges to apply lower spot month speculative position limits to selected trading months where there are strong seasonal variations in a contract's potential deliverable supplies.

[16] Although CBT complains that the Commission's definition is ''far from conclusive'' and ''subjective,'' its comment suggests, not that the requirement is undefined, but rather that CBT disagreed with the Commission's exclusion of certain stocks and inventories of corn and soybeans from estimated deliverable supplies in the 1998 section 5a(a)(10) proceeding.

from a contract's listing ''would severely limit an exchange's ability to respond to changing market conditions during the first year after listing.'' Although few futures contracts have achieved the levels of open interest to qualify for increasing speculative position limits levels under the rule sooner than a year after listing, the Commission agrees that the rule should not foreclose the possibility of a new contract's qualifying the adjustment. Accordingly, the Commission is modifying the final rule to permit an exchange to adjust nonspot month limits based upon the proposed rule's descriptive standard at any time after initial listing. The formula for adjustments to levels, for simplicity, will be based on data for the previous calendar year, as proposed.[17]

Several commenters suggested that the proposed position accountability rules actually narrowed the prior grants of exemptive relief. The Managed Funds Association (MFA) suggested that, by not proposing an exemptive category for commodities with virtually inexhaustible deliverable supplies, a category which would apply to foreign currency futures contracts, the Commission was foreclosing new contracts from potential eligibility for this relief.[18] It also noted that the exemptive relief for position accountability was not restricted on its face to contracts that has been trading for at least a year. In addition, CBT expressed concern that one of its contracts that qualifies for exemption due to a highly liquid cash market would not meet the requirements of the proposed rule. NYMEX suggested that, through Commission codification of the past exemptive categories, exchanges would lose the flexibility to ''justify that an exception was warranted for a particular contract.''

Application of the rule is prospective only. No currently exempt contract market will lose its exemption as long as it remains actively traded under its current designation.[19] Moreover, with one minor exception, position accountability rules have been approved only for contracts with significant trading histories.[20] In addition, proposed rule 150.5(f) would permit a contract market to ''propose such other exemptions from its position limits consistent with the purposes of this section'' for Commission consideration. This provision is found in existing rule 1.61 and is the authority for the current trader accountability rules that the Commission is proposing to codify in this rulemaking. The Commission is modifying the final rule to clarify that the right to petition the Commission for exemption extends to all of the section's provisions, including the requirements for exemption that are being codified. Accordingly, these rules do not foreclose the Commission from considering in appropriate circumstances petitions for individual exemptions from the required levels for setting exchange speculative position limits and from the requirement that exchanges adopt speculative position limits for all futures contracts.

IV. Issues Relating to Exemption From Nonspot Speculative Position Limits for Independently Controlled Accounts

In response to the growth of professionally managed futures trading accounts and pooled futures investments, the Commission in 1988 promulgated rule 150.3, 17 CFR 150.3, an exemption from speculative position limits for commodity pools or similar entities which use independent account controller.[21] 53 FR 41563 (October 24, 1988). In 1991 the Commission extended eligibility for this exemption to commodity trading advisors and greatly streamlined the application procedure, subsequently making it self-executing.[22] 57 FR 44492 (September 28, 1992).

Commission rule 150.3 generally has worked well. It has provided flexibility to the markets, accommodating the continuing trend toward professional management of speculative trading accounts, while at the same time protecting the markets from the undue accumulation of large speculative positions owned by a single person or entity in the spot month. Since its amendment in 1991, most questions concerning rule 150.3 have related to its application in the context of integrated financial services companies. However, presently only commodity pool operators and commodity trading advisors meet the rule's eligibility requirement.

In light of the successful operation of the exemption since it was issued, the Commission proposed to extend eligibility for the exemption to banks, trust companies, savings associations, insurance companies and their separately incorporated affiliates. These additional categories were suggested for inclusion by some commenters when the Commission last proposed to revise rule 150.3.[23]

Generally, commenters favored broadening the definition of eligible entities under rule 150.1(d). Several, but not all, commenters agreed that the trends toward greater professional management of futures trading and the

[17] NYMEX's comment may misapprehend how the formula is applied. It should be noted that the maximum allowable speculative limit for nonspot individual months is not based on the data for any one particular individual month; instead, the applicable level is derived by computing the 12-month average level of month-end open interest for the most recent one-year period in any (usually the next to expire) contract month, considering futures and delta-adjusted options combined.

[18] Because the proposed rules make clear that neither a speculative position limit nor the position accountability rule is required for a designed contract market in ''major foreign currency,'' the Commisson proposed to reduce to three the number of exemptive categories. No exchange contracts other than the existing futures contracts on such foreign currencies have met the existing first exemptive criterion since this relief was first permitted. ''Major foreign currencies'' are defined in the Commission's fast-track designation rule. 17 CFR 5.1(a)(2)(i). The Commission proposed that contract markets in other, less liquid foreign currencies be treated as a futures or option contract on any other financial instrument or product.

[19] The Commission specifically noted in the notice of proposed rulemaking, 63 FR 38530, n. 21, that although the policy provided that position accountability could be based on either a liquid futures market or a liquid cash market, the Commission was proposing to require that both the cash and futures markets be liquid and that a contract market would have to establish a trading history. The Commission continued, however, by noting that the rule would apply prospectively and that any contracts (or pending applications) that have position accountability rules in place in reliance on the liquidity of the cash market alone may continue to rely on the policy.

[20] As noted by the Commission in the notice of proposed rulemaking, the only instances where position accountability rules were permitted in the absence of a prior trading history was where the contracts were spread contracts on contracts for which position accountability rules had already been approved. The only other instances where exemptions from speculative position limits were approved at contract designation were for major foreign currency contracts, a category that the Commission proposed to exclude from the requirement altogether.

[21] Commodity pools, pension funds, and other similar entities are required to aggregate their positions as the owner of the trading accounts, even if those accounts are traded independently by multiple independent account controllers. Commission rule 150.3 exempted such entities that use independent account controllers from speculative position limits outside of the spot-month. The exemption permits the total positions of the trading entity or vehicle to exceed speculative limits during nonspot months, but requires that each independent account controller trading on the entity's behalf comply with the applicable limits. During the spot month, all positions of the entity are required to be aggregated and are subject to the spot-month speculative position limit level.

[22] Under the exemption as originally promulgated, those seeking exemptive treatment were required to file an application with the Commission and to document the independence of their account controllers.

[23] Commenters, in connection with the 1991 proposed amendments to the rule 150.3 exemption, suggested that, in addition to commodity trading advisors, the exemption be extended to others, including investment banks, other financial intermediaries, parent/affiliate firms, separately managed divisions of a single corporation, commercial banks, merchant banks, and insurance companies.

consolidation of financial services companies support expanding the category of entities eligible for the exemption. Although supporting expanding the categories for eligibility, the Futures Industry Association (FIA) suggested that the Commission modify the phrase ''separately incorporated affiliates'' to read ''separately organized affiliates.'' The FIA explained that the modified language

> would clarify that the exemption applies to affiliates whether they are organized as corporations or not. For example, an affiliate may be organized as a partnership, business trust or limited liability business organization to achieve certain tax objectives. Under applicable law, any such entity would still have a separate identity, ownership and management structure and should be treated in the same manner as an affiliate which is organized as a corporation. Also, entities organized outside the United States may not technically be incorporated under local law but should be eligible as affiliates under the proposed revision as long as they are separately organized under applicable foreign law.

The MFA also favored expansion of the definition of eligible entities in § 150.1(d), but suggested that it be modified ''to * * * refer to trusts, financial intermediaries, corporate divisions and other similarly organized entities or associations.''

One commenter opposed expanding the categories of eligible entity, reasoning that:

> The expansion of rule 150.3 proposed in the release would include the separately incorporated affiliates of various specified financial services companies, including banks, insurance companies, and FCMs. We are deeply concerned that this proposal is intended to codify the view that rule 150.3 provides the exclusive basis under which relief from aggregation of positions is available for such entities rather than a nonexclusive exemption.

Rule 150.3, however, is an exemption from speculative position limit levels and does not itself restrict or expand the aggregation requirements. In this regard, several commenters expressed the view that, because futures commission merchants (FCMs) are exempt from aggregating certain types of accounts under proposed rule 150.4(d), they need not be included as eligible for exemption under Commission rule 150.3.

The Commission agrees with commenters that modifying the language of the final rule to apply to ''separately organized affiliates'' is appropriate in light of the wide variety of forms of business organization used by those active in the markets today and that removing FCMs from the list of entities eligible for rule 150.3 exemption may reduce unnecessary confusion.[24] Accordingly, the Commission is modifying proposed rule 150.1(d) as they suggest. However, the Commission is of the view that the rule 150.3 exemption should not be extended to the other recommended categories, such as corporate divisions and their separately organized affiliates. Such an extension may be overly broad and should not be undertaken without careful consideration. Nevertheless, the Commission remains receptive to considering further expansion of the categories of eligible institutions as market developments warrant.[25]

V. Aggregation of Accounts

The Commission also proposed a number of amendments to its rules relating to the aggregation of accounts. These proposed amendments were intended to respond to the continuing trend toward mergers and consolidation in the financial services sector, to clarify issues of rule interpretation that have arisen as a consequence of changing industry practice and to increase the accessibility of the applicable law by recodifying various related rules in one section of the Code of Federal Regulations and by codifying existing interpretations and policies.

Section 4a of the Act provides that, in determining whether a position exceeds the speculative position limits,

> the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person.

As the Commission explained in the notice of rulemaking, it interprets the ''held or control'' criteria as applying separately to ownership of positions or to control of trading decisions.[26] Rule 150.4(a), which the Commission is adopting as proposed, restates the general aggregation requirement of section 4a of the Act. Following the general rule in § 150.4(a), proposed § 150.4(b) would detail the nature of a financial interest which would trigger application of the ownership criterion, proposed § 150.4(c) would impose conditions on exceptions from aggregation for limited partners, and proposed § 150.4(d) would codify the existing policy exempting FCMs from aggregating positions in customer discretionary accounts or guided account programs controlled by independent traders.

Compliance with the Commission's speculative position limit rules is often dependent upon the proper aggregation of positions. A central feature of the proposed rules is the codification of the aggregation standard itself. As the Commission stated in the notice of proposed rulemaking, the requirements relating to aggregation of positions, including the exceptions provided in the Commission's ''Statement of Policy on Aggregation of Accounts,'' 44 FR 83839 (June 13, 1979) (1979 Aggregation Policy), currently are included implicitly in the Commission's large-trader reporting rules. 63 FR 38532. The Commission proposed to codify the aggregation rules and Commission policies in the same part of the Code of Federal Regulations as the speculative position limit rules for ease of reference and to increase their accessibility to the general public.[27]

The 1979 Aggregation Policy sets forth an exception from the general aggregation principle providing that an FCM need not aggregate the discretionary trading accounts or customer trading programs through which a trader affiliated with, but independent of, the FCM directs trading of customer-owned positions or

[24] Moreover, broadening the definition of ''eligible entities'' to the separately organized affiliates of the entities listed in rule 150.1(d) in no way restricts the applicability of rule 150.4(d) (which applies to an FCM and its affiliates) because an FCM also happens to be an affiliate of a rule 150.1(d) ''eligible entity.''

[25] The Commission is also expanding the category of entities which are eligible for the exemption to the limited partners of pools, the operators of which are exempt from registration under rule 4.13 by virtue of having fewer than fifteen participants in the pools and less than $200,000 in capital contributions. As discussed in greater detail below, the Commission is of the view that the trading of certain of these limited partnerships should not be disaggregated from trading by the limited partner(s). However, the Commission believes that trading for the limited partners can be included appropriately within the exemption from speculative position limits for the nonspot month limits under Commission rule 150.3 if such trading meets the conditions of the rule.

[26] *See e.g.,* Commission rule 18.01 (''holds, has a financial interest in or controls''). As the Commission discussed in the notice of proposed rulemaking, the Commission's routine large trader reporting system is set up so that it does not double count positions which may be controlled by one and traded for the beneficial ownership of another. In such circumstances, although the routine reporting system will aggregate the positions reported by FCMs using only the control criterion, the staff may determine that certain accounts or positions should also be aggregated using the ownership criterion or may by special call receive reports directly from a trader.

[27] The Commission also proposed conforming amendments to rules 18.01 and 17.00(b), which specify the manner of identifying accounts for reporting purposes.

accounts.[28] In creating this exception, the Commission took an important step in recognizing the structural changes made by the futures industry to respond to the increased acceptance of professional management of trading accounts. Proposed rule 150.4(d) was intended merely to codify the substance of this policy.

Several commenters, including the MFA, FIA, the Committee on Futures Regulation of the Association of the Bar of the City of New York (NY Bar), and Goldman, Sachs & Co. (GS) expressed concern, however, that codification of the 1979 Aggregation Policy in the manner proposed might narrow its current application. The FIA suggested that:

> The 1979 Aggregation Policy, which is proposed to be adopted as Rule 150.4(d), should be extended to affiliates of the FCM and not limited to the FCM's independent traders * * *. (W)e note that the Commission has already accepted this position in terms of affiliates of FCMs pursuant to CFTC Interpretive Letter No. 92–15. CCH Commodity Futures Law Reporter, 1990–1992 Transfer Binder, para 25831 at page 39,285. Proposed Rule 150.4(d) should be revised to specifically include affiliates of the FCM so it remains consistent with the Commission's current interpretation of the Aggregation Policy.

By proposing to codify the substance of the 1979 Aggregation Policy, the Commission did not intend to narrow its interpretation or application. In this regard, Commission staff since 1991 has interpreted the policy as applying to an FCM's affiliates. Interpretative Letter 92–15, *supra.* Specifically, Commission staff opined that, where a diversified financial services holding company is the common parent of a commodity pool operator (CPO) or a commodity trading advisor (CTA) and an FCM and the entities' trading arrangements meet the 1979 Aggregation Policy's indicia of independence, the CPO/CTA ''may calculate its trading positions for determining compliance with speculative position limits and reporting requirements separate from the proprietary positions held by, or on behalf of, the parent.'' *Id.* at p. 39286.

In reaching this conclusion, the letter reasoned that ''the 1979 Aggregation Policy clearly would have been applicable, on its face, had [the parent] undertaken the same, or a similar, program through * * * its subsidiary which is a registered FCM, rather than through a separate affiliate * * *, the customer trading program directed by the (CPO/CTA) is kept independent * * * from the (parent's) other trading, including that of the other affiliates, nor does it appear * * * (that) assign(ing) these functions to separate affiliates is intended to circumvent speculative limits and reporting requirements.'' *Id.* at 39,285.

It is the Commission's intent in issuing rule 150.4(d) merely to codify the 1979 Aggregation Policy, including the continued efficacy of the 1991 interpretative letter, and not to modify the current state of the law on this issue. At the suggestion of various commenters, the Commission is making that intent clear by modifying the language of proposed rule 150.4(d) to include explicit reference to affiliates of an FCM.

The Commission also proposed to amend the limited partner exception of Commission rule 18.01.[29] Commission rule 18.01 defines account owners as those having a 10% or greater financial interest in the account, except for limited partners. Limited partners are exempt from being defined as owners on the assumption that limited partners, even if holding greater than a 10% ownership interest, are prohibited from exercising control over the partnership's trading activities. The Commission noted in the notice of proposed rulemaking, however, that it had become concerned by the trading by certain single-investor commodity pools. Accordingly, the Commission proposed that, when there were 10 or fewer limited partners or when a limited partner has an ownership interest of 25% or greater, the limited partner be required to aggregate the partnership's positions with his or her other positions. The Commission specifically noted that it did not intend this proposal to modify the general treatment of limited partners or shareholders [30] in typical commodity pools and requested that commenters address the typical organization for pools and whether the proposed levels would affect only unusual forms of ownership. 63 FR 38533.

A number of commenters advised the Commission that the proposed criteria would affect a number of typical forms of commodity pool organization. The FIA, MFA, NY Bar and GS all expressed the view that the Commission's proposed criteria ''casts too wide a net,'' noting that single investor pools are used today by institutional investors for a variety of legitimate purposes. For example, the FIA commented that:

> FIA's members are aware that many single investor pools, such as ERISA funds, are formed for reasons having nothing to do with the investor's desire to control or have input in the pool's trading decisions.
>
> Many such pools are formed to address the unique regulatory concerns that a larger pool faces or for other reasons, such as to maintain limited liability or to implement unique investment goals or fee structures.

These commenters also noted that the 25% ownership criterion could be exceeded routinely in start up or seed money situations. As GS explained:

> Even though the purported focus of the proposal is on the operators of small pools who are exempt from CPO registration pursuant to rule 4.13, the numerical criteria would reach many funds privately offered by registered CPOs. For example, in seed money situations where an affiliate of the CPO wishes to demonstrate to potential clients that the affiliate is committing its own capital to a particular strategy, its percentage share could well exceed 25%. It is also common for the initial offering of a pool to close and for the pool to begin trading after one or two large investments have been made. Such situations would run afoul of both criteria.

As the Commission noted in the notice of proposed rulemaking, its primary concern in proposing this change to the general exemption for limited partners was to address certain patterns of pool formation and trading that it had observed in connection with commodity pools the operators of which are exempt from CPO registration under Commission rule 4.13. Such trading patterns were not evidenced where the CPO was registered with the Commission or where greater than a 25% ownership interest was the result of a seed money or start up investment. Accordingly, the commission is modifying the final rule to apply only to limited partners participating in a pool the operator of which is exempt from registration under rule 4.13. The Commission is retaining the numeric criteria, so the aggregation requirement will apply only to limited partners having a 25% or greater ownership interest in commodity pools operated by

[28] The 1979 Aggregation Policy also offered guidance on the criteria considered in determining whether the trader exercises independent control over the trading decisions of the customer discretionary accounts or trading programs. These included the customer account agreement, advertising, the agreements between the FCM and its employee or other trader, the degree of supervision, the confidentiality of the program's trading decisions, reliance of the FCM for market information, financial investment by the FCM in the program greater than 10% and common trading patterns. *Id.* at 33844.

[29] In counterpoint to this proposal, the Commission also proposed to include within the exemption from speculative position limits under Commission rule 150.3 the limited partners of small commodity pools the operators of which are exempt from CPO registration.

[30] The Commission also proposed to clarify that for this purpose other similar types of pool participant are treated the same as limited partners or shareholders. These include pool participants in other categories of limited liability business organizations, such as members of limited liability companies or beneficiaries of certain types of trusts. No commenters opposed this clarification and the final rules incorporate this change.

such an exempt commodity pool operator. Moreover, as explained above, the Commission also is amending rule 150.1(d) to include such limited partners as entities eligible for rule 150.3 relief under the exemption from speculative position limit levels for nonspot trading months. The Commission believes that as modified the rule will address its regulatory concern without unduly impacting legitimate market activity or otherwise burdening financial flexibility or innovation.

Commenters also objected to the Commission's proposed rule revising the limited partnership exemption to make explicit the Commission's understanding that the current rule treats the principals or affiliates of a commodity pool operator the same as the pool operator itself for aggregation purposes. Under current rules, a pool operator's having a greater than 10% financial interest in a pool requires the aggregation of the pool's positions with those of the pool operator. The Commission proposed a rule amendment to clarify that the principals or affiliates of a commodity pool operator which invest in the operator's pool as limited partners have a financial interest which requires them to aggregate their positions if their ownership interest in the pool is ten percent or greater.

The commenters suggested that the ability of affiliates or principals of a commodity pool operator to invest in its commodity pools is important to the formation of new pools. They maintained that such investment in the pools is often integral to their efforts to attract outside investors. They further maintained that the requirement that principals or affiliates aggregate the pool's position, even if only during the spot month, will include such investment. One commenter stated that:

> (i)t is more often the case that the affiliates of a commodity pool operator or commodity trading advisor will maintain a beneficial interest in the pool. Frequently, this structure is essential to initially form and capitalize the entity or to align the operator's interest with those of its investors, which is frequently not only beneficial to, but is demanded by, the entity's investors. In many cases, the commodity pool operator is insufficiently funded to maintain such an interest and, accordingly, affiliates meet the funding requirement.

The commenters further suggested that as a practical matter aggregating such partnership positions is exceedingly difficult. The commenters suggested that commodity pool operators or commodity trading advisors that are independent traders would not share information with limited partners on individual pool positions, viewing such information as proprietary. In their view, therefore, it would be difficult, if not impossible, for limited partners to obtain the information necessary to aggregate positions. GS noted that:

> Because limited partners or shareholders of a pool do not ordinarily receive position information on a real time basis, or otherwise, presumably it would be necessary for the pool's CPO to provide that information to them on a timely basis. However, CTAs view this information as confidential and proprietary, so that maintaining the confidentiality of this information is typically a heavily negotiated issue in management agreements entered into between pools and their CTAs. For this reason, CTAs frequently prefer to trade pooled accounts rather [than] individual managed accounts.

As many of the commenters recognized, the Commission intended by the proposed amendments to provide relief from the aggregation requirement for the pool operator's principals or affiliates under the rule 150.3 exemption from speculative position limits for nonspot trading months. The Commission has observed that commodity pools generally refrain from trading activity during a contract's spot months. The Commission therefore assumed that, coupled with relief under rule 150.3, the aggregation requirement would not impose an undue burden on the entities involved. The comments maintained, however, that the relative burden of compliance is greater than the Commission anticipated.

Accordingly, the Commission is modifying the requirement as proposed that principals or affiliates of a commodity pool operator with greater than a 10% limited partnership ownership interest aggregate their positions. The final rule provides that such limited partners or shareholders need not aggregate their positions with the pool's positions if the limited partner does not have direct supervisory authority over the pool's trading, the commodity pool operator maintains and enforces written procedures to preclude the limited partner from having knowledge of, or access to, information concerning the pool's positions or trading decisions and that the limited partner, if a principal of the pool operator, exercises only the minimum degree of supervision of the pool's trading consistent with a principal's duty of supervision. The final rule also provides that such entities must provide information to the Commission upon special call supporting their claim to relief from aggregation requirements under this provision.

VI. Other Matters

A. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 1996)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission solicited comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) 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; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the 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.

The Commission previously submitted these rules in proposed form and its associated information collection requirements to the Office of Management and Budget (OMB). OMB approved the collection of information associated with these rules on March 10, 1999 and on July 26, 1996 and assigned OMB control numbers 3038–0013 and 3038–0009, respectively, to these rules. The burdens associated with these rules are as follows:

Collection No. (3038–0013)	
Average burden hours per response.	6
Number of respondents	12
Frequency of response	On occasion.

Collection No. 3038–0009	
Average burden hours per response.	4.74
Number of respondents	3709
Frequency of response	On occasion.

Persons wishing to comment on the information which would be required by these final rules should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are

available from the CFTC Clearance Officer, 1155 21st St NW, Washington, DC 20581, (202) 418–5160.

Copies of the OMB-approved information collection package associated with this rulemaking may be obtained from Desk Officer, Commodity Futures Trading Commission, Office of Management and Budget, Room 10202, NEOB Washington, DC 20503, (202) 395–7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of those rules on small businesses. The Commission has previously determined that large traders are not small entities for purposes of the RFA.[31] The Commission believes that the rule amendments to raise Federal speculative position limits will only impact large traders. In addition, the Commission is of the opinion that the amendments to Commission rule 150.3, under which certain eligible entities will be exempted from speculative limits (except in the spot-month), will apply exclusively to large traders, as will rule 150.4 codifying its policies on aggregation. The Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the rules will lift speculative limit levels, extend exemptive relief from speculative limits (except in the spot-month) to certain eligible entities and codify the Commission policies on aggregation, including its rules on aggregating positions for speculative limit compliance. The rules permitting such transactions subject to the specified conditions, therefore, remove a burden for all entities, regardless of size.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements, Segregation requirements.

17 CFR Part 17

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 18

Brokers, Commodity futures, Reporting and recordkeeping requirements.

[31] 47 FR 18618 (April 30, 1982).

17 CFR Part 150

Agricultural commodities, Bona fide hedge positions, Position limits, Spread exemptions.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular sections 2(a)(1), 2(a)(2), 4a, 4c, 4f, 4g, 4i, 4n, 5, 5a, 6b, 6c, 8a, and 15, 7 U.S.C. 2, 6a, 6c, 6f, 6g, 6i, 6n, 7, 7a, 12a, 13a, 13a–1, and 19, the Commission amends parts 1, 17, 18, and 150 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

§ 1.61 [Removed and reserved]

2. Section 1.61 is removed and reserved.

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

3. The authority citation for part 17 continues to read as follows:

Authority: 7 U.S.C. 6a, 6d, 6f, 6g, 6i, 7, and 12a.

4. Section 17.00 is amended by revising paragraph (b)(1), introductory text, by removing paragraphs (b) (2) and (c), by redesignating paragraphs (b) (1) (i) and (b) (1) (ii) as paragraphs (b) (1) and (b) (2), respectively, and by adding paragraph (b)(3) to read as follows:

§ 17.00 Information to be furnished by futures commission merchants, clearing members and foreign brokers.

* * * * *

(b) *Interest in or control of several accounts.* Except as otherwise instructed by the Commission or its designee and as specifically provided in § 150.4 of this chapter, if any person holds or has a financial interest in or controls more than one account, all such accounts shall be considered by the futures commission merchant, clearing member or foreign broker as a single account for the purpose of determining special account status and for reporting purposes. For purposes of this section, the following shall apply:

* * * * *

(3) *Account ownership.* Multiple accounts owned by a trader shall be considered a single account as provided under §§ 150.4(b), (c) and (d) of this chapter.

PART 18—REPORTS BY TRADERS

5. The authority citation for part 18 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a, and 19; 5 U.S.C. 552 and 552(b) unless otherwise noted.

6. Section 18.01 is revised to read as follows:

§ 18.01 Interest in or control of several accounts.

If any trader holds, has a financial interest in or controls positions in more than one account, whether carried with the same or with different futures commission merchants or foreign brokers, all such positions and accounts shall be considered as a single account for the purpose of determing whether such trader has a reportable position and, unless instructed otherwise in the special call to report under § 18.00 of this part, for the purpose of reporting.

PART 150—LIMITS ON POSITIONS

7. The authority citation for part 150 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c and 12a(5).

8. In § 150.1 the introductory text of paragraph (d), and paragraph (d)(2), (e)(2) and (e)(5) are revised to read as follows:

§ 150.1 Definitions.

* * * * *

(d) *Eligible entity* means—

A commodity pool operator, the operator of a trading vehicle which is excluded or who itself has qualified for exclusion from the definition of the term ''pool'' or commodity pool operator,'' respectively, under § 4.5 of this chapter; the limited partner or shareholder in a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter; a commodity trading advisor; a bank or trust company; a savings association; an insurance company; or the separately organized affiliates of any of the above entities:

(1) * * *

(2) Which maintains:

(i) Only such minimum control over the independent account controller as is consistent with its fiduciary responsibilities and necessary to fulfill its duty to supervise diligently the trading done on its behalf; or

(ii) If a limited partner or shareholder of a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter, only such limited control as is consistent with its status.

(e) *Independent account controller* means a person—

* * * * *

(2) Over whose trading the eligible entity maintains only such minimum control as is consistent with its fiduciary responsibilities to fulfill its duty to supervise diligently the trading done on its behalf or as is consistent with such other legal rights or obligations which may be incumbent upon the eligible entity to fulfill;

* * * * *

(5) Who is registered as a futures commission merchant, an introducing broker, a commodity trading advisor, an associated person or any such registrant, or is a general partner of a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter.

* * * * *

9. Section 150.2 is revised to read as follows:

§ 150.2 Position limits.

No person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon, in excess of the following:

SPECULATIVE POSITION LIMITS

[By contract]

Contract	Limits by number of contracts		
	Spot month	Single month	All months
Chicago Board of Trade			
Corn	600	5,500	9,000
Oats	600	1,000	1,500
Soybeans	600	3,500	5,500
Wheat	600	3,000	4,000
Soybean Oil	540	3,000	4,000
Soybean Meal	720	3,000	4,000
MidAmerica Commodity Exchange			
Corn	3,000	6,000	6,000
Oats	2,000	2,000	2,000
Soybeans	3,000	6,000	6,000
Wheat	3,000	6,000	6,000
Soybean Meal	800	800	800
Minneapolis Grain Exchange			
Hard Red Spring Wheat	600	3,000	4,000
White Wheat	600	1,200	1,200
New York Cotton Exchange			
Cotton No. 2	300	2,500	3,500
Kansas City Board of Trade			
Hard Winter Wheat	600	3,000	4,000

10. Section 150.4 is revised to read as follows:

§ 150.4 Aggregation of positions.

(a) *Positions to be aggregated.* The position limits set forth in § 510.2 of this part shall apply to all positions in accounts for which any person by power of attorney or otherwise directly or indirectly holds positions or controls trading or to positions held by two or more persons acting pursuant to an expressed or implied agreement or understanding the same as if the positions were held by, or the trading of the position were done by, a single individual.

(b) *Ownership of accounts.* For the purpose of applying the position limits set forth in § 510.2, except for the ownership interest of limited partners, shareholders, members of a limited liability company, beneficiaries of a trust or similar type of pool participant in a commodity pool subject to the provisos set forth in paragraph (c) of this section, any trader holding positions in more than one account, or holding accounts or positions in which the trader by power of attorney or otherwise directly or indirectly has a 10% or greater ownership or equity interest, must aggregate all such accounts or positions.

(c) *Ownership by limited partners, shareholders or other pool participants.* For the purpose of applying the position limits set forth in § 150.2:

(1) A commodity pool operator having ownership or equity interest of 10% or greater in an account or positions as a limited partner, shareholder or other similar type of pool participant must aggregate those accounts or positions with all other accounts or positions owned or controlled by the commodity pool operator;

(2) A trader that is a limited partner, shareholder or other similar type of pool participant with an ownership or equity interest of 10% or greater in a pooled account or positions who is also a principal or affiliate of the operator of the pooled account must aggregate the pooled account or positions with all other accounts or positions owned or controlled by that trader, *provided, however,* that the trader need not aggregate such pooled positions or accounts if:

(i) The pool operator has, and enforces, written procedures to preclude the trader from having knowledge of, gaining access to, or receiving data about the trading or positions of the pool;

(ii) The trader does not have direct, day-to-day supervisory authority or control over the pool's trading decisions; and

(iii) The trader, if a principal of the commodity pool operator, maintains only such minimum control over the commodity pool operator as is consistent with its responsibilities as a principal and necessary to fulfill its duty to supervise the trading activities of the commodity pool;

(3) Each limited partner, shareholder, or other similar type of pool participant having an ownership or equity interest of 25% or greater in a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter must aggregate the pooled account or positions with all other accounts or positions owned or controlled by that trader.

(d) *Trading control by futures commission merchants.* The position limits set forth in § 150.2 of this part shall be construed to apply to all positions held by a futures commission merchant or its separately organized affiliates in a discretionary account, or in an account which is part of, or participates in, or receives trading advice from a customer trading program of a futures commission merchant or any of the officers, partners, or employees of such futures commission merchant or its separately organized affiliates, unless:

(1) A trader other than the futures commission merchant or the afffilate directs trading in such an account;

(2) The futures commission merchant or the affiliate maintains only such minimum control over the trading in such an account as is necessary to fulfill its duty to supervise diligently trading in the account; and

(3) Each trading decision of the discretionary account or the customer trading program is determined independently of all trading decisions in other accounts which the futures commission merchant or the affiliate holds, has a financial interest of 10% or more in, or controls.

(e) *Call for information.* Upon call by the Commission, the Director of the Division of Economic Analysis or the Director's delegatee, any person claiming an exemption under paragraphs (c) or (d) of this section must provide to the Commission such information as specified in the call relating to the positions owned or controlled by that person, trading done pursuant to the claimed exemption, or the relevant business relationships supporting a claim of exemption.

11. New § 150.5 is added to read as follows:

§ 150.5 Exchange-set speculative position limits.

(a) *Exchange limits.* Each contract market as a condition of designation under part 5, appendix A, of this chapter shall be bylaw, rule, regulation, or resolution limit the maximum number of contracts a person may hold or control, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon. This section shall not apply to a contract market for which position limits are set forth in § 150.2 of this part or for a futures or option contract market on a major foreign currency, for which there is no legal impediment to delivery and for which there exists a highly liquid cash market. Nothing in this section shall be construed to prohibit a contract market from fixing different and separate position limits for different types of futures contracts based on the same commodity, or from fixing different position limits for different futures or for different delivery months, or from exempting positions which are normally known in the trade as ''spreads, straddles, or arbitrage,'' of from fixing limits which apply to such positions which are different from limits fixed for other positions.

(b) *Levels at designation.* At the time of its initial designation, a contract market must provide for speculative position limit levels as follows:

(1) For physical delivery contracts, the spot month limit level must be no greater than one-quarter of the estimated spot month deliverable supply, calculated separately for each month to be listed, and for cash settled contracts, the spot month limit level must be no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price;

(2) Individual nonspot or all-months-combined levels must be no greater than 1,000 contracts for tangible commodities other than energy products;

(3) Individual nonspot or all-months-combined levels must be no greater than 5,000 contracts for energy products and nontangible commodities, including contracts on financial products.

(c) *Adjustments to levels.* Contract markets may adjust their speculative limit levels as follows:

(1) For physical delivery contracts, the spot month limit level must be no greater than one-quarter of the estimated spot month deliverable supply, calculated separately for each month to be listed, and for cash settled contracts, the spot month limit level must be no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price; and

(2) Individual nonspot or all-months-combined levels must be no greater than 10% of the average combined futures and delta-adjusted option month-end open interest for the most recent calendar year up to 25,000 contracts with a marginal increase of 2.5% thereafter or be based on position sizes customarily held by speculative traders on the contract market, which shall not be extraordinarily large relative to total open positions in the contract, the breadth and liquidity of the cash market underlying each delivery month and the opportunity for arbitrage between the futures market and the cash market in the commodity underlying the futures contract.

(d) *Hedge exemption.* (1) No exchange bylaw, rule, regulation, or resolution adopted pursuant to this section shall apply to bona fide hedging positions as defined by a contract market in accordance with § 1.3(z)(1) of this chapter. *Provided, however,* that the contract market may limit bona fide hedging positions or any other positions which have been exempted pursuant to paragraph (e) of this section which it determines are not in accord with sound commercial practices or exceed an amount which may be established and liquidated in an orderly fashion.

(2) Traders must apply to the contract market for exemption from its speculative position limit rules. In considering whether to grant such an application for exemption, contract markets must take into account the factors contained in paragraph (d)(1) of this section.

(e) *Trader accountability exemption.* Twelve months after a contract market's initial listing for trading or at any time thereafter, contract markets may submit for Commission approval under section 5a(a)(12) of the Act and § 1.41(b) of this chapter a bylaw, rule, regulation, or resolution, substituting for the position limits required under paragraphs (a), (b) and (c) of this section an exchange rule requiring traders to be accountable for large positions as follows:

(1) For futures and option contracts on a financial instrument or product having an average open interest of 50,000 contracts and an average daily trading volume of 100,000 contracts and

a very highly liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange;

(2) For futures and option contracts on a financial instrument or product or on an intangible commodity having an average moth-end open interest of 50,000 and an average daily volume of 25,000 contracts and a highly liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange and to consent to halt increasing further a trader's positions if so ordered by the exchange;

(3) For futures and option contracts on a tangible commodity, including but not limited to metals, energy products, or international soft agricultural products, having an average month-end open interest of 50,000 contracts and an average daily volume of 5,000 contracts and a liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange and to consent to halt increasing further a trader's positions if so ordered by the exchange, *provided, however,* such contract markets are not exempt from the requirement of paragraphs (b) or (c) that they adopt an exchange bylaw, regulation or resolution setting a spot month speculative position limit with a level no grater than one quarter of the estimated spot month deliverable supply;

(4) For purposes of this paragraph, trading volume and open interest shall be calculated by combining the month-end futures and its related option contract, on a delta-adjusted basis, for all months listed during the most recent calendar year.

(f) *Other exemptions.* Exchange speculative position limits adopted pursuant to this section shall not apply to any position acquired in good faith prior to the effective date of any bylaw, rule, regulation, or resolution which specifies such limit or to a person that is registered as a futures commission merchant or as a floor broker under authority of the Act except to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person. In addition to the express exemptions specified in this section, a contract market may propose such other exemptions from the requirements of this section consistent with the purposes of this section and shall submit such rules Commission review under section 5a(1)(12) of the Act and § 1.41(b) of this chapter.

(g) *Aggregation.* In determining whether any person has exceeded the limits established under this section, all positions in accounts for which such person by power of attorney or otherwise directly or indirectly controls trading shall be included with the positions held by such person; such limits upon positions shall apply to positions held by two or more person acting pursuant to an express or implied agreement or understanding, the same as if the positions were held by a single person.

Issued by the Commission this 27th day of April, 1999, in Washington, DC.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–11066 Filed 5–4–99; 8:45 am]

BILLING CODE 6351–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

Standards of Performance for New Stationary Sources

CFR Correction

In Title 40 of the Code of Federal Regulations, part 60, revised as of July 1, 1998, § 60.41c is corrected by adding the following definitions:

§ 60.41c Definitions.

* * * * *

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials in ASTM D388–77, ''Standard Specification for Classification of Coals by Rank'' (incorporated by reference—see § 60.17); coal refuse; and petroleum coke. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures, are included in this definition for the purposes of this subpart.

Coal refuse means any by-product of coal mining or coal cleaning operations with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (kJ/kg) (6,000 Btu per pound (Btu/lb) on a dry basis.

Cogeneration steam generating unit means a steam generating unit that simultaneously produces both electrical (or mechanical) and thermal energy from the same primary energy source.

Combined cycle system means a system in which a separate source (such as a stationary gas turbine, internal combustion engine, or kiln) provides exhaust gas to a steam generating unit.

* * * * *

[FR Doc. 99–55518 Filed 5–4–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 971029257–9101–02; I.D. 101097A]

RIN 0648–AG56

Designated Critical Habitat; Central California Coast and Southern Oregon/ Northern California Coasts Coho Salmon

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

ACTION: Final rule and correction.

SUMMARY: NMFS is designating critical habitat for two Evolutionarily Significant Units (ESUs) of coho salmon (*Oncorhynchus kisutch*) pursuant to the Endangered Species Act of 1973 (ESA). Critical habitat for the Central California Coast ESU encompasses accessible reaches of all rivers (including estuarine areas and tributaries) between Punta Gorda and the San Lorenzo River (inclusive) in California, including two streams entering San Francisco Bay: Arroyo Corte Madera Del Presidio and Corte Madera Creek. Critical habitat for the Southern Oregon/Northern California Coasts ESU encompasses accessible reaches of all rivers (including estuarine areas and tributaries) between the Mattole River in California and the Elk River in Oregon, inclusive.

The areas described in this final rule represent the current freshwater and estuarine range of the listed species. For both ESUs, critical habitat includes all waterways, substrate, and adjacent riparian zones below longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years). After considering public comments and reviewing additional scientific information, NMFS is modifying various aspects of the proposed designation, including a revised description of adjacent riparian zones and the exclusion of tribal lands from critical habitat. NMFS has identified several dams in the range of these ESUs that currently block access to habitats

historically occupied by coho salmon. However, NMFS has not designated these inaccessible areas as critical habitat because the downstream areas are believed to provide sufficient habitat for conserving the ESUs. The economic (and other) impacts resulting from this critical habitat designation are expected to be minimal.

DATES: This rule is effective June 4, 1999. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 4, 1999.

FOR FURTHER INFORMATION CONTACT: In Oregon, contact Garth Griffin (Portland) at (503) 231–2005, or Frank Bird (Roseburg) at (541) 957–3383. In California, contact Craig Wingert (Long Beach) at (562) 980–4021, Patrick Rutten (Santa Rosa) at (707) 575–6050, or Greg Bryant (Eureka) at (707) 441–3684.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1996, NMFS published its determination to list Central California Coast coho salmon (*Oncorhynchus kisutch*) as threatened under the ESA (61 FR 56138). In a technical correction to the final listing determination (62 FR 1296, January 9, 1997), NMFS defined the Central California Coast coho salmon ESU to include all coho salmon naturally reproduced in streams between Punta Gorda in Humboldt County, California, and the San Lorenzo River in Santa Cruz County, California (inclusive). Subsequently, on May 6, 1997, NMFS published its determination to list the Southern Oregon/Northern California Coasts coho salmon ESU as threatened under the ESA (62 FR 24588) and defined the ESU to include all coho salmon naturally reproduced in streams between Cape Blanco in Curry County, Oregon, and Punta Gorda in Humboldt County, California.

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. On July 25, 1995, NMFS published a **Federal Register** document (60 FR 38011) soliciting information and data regarding the biological status of West Coast coho salmon, available salmon conservation measures, and information on areas that may qualify as critical habitat. At the time of final listing for each of these two ESUs, critical habitat was not determinable, because there was not enough information to perform the required analyses. On November 25, 1997, NMFS published a proposed rule designating critical habitat for the listed species (62 FR 62741). In that proposed rule, NMFS solicited public comments and announced public hearings on the proposed action. This final rule takes into consideration the new information and comments received in response to the proposed rule.

Use of the term ''essential habitat'' within this document refers to critical habitat as defined by the ESA and should not be confused with the requirement to describe and identify Essential Fish Habitat (EFH) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq*).

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as ''(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species'' (see 16 U.S.C. 1532(5)(A)). The term ''conservation,'' as defined in section 3(3) of the ESA, means ''* * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary'' (see 16 U.S.C. 1532(3)).

In designating critical habitat, NMFS considers the following requirements of the species: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of this species (see 50 CFR 424.12(b)). In addition to these factors, NMFS also focuses on the known physical and biological features (primary constituent elements) within the designated area that are essential to the conservation of the species and that may require special management considerations or protection. These essential features may include, but are not limited to, spawning sites, food resources, water quality and quantity, and riparian vegetation.

Benefits of Critical Habitat Designation

A designation of critical habitat provides Federal agencies with a clear indication as to when consultation under section 7 of the ESA is required, particularly in cases where the proposed action would not result in immediate mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical habitat area when a migratory species is not present). The critical habitat designation, in describing the essential features of the habitat, also helps determine which activities conducted outside the designated area are subject to section 7 (i.e., activities outside critical habitat that may affect essential features of the designated area).

A critical habitat designation will also assist Federal agencies in planning future actions because the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations. With a designation of critical habitat, potential conflicts between Federal actions and endangered or threatened species can be identified and possibly avoided early in an agency's planning process.

Another indirect benefit of designating critical habitat is that it helps focus Federal, tribal, state, and private conservation and management efforts in such areas. Management efforts may address special considerations needed in critical habitat areas—including conservation regulations that restrict both private and Federal activities. The economic and other impacts of these actions would be considered at the time regulations are proposed and, therefore, are not considered in the critical habitat designation process. Other Federal, tribal, state, and local authorities, such as zoning or wetlands and riparian lands protection, may also benefit critical habitat areas.

Summary of Comments

Three public hearings were held on the proposed action: one in Gold Beach, Oregon, on December 8, 1997, one in Eureka, California, on December 9, 1997, and one in Santa Rosa, California, on December 11, 1997. Forty-two individuals provided oral testimony at the public hearings. Approximately 5,100 written comments were submitted in response to the proposed rule. While some commenters were in favor of the proposed critical habitat designation, the vast majority of the oral and written comments opposed the proposed rule. New information and comments received in response to the proposed rule are summarized here.

Public Notification Process

Comment 1: Some commenters felt that the process for proposing critical habitat was not handled well (e.g., difficulties with public notice and time to respond) and that the proposal itself was too ill-defined to be fully evaluated.

Response: NMFS made every attempt to communicate the critical habitat proposal to the affected communities. Three public hearings were held in the range of each ESU in California and Oregon and various local newspapers were notified of the proposed action, comment deadlines, and public meetings. In response to numerous requests, NMFS twice extended the comment period (63 FR 4212, January 28, 1998 and 63 FR 23710, April 30, 1998) to allow an additional 5 months for the public to submit comments. Finally, NMFS responded to several requests for supplemental meetings with affected county and local groups to promote better understanding about the proposal and attempt to allay unwarranted fears resulting from misleading information being widely promulgated throughout northern California and southern Oregon. Such misinformation created an unnecessary rift between local citizens and fisheries managers. This is particularly troublesome because most involved generally have the same common goal: restoring threatened salmon to the point where they can once again be a prized and sustainable resource in the region. Any and all parties are encouraged to contact NMFS if they have questions or need additional information regarding this final rule (see **FOR FURTHER INFORMATION CONTACT**).

Economic Considerations

Comment 2: Numerous commenters believed that NMFS improperly minimized the proposal's economic impacts by separating the designation of critical habitat from the listing process (i.e., by considering only the incremental economic effects of designating critical habitat beyond the effects associated with listing the species). These commenters are concerned that by separating the costs associated with the various administrative actions (e.g., listing, critical habitat designation, section 7 consultations), NMFS underestimated the real economic consequences of protecting listed coho salmon. Some commenters countered that any economic costs would be offset once the coho fisheries were restored. Many commenters objected to NMFS' interpretation that the impact of critical habitat designation is subsumed by the costs associated with protections under section 7 of the ESA.

Response: NMFS disagrees with the assertion that it has improperly minimized the economic impacts by separating the designation of critical habitat from the listing process. Rather, the ESA is unambiguous in how it addresses economic impacts; it prohibits the consideration of economic impacts in the listing process, but requires analysis of economic impacts when designating critical habitat. Our reading of these separate requirements for each determination leads us to an incremental analysis in which only the economic impacts resulting from the designation of the critical habitat are considered.

Since NMFS is designating the current range of the listed species as critical habitat, this designation will not impose any additional requirements or economic effects beyond those which already accrue from section 7 of the ESA, which is triggered by the species' listing. Section 7 requires Federal agencies to ensure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat determined to be critical. The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

Most of the effect on non-Federal interests will result from the protective regulations of 4(d) of the ESA and the no-jeopardy requirement of section 7 of the ESA, both of which are a function of listing a species, not designating its critical habitat. Whether critical habitat is designated, non-Federal interests must conduct their actions in a manner consistent with the requirements of the ESA. When a species is listed, non-Federal interests must comply with the prohibitions on takings found in section 9 of the ESA and associated regulations. If the activity is funded, permitted, or authorized by a Federal agency, that agency must comply with the non-jeopardy mandate of section 7 of the ESA, which also results from listing a species, not from designating its critical habitat. Once critical habitat is designated, the agency must avoid actions that destroy or adversely modify that critical habitat. However, pursuant to NMFS' ESA implementing regulations, any action that destroys or adversely modifies critical habitat is also likely to jeopardize the continued existence of the species (See the definitions in 50 CFR 402.02). Therefore, NMFS does not anticipate that the designation will result in significant additional requirements for non-Federal interests.

Notwithstanding its lack of economic impact, the designation of critical habitat remains important because it identifies habitat that is essential for the continued existence of a species and, therefore, indicates habitat that may require special management attention. This facilitates and enhances Federal agencies' ability to comply with section 7 of the ESA by ensuring that they are aware of it when their activities may affect listed species and habitats essential to support them. In addition to aiding Federal agencies in determining when consultations are required pursuant to section 7(a)(2) of the ESA, critical habitat can aid an agency in fulfilling its broader obligation under section 7(a)(1) to use its authority to carry out programs for the conservation of listed species.

Comment 3: A number of commenters were under the impression that critical habitat is equivalent to a ''set-aside'' or an easement and that by its nature was tantamount to an illegal and unconstitutional ''taking'' of private property. Some commenters felt that designating critical habitat abrogated Executive Order 12630 and the June 30, 1988, Attorney General's ''Guidelines for Evaluation and Risk Avoidance of Unanticipated Takings.'' Many of these commenters provided estimates and analyses describing specific costs they believed they would incur as a result of the proposed critical habitat designation. These commenters suggested that they should be monetarily reimbursed for any financial hardship resulting from a designation of critical habitat.

Response: A critical habitat designation does not imply that private land would be confiscated or taken without just compensation. A critical habitat designation affects private land only when a Federal action is involved. In the overwhelming majority of cases, private landowners are not precluded from using their land as a result of the critical habitat designation. In a separate rulemaking, NMFS has adopted a regulation that prohibits the take of listed coho, which includes take by actions that destroy habitat (62 FR 38479). This regulation may have some impact on land uses that can be shown to have harmed salmon (for example, placing barriers to salmon migration in a stream). But this regulation should not be confused with the designation of critical habitat. In the course of deciding to make this final designation, the

Department of Commerce has complied with Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Compliance With National Environmental Policy Act (NEPA)

Comment 4: Some commenters believed that NMFS should prepare an environmental impact statement pursuant to NEPA on the critical habitat designation because designation is a major Federal action and will have a significant impact on the environment.

Response: Under section 4(b)(2) of the ESA, the Secretary is required to designate critical habitat on the basis of the best scientific data available after taking into account the ''* * * relevant impacts of specifying any particular area as critical habitat''. In past critical habitat designations, NMFS has performed analysis of the kind requested here: Environmental analysis under NEPA. In all such cases NMFS has determined that mere designation of critical habitat has no adverse environmental impacts. In the time since these analyses were performed, it has become NMFS' policy, as well as that of the U.S. Fish and Wildlife Service (FWS), that designating critical habitat has no impact that requires a NEPA analysis.

Scope and Extent of Critical Habitat

The majority of commenters raised issues regarding the geographic scope and extent of proposed critical habitat; in particular, the designation of adjacent riparian zones as critical habitat. Critical habitat is defined in section 3(5)(A) of the ESA as the specific areas within the geographic area occupied by the species on which are found those physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. Based on commenters' concerns and on new information received during the public comment period, NMFS has refined its designation of critical habitat for both the Southern Oregon/Northern California Coasts and Central California Coast coho salmon ESUs. The following sections, partitioned by habitat type, address these commenters' concerns and clarify NMFS' designation of critical habitat for these ESUs.

Freshwater and Estuarine Habitats

Comment 5: Numerous commenters felt that a far more complete scientific analysis was required before critical habitat could be designated and, as a result, requested that the agency withdraw the proposed rule. Several commenters questioned NMFS' delineation of critical habitat as including all areas currently accessible to the species, and requested more specificity as to which stream reaches are critical habitat. Some commenters sought designation of unoccupied streams as critical habitat, while others noted that some local creeks and streams never had coho salmon and requested designation of only those areas where species restoration is feasible. The Oregon Department of Fish and Wildlife (ODFW) requested that NMFS consider using specific ''core areas'' for coho salmon and sought clarification of NMFS' interpretation that coho salmon are rare in southern Oregon. One commenter noted that coho salmon have not been documented recently in Pilarcitos Creek (San Mateo County, California), and noted that Stone Dam has blocked upstream areas for over 100 years. This commenter believed that adverse hydrologic conditions and degraded habitat would preclude this basin from playing a critical role in the species' recovery. One commenter requested that NMFS specify that side channels and off-channel wetlands are included in critical habitat, and that beaver dams, alluvial deposits, and trees be identified as essential features of coho salmon habitat. Another commenter noted that NMFS misidentified Mill Valley Creek in San Francisco Bay; it is actually named ''Arroyo Corte Madera Del Presidio'' on U.S. Geological Survey (USGS) maps. The U.S. National Park Service (NPS) questioned whether Redwood Creek was identified as critical habitat for coho salmon.

Response: While the proposed rule described the lack of consistent and robust data sets with which to discern the species' distribution at a fine scale (62 FR 62741, November 25, 1997), NMFS believes that the best available distribution information is sufficient to characterize basin-level designations of critical habitat for the listed species. The California and Oregon mapping efforts (e.g., ODFW's core area assessment) cited in the proposed rule are nearing completion, but have yet to reach final adoption and must be viewed as good, but tentative, descriptions of areas occupied by or critical for coho salmon. NMFS believes that these mapping efforts hold great promise for focusing habitat protection and restoration efforts and will continue to use the State's expertise to discern coho distribution when specific actions warrant (e.g., during ESA section 7 consultations). However, the limited data across the range of both ESUs, as well as dissimilarities in data types within the Southern Oregon/Northern California Coasts ESU, continue to make it difficult to define this species' distribution at a finer scale than the USGS hydrologic units (i.e., basins) identified in the proposed rule. Similarly, this limitation precludes NMFS from restricting critical habitat to streams where restoration may or may not be feasible.

NMFS' preferred approach to identifying critical habitat is to designate all areas accessible to the species within the range of hydrologic units in the range of each ESU. While this may not provide the level of resolution to define the species' presence or absence in specific local creeks and streams, NMFS believes that adopting a more inclusive, watershed-based description of critical habitat is appropriate because it (1) recognizes the species' use of diverse habitats and underscores the need to account for all of the habitat types supporting the species' freshwater and estuarine life stages, from small headwater streams to migration corridors and estuarine rearing areas; (2) takes into account the natural variability in habitat use that makes precise mapping problematic (e.g., some streams may have fish present only in years with plentiful rainfall); and (3) reinforces the important linkage between aquatic areas and adjacent riparian/upland areas. While unoccupied streams are excluded from critical habitat, NMFS reiterates the proposed rule language that ''it is important to note that habitat quality in this current range is intrinsically related to the quality of upland areas and of inaccessible headwater or intermittent streams which provide key habitat elements (e.g., large woody debris, gravel, water quality) crucial for coho in downstream reaches.''

In the proposed rule, NMFS noted that the ODFW considered coho salmon ''rare'' in coastal streams draining the Siskiyou Mountains, citing a recent ''Biennial Report on the Status of Wild Fish in Oregon (ODFW, 1995). In fact, this report identifies 10 Oregon coho populations in the range of the Southern Oregon/Northern California Coasts ESU (Elk, Rogue, Pistol, Chetco, and Winchuck Rivers, and Hubbard, Brush, Mussel, Euchre, and Hunter Creeks). The report noted that coho populations are currently located in the Rogue and Winchuck River basins, but are ''very rare in the other coastal basins.'' Subsequent discussions with ODFW biologists has yielded additional, site-specific information regarding coho salmon in several southern Oregon streams, notably the Pistol and Chetco

Rivers. These discussions have raised the issue as to whether viable populations still occur in these basins. Until this issue is resolved, NMFS will continue to consider reaches accessible to coho salmon in these and other basins as critical habitat for the species. If additional information becomes available, NMFS will revise the critical habitat designation for this ESU as appropriate.

Similarly, NMFS acknowledges that Pilarcitos Creek and other coastal drainages may have little suitable habitat for coho salmon or are rarely inhabited by the species (although information provided by the commenter indicates that Pilarcitos Creek does contain habitat for other salmonids and that the creek could be used by coho salmon straying from other coastal streams). As noted previously, the paucity of information regarding coho salmon distribution precludes NMFS from identifying specific drainages or river reaches occupied by the species. In addition, the current low abundance of the species makes it difficult to rule out any stream for recovery since the remnant populations may need whatever habitat is available in order to persist. In the case of Pilarcitos Creek it is unclear whether the basin has been monitored sufficiently that firm conclusions about the species' presence/absence can be made. Instead, NMFS believes that the most prudent approach to characterizing critical habitat is to include all areas accessible to listed coho salmon. The key issue raised by these and other commenters is whether activities in the Pilarcitos Creek watershed and other coastal drainages could have an adverse effect on the listed species. In streams where there is limited species distribution information, NMFS biologists would make their best professional judgement about the access, to and suitability of, available habitat and what, if any, impacts would occur on the listed fish as a result of a specific activity. Few if any effects would result from an activity where it is well-documented that the species makes little use of a stream reach and the existing habitat conditions are poor.

NMFS agrees with the statements by one commenter that beaver dams and their associated habitat changes (e.g., channel flooding, and flow and siltation changes) often create ideal conditions for coho salmon. Some of the beneficial habitat effects from beaver activity include improved rearing and overwintering habitat, increased water volumes during low flows, and backwater habitat refuge areas during floods (Swanston, 1991). NMFS will identify beaver removal as an activity potentially requiring special management consideration, and encourages landowners and agencies to promote beaver habitation as one means by which to support coho salmon recovery. NMFS also agrees with this commenter's assertion that side/off-channel habitats are important for coho salmon and has retained reference to these habitats in this final rule. However, NMFS has not specifically identified trees and alluvial deposits as essential features because these habitat components are already addressed in the proposed rule's list of essential features, specifically the categories of substrate, cover/shelter, and riparian vegetation (see Critical Habitat of California and Southern Oregon Coho Salmon).

Finally, NMFS concurs that the San Francisco Bay stream ''Arroyo Corte Madera Del Presidio'' was misidentified as Mill Valley Creek and has corrected the error in this final rule. Also, NMFS clarifies for NPS that the basin containing Redwood Creek (hydrologic unit #18010102) is identified as containing critical habitat for the Southern Oregon/Northern California Coasts coho salmon ESU.

Adjacent Riparian Zones

Comment 6: While several commenters supported NMFS' proposal to include the adjacent riparian zone as critical habitat, the vast majority were against this approach. Many commenters noted the lack of justification for including adjacent riparian zones of 300 ft (91.4 meters (m)) from each side of a stream in the critical habitat proposal. Moreover, they felt that proposing to designate these zones was arbitrary and excessive. Several commenters offered possible lesser solutions to defining adjacent riparian zones, including: only the actual inhabited stream reaches themselves, a 50-ft or 30-m width to the riparian boundary, a site-potential tree height, and the 10-year flood plain. One commenter correctly noted that NMFS' proposal referenced a ''horizontal'' rather than ''slope'' distance, which was inconsistent with the Northwest Forest Plan's (NFP's) riparian reserve definition.

Response: NMFS agrees that the proposed rule did not adequately describe the rationale for identifying adjacent riparian zones as part of critical habitat. NMFS believes it is important to include these areas in the designation of critical habitat for several reasons. The ESA defines critical habitat to include areas ''on which are found those physical or biological features * * * essential to the conservation of the species and * * * which may require special management considerations or protection.'' These essential features for salmon include, but are not limited to, spawning sites, food resources, water quality and quantity, and riparian vegetation (see 50 CFR 424.12(b)). Riparian areas form the basis of healthy watersheds and affect these primary constituent elements; therefore, they are essential to the conservation of the species and need to be included as critical habitat.

NMFS' past critical habitat designations for listed anadromous salmonids have included the adjacent riparian zone as part of the designation. In the final designations for Snake River spring/summer chinook, fall chinook, and sockeye salmon (58 FR 68543, December 28, 1993), NMFS included the adjacent riparian zone as part of critical habitat and defined it in the regulation as those areas within a horizontal distance of 300 ft (91.4 m) from the normal high water line. In the critical habitat designation for Sacramento River winter run chinook (58 FR 33212, June 16, 1993), NMFS included ''adjacent riparian zones'' as part of the critical habitat but did not define the extent of that zone in the regulation. The preamble to that rule stated that the adjacent riparian zone was limited to ''those areas that provide cover and shade.''

Streams and stream functioning are inextricably linked to adjacent riparian and upland (or upslope) areas. Streams regularly submerge portions of the riparian zone via floods and channel migration, and portions of the riparian zone may contain off-channel rearing habitats used by juvenile salmonids, especially during periods of high flow. The riparian zone also provides an array of important watershed functions that directly benefit salmonids. Vegetation in the zone shades the stream, stabilizes banks, and provides organic litter and large woody debris. The riparian zone stores sediment, recycles nutrients and chemicals, mediates stream hydraulics, and controls microclimate. Healthy riparian zones help ensure water quality essential to salmonids, as well as the forage species they depend on (Reiser and Bjornn, 1979; Meehan, 1991; Federal Emergency Management Agency (FEMA), 1993; and Spence *et al.*, 1996). Human activities in the adjacent riparian zone, or in upslope areas, can harm stream function and can harm salmonids, both directly and indirectly, by interfering with the watershed functions described here. For example, timber harvest, road-building, grazing, cultivation, and other activities can increase sediment, destabilize banks,

reduce organic litter and woody debris, increase water temperatures, simplify stream channels, and increase peak flows. These adverse modifications reduce the value of habitat for salmon and, in many instances, may result in injury to, or mortality of, fish. Because human activity may adversely affect these watershed functions and habitat features, NMFS concluded the adjacent riparian zone could require special management consideration, and, therefore, was appropriate for inclusion in critical habitat.

The Snake River salmon critical habitat designation relied on analyses and conclusions reached by the Forest Ecosystem Management Assessment Team (FEMAT) 1993, regarding interim riparian reserves for fish-bearing streams on Federal lands within the range of the northern spotted owl. The interim riparian reserve recommendations in the FEMAT report were based on a systematic review of the available literature, primarily for forested habitats, concerning riparian processes as a function of distance from stream channels. The interim riparian reserves identified in the FEMAT report for fish-bearing streams on Federal forest lands are intended to (1) provide protection to salmonids, as well as riparian-dependent and associated species, through the protection of riparian processes that influence stream function, and (2) provide a high level of fish habitat and riparian protection until site-specific watershed and project analyses can be completed. The FEMAT report identified several alternative ways that interim riparian reserves providing a high level of protection could be defined, including the 300-ft (91.4 m) slope distance, a distance equivalent to two site-potential tree heights, the outer edges of riparian vegetation, the 100-year flood plain, or the area between the edge of the active stream channel to the top of the inner gorge, whichever is greatest. The U.S. Forest Service (USFS) and U.S. Bureau of Land Management (BLM) ultimately adopted these riparian reserve criteria as part of an Aquatic Conservation Strategy aimed at conserving fish, amphibians, and other aquatic-and riparian-dependent species in the Record of Decision (ROD) for the Northwest Forest Plan (NFP) (FEMAT ROD, 1994).

While NMFS has used the findings of the FEMAT report to guide its analyses in ESA section 7 consultations with USFS and BLM regarding management of Federal lands, NMFS recognizes that the interim riparian reserves may be conservative with regard to the protection of adjacent riparian habitat for salmonids since they are designed to protect terrestrial species that are riparian dependent or associated as well as salmonids. Moreover, NMFS' analyses have focused more on the stream functions important to salmonids and on how proposed activities will affect the riparian area's contribution to properly functioning conditions for salmonid habitat.

Since the adoption of the NFP, NMFS has gained experience working with Federal and non-Federal landowners to determine the likely effects of proposed land management actions on stream functions. In freshwater and estuarine areas, these activities include, but are not limited to, agriculture; forestry; grazing; diking and bank stabilization; construction/urbanization; dam construction/operation; dredging and dredged spoil disposal; habitat restoration projects; irrigation withdrawal, storage, and management; mineral mining; road building and maintenance; sand and gravel mining; wastewater/pollutant discharge; wetland and floodplain alteration; and woody debris/structure removal from rivers and estuaries. NMFS has developed numerous tools to assist Federal agencies in analyzing the likely impacts of their activities on anadromous fish habitat. With these tools, Federal agencies are better able to judge the impacts of their actions on salmonid habitat, taking into account the location and nature of their actions. NMFS' primary tool guiding Federal agencies is a document titled ''Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale'' (NMFS, 1996a). This document presents guidelines to facilitate and standardize determinations of ''effect'' under the ESA and includes a matrix for determining the condition of various habitat parameters. This matrix is being implemented throughout northern California and Oregon coastal watersheds and is expected to help guide efforts to define salmonid risk factors and conservation strategies throughout the West Coast.

Several recent literature reviews have addressed the effectiveness of various riparian zone widths for maintaining specific riparian functions (e.g., sediment control, large woody debris recruitment) and overall watershed processes. These reviews provide additional useful information about riparian processes as a function of distance from stream channels. For example, Castelle et al. (1994) conducted a literature review of riparian zone functions and concluded that riparian widths in the range of 30 m (98 ft) appear to be the minimum needed to maintain biological elements of streams. They also noted that site-specific conditions may warrant substantially larger or smaller riparian management zones. Similarly, Johnson and Reba (1992) summarized the technical literature and found that available information supported a minimum 30-m riparian management zone for salmonid protection.

A recent assessment funded by NMFS and several other Federal agencies reviewed the technical basis for various riparian functions as they pertain to salmonid conservation (Spence *et al.*, 1996). These authors suggest that a functional approach to riparian protection requires a consistent definition of riparian ecosystems based on ''zones of influence'' for specific riparian processes. They noted that in constrained reaches where the active channel remains relatively stable through time, riparian zones of influences may be defined based on site-potential tree heights and distance from the active channel. In contrast, they note that, in unconstrained reaches (e.g., streams in broad valley floors) with braided or shifting channels, the riparian zone of influence is more difficult to define, but recommend that it is more appropriate to define the riparian zone based on some measure of the extent of the flood plain.

Spence *et al.* (1996) reviewed the functions of riparian zones that are essential to the development and maintenance of aquatic habitats favorable to salmonids and the available literature concerning the riparian distances that would protect these functional processes. Many of the studies indicate that riparian management widths designed to protect one function in particular, recruitment of large woody debris, are likely to be adequate to protect other key riparian functions. The reviewed studies concluded that the vast majority of large woody debris is obtained within one site-potential tree height from the stream channel (Murphy and Koski, 1989; McDade *et al.*, 1990; Robison and Beschta, 1990; Van Sickle and Gregory, 1990; FEMAT, 1993; and Cederholm, 1994). Based on the available literature, Spence *et al.* (1996) concluded that fully protected riparian management zones of one site-potential tree would adequately maintain 90 to 100 percent of most key riparian functions of Pacific Northwest forests if the goal was to maintain instream processes over a time frame of years to decades.

Based on experience gained since the designation of critical habitat for Snake River salmon and after considering public comments and reviewing

additional scientific information regarding riparian habitats, NMFS is re-defining coho salmon critical habitat based on key riparian functions. Specifically, the adjacent riparian area is defined as the area adjacent to a stream that provides the following functions: shade, sediment, nutrient or chemical regulation, streambank stability, and input of large woody debris or organic matter. Specific guidance on assessing the potential impacts of land use activities on riparian functions can be obtained by consulting with NMFS (see **ADDRESSES**), local foresters, conservation officers, fisheries biologists, or county extension agents.

The physical and biological features that create properly functioning salmonid habitat vary throughout the range of coho salmon and the extent of the adjacent riparian zone may change accordingly, depending on the landscape under consideration. While a site-potential tree height can serve as a reasonable benchmark in some cases, site-specific analyses provide the best means to characterize the adjacent riparian zone because such analyses are more likely to accurately capture the unique attributes of a particular landscape. Knowing what may be a limiting factor to the properly functioning condition of a stream channel on a land use or land type basis and how that may or may not affect the function of the riparian zone will significantly assist Federal agencies in assessing the potential for impacts to listed coho salmon. On Federal lands within the range of the northern spotted owl, Federal agencies should continue to rely on the Aquatic Conservation Strategy of the NFP to guide their consultations with NMFS. Where there is a Federal action on non-Federal lands, Federal agencies should consider the potential effects of the activities they fund, permit, or authorize on the riparian zone adjacent to a stream that may influence the following functions: shade, sediment delivery to the stream, nutrient or chemical regulation, streambank stability, and the input of large woody debris or organic matter. In areas where the existing riparian zone is seriously diminished (e.g., in many urban settings and agricultural settings where flood control structures are prevalent), Federal agencies should focus on maintaining any existing riparian functions and restoring others where appropriate; (e.g., by cooperating with local watershed groups and landowners). NMFS acknowledges in its description of riparian habitat function that different land use types (e.g., timber, urban, and agricultural) will have varying degrees of impact and that activities requiring a Federal permit will be evaluated on the basis of disturbance to the riparian zone. In many cases the evaluation of an activity may focus on a particular limiting factor for a watercourse (e.g., temperature, stream bank erosion, sediment transport) and whether that activity may or may not contribute to improving or degrading the riparian habitat.

Finally, NMFS emphasizes that a designation of critical habitat does not prohibit landowners from conducting actions that modify streams or the adjacent terrestrial habitat. Critical habitat designation serves to identify important areas and essential features within those areas, thus alerting both Federal and non-Federal entities to the importance of the area for listed salmonids. Federal agencies are required by the ESA to consult with NMFS to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify critical habitat in a way that appreciably diminishes the value of critical habitat for both the survival and the recovery of the listed species. The designation of critical habitat will assist Federal agencies in evaluating how their actions on Federal or non-Federal lands may affect listed coho salmon and determining when they should consult with NMFS on the impacts of their actions. When a private landowner requires a Federal permit that may result in the modification of coho salmon habitat, Federal permitting agencies will be required to ensure that the permitted action, regardless of whether it occurs in the stream channel, adjacent riparian zone, or upland areas, does not appreciably diminish the value of critical habitat for both the survival and recovery of the listed species or jeopardize the species' continued existence. For other actions, landowners should consider the needs of the listed fish and NMFS will assist them in assessing the impacts of actions on listed fish.

Dams and Barriers

Comment 7: Several commenters requested that NMFS conduct a more detailed analysis of areas above existing dams before concluding that these areas do not constitute critical habitat. Some suggested that NMFS consider installing fish ladders and passage facilities to allow coho salmon access to areas historically occupied. Two commenters requested that NMFS add additional dams to the lists of impassable manmade structures; specifically, Phoenix Dam in the Corte Madera Creek basin, California; and Willow Lake, Fish Lake, Agate Lake, Emigrant Lake, and Selmac Lake Dams in Oregon's Rogue River basin. One commenter provided information indicating that Matthews Dam in the Mad River basin should be excluded from the list of barriers because coho salmon historically never occupied the areas upstream. One commenter noted that Peters Dam was completed in 1953, not 1940 as stated in the proposed rule.

Response: NMFS' ESA implementing regulations specify that unoccupied areas are not to be included in critical habitat unless the present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)). As the proposed rule states, dams currently block approximately 9 to 11 percent of the historic range of each ESU. The six additional dams identified by two commenters do not add significantly to these blocked percentages, and the ODFW stated that the amount of blocked historic habitat above the five Oregon dams is ''thought to be low and not essential to maintaining or restoring coho salmon in the Rogue River basin.'' While the blocked areas are proportionally significant in certain basins, NMFS believes these areas are not currently essential for the recovery of either ESU because an array of habitat types (i.e., low and high gradient reaches) are still accessible in downstream areas historically used by coho salmon.

NMFS has reviewed, and concurs with, the information submitted by commenters requesting that six additional structures be added to the list of dams/reservoirs representing the upstream extent of critical habitat. Also, for the reasons presented by the commenter, NMFS agrees that Matthews Dam should not be included in the list of dams within the range of the Southern Oregon/Northern California Coasts ESU. NMFS also concurs with the corrections regarding the completion date for Peters Dam and the naming of Seeger Dam (previously identified as Nicasio Dam).

NMFS' intent in identifying specific dams in each ESU was to clarify the upstream extent of known occupied reaches for each ESU and to contrast these barriers with smaller, ephemeral barriers (e.g., culverts, push-up dams, etc.) that the agency does not view as impassable structures. NMFS does not intend to ''write off'' potential habitats above these dams, but instead will fully consider the need to include these blocked habitats in the recovery planning process and in ESA section 7 consultations. If future analyses reveal that these areas are essential for the

species' conservation or could contribute to an expedited recovery of either ESU, NMFS will revise the critical habitat designation and promote efforts to gain access to blocked habitats.

Marine Habitats

Comment 8: Numerous commenters questioned why NMFS had not designated critical habitat in marine areas. Some recommended that NMFS revise its designation based on the recent EFH recommendations which include marine areas over portions of the continental shelf.

Response: NMFS is currently re-evaluating its previous determination to exclude ocean areas as critical habitat for these ESUs, in particular the issue of whether marine areas require special management consideration or protection. If warranted, NMFS will revise this designation to include specific marine areas as part of coho salmon critical habitat.

Factors for the Species' Decline

Comment 9: Many commenters challenged the merits of the original listings and felt that the true cause of the coho declines lay in various spheres aside from freshwater habitat. Among the various causes cited were: tribal fishing, commercial fishing, sport fishing, foreign fishing, marine mammals, other protected predators, non-native species, birds, hatchery practices, dams, ocean conditions, and recent droughts and floods. Others provided evidence that mismanagement and pollution of freshwater habitats have been principal factors in the species' decline. Still others felt that extinction is a natural process and that little can (or should) be done about it.

Response: NMFS believes that the threatened extinction of these coho populations is the result of human, rather than natural factors, and will continue to encourage all efforts to protect and restore imperiled salmon and their habitat. NMFS acknowledges that a multitude of factors have contributed to the decline of coho salmon and has described these factors in more detail in the listing determinations for each ESU (61 FR 56138, October 31, 1996; 62 FR 24588, May 6, 1997), in technical status reviews for the species (Bryant 1994; Weitkamp et al., 1995; NMFS 1997), and in documents detailing factors for decline for related species (NMFS 1996b and 1998). Many of the causes cited by commenters are human-controlled and NMFS believes that these can and must be addressed in the near-term to improve the salmon's chances for surviving such uncontrollable natural events as droughts, floods, and poor ocean conditions.

ESA Definitions and Standards

Comment 10: Some commenters requested that NMFS clarify the meaning of ''harm'' under the ESA, and several commenters took exception to NMFS' assertion that adverse modification of critical habitat is equivalent to jeopardizing the listed species.

Response: On May 1, 1998, NMFS published a proposed rule to define the term ''harm'', which is contained in the definition of ''take'' in the ESA (63 FR 24148). Section 9 of the ESA makes it illegal to take an endangered species of fish or wildlife. The definition of ''take'' is to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' (16 U.S.C. 1532(19)). FWS has promulgated a regulation further defining the term ''harm'' to eliminate confusion concerning its meaning (50 CFR 17.3). FWS' definition of ''harm'' with respect to habitat destruction has been upheld by the Supreme Court as a reasonable interpretation of the term and supported by the broad purpose of the ESA to conserve endangered and threatened species (See *Babbitt* v. *Sweet Home Chapter of Communities for a Greater Oregon*, 115 S. Ct. 2407, 2418 (1995)). With the listings of Pacific salmon and anadromous trout stocks, potentially affected parties have questioned whether NMFS also interprets ''harm'' to include habitat destruction. The May 1, 1998, proposed rule will, if adopted, establish NMFS' interpretation of ''harm'' consistent with that of FWS.

NMFS' proposed rule interprets the term ''harm'' in the context of habitat destruction as an act that actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, and sheltering (Compare 50 CFR 17.3). The habitat modification or degradation contained in the definition of ''harm'' is limited to those actions that actually kill or injure listed fish or wildlife. NMFS believes that this proposed definition is reasonable for the conservation of the habitats of listed species and is in keeping with Congress' intent under the ESA. Public input has been solicited on this proposed definition and a final rule will be published after taking all comments into account.

With regard to comments on the ''adverse modification'' and ''jeopardy standards'', NMFS did not assert that adverse modification of critical habitat is equivalent to jeopardizing listed species. Section 7 of the ESA requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat. This requirement is in addition to the prohibition against jeopardizing the continued existence of a listed species, and it is the only mandatory legal consequence of a critical habitat designation. Implementing regulations define ''jeopardize the continued existence of'' and ''destruction or adverse modification of'' in similar terms. ''Jeopardize the continued existence of'' means to engage in an action ''that reasonably would be expected * * * to reduce appreciably the likelihood of both the survival and recovery of a listed species.'' 50 CFR 402.02. ''Destruction or adverse modification of'' means an ''alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.'' 50 CFR 402.02. Using these definitions, Federal actions found to cause an adverse modification are nearly always found to also jeopardize the species concerned, and the existence of critical habitat designation does not materially affect the outcome of consultation. Biological opinions which conclude that a Federal agency action is likely to adversely modify critical habitat but is not likely to jeopardize the species for which it is designated are extremely rare historically; none have been issued in recent years. However, a situation in which an adverse modification did not result in jeopardy could arise. Such a situation might involve a Federal action in critical habitat outside of current range of the species, where the action would not reduce the current reproduction, distribution, or numbers of the species, but would appreciably reduce the value of critical habitat for survival and recovery.

Adequacy of Existing Conservation Plans and Efforts

Comment 11: Several commenters stated that existing management plans and conservation initiatives were sufficient to protect coho salmon and its habitat, and, therefore, the proposed critical habitat designation is not warranted. Some commenters admonished NMFS to engage in local salmon conservation programs and warned that designating critical habitat could dampen these efforts.

Response: The designation of critical habitat relies on evaluating which areas are occupied and essential for the species' conservation (see Definition of

Critical Habitat). Moreover, NMFS considered existing regulatory mechanisms and conservation plans applicable to Central California Coast and Southern Oregon/Northern California Coasts coho salmon and their habitats in the final listing determinations (61 FR 56138, October 31, 1996; 62 FR 24588, May 6, 1997). In those **Federal Register** documents, a variety of Federal and state laws and programs were found to have affected the abundance and survival of anadromous fish populations in both ESUs. NMFS concluded that available regulatory mechanisms were inadequate and that regulated activities continued to represent a potential threat to the species' existence.

NMFS agrees with commenters that state and local watershed efforts are key to the coho salmon's recovery and long-term survival. Species listings and critical habitat designations under the ESA should in no way hamper efforts to help coho salmon and other imperiled species in the Pacific Northwest and California. NMFS encourages such efforts, as evidenced by our involvement with an array of programs in the range of both ESUs, including: helping to fund watershed coordinators through the Oregon Governor's Watershed Enhancement Board, working with numerous Resource Conservation Districts and watershed restoration efforts (including the Mattole River Restoration Council, and the Salmon, South Fork Trinity, Shasta, and Scott River Coordinated Resource Management Plans), participating in the development of California's recovery and strategic management plans for coastal salmonids, working with the California Governor's Biodiversity Councils and assisting with implementation of the Oregon Plan for Salmon and Watersheds (OPSW). NMFS recognizes the significant benefits that will accrue to salmon as a result of these efforts. In fact, NMFS has promulgated interim protection regulations (i.e., ESA 4(d) rule) that provide specific exceptions for the significant harvest, hatchery, habitat restoration, and monitoring efforts contained in the OPSW and other efforts currently underway in the range of the Southern Oregon/Northern California Coasts ESU (62 FR 38479). All parties interested in obtaining technical assistance in support of salmon conservation (or other information related to NMFS' ESA activities) are encouraged to contact NMFS field office personnel in Roseburg, Oregon, and in Eureka, Long Beach, and Santa Rosa, California (see **FOR FURTHER INFORMATION CONTACT**).

Tribal Lands

Comment 12: On June 3, 1998, the Hoopa Valley Tribe (HVT) specifically requested that NMFS not designate critical habitat on their reservation and that NMFS waive ESA section 7 consultation requirements when the tribe has a plan in place which protects fish habitat and meets the requirements of the Secretarial Order entitled ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' on June 5, 1997 (Secretarial Order).

Response: The unique and distinctive relationship between the United States and Indian tribes is defined by treaties, statutes, executive orders, judicial decisions, and agreements, that differentiates tribes from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Pursuant to the treaties, statutes, judicial decisions, executive orders and other agreements that define the relationship between the United States and tribes, lands have been retained by Indian tribes or have been set aside for tribal use. These lands are managed by Indian tribes in accordance with tribal goals and objectives, within the framework of applicable laws.

As a means of recognizing the responsibilities and relationship between the United States and Indian tribes, the Secretaries of Commerce and Interior issued the Secretarial Order entitled ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' on June 5, 1997 (Secretarial Order). The Secretarial Order clarifies the responsibilities of NMFS and FWS when carrying out authorities under the ESA and requires that they consult with, and seek participation of, the affected Indian tribes to the maximum extent practicable. The Secretarial Order further provides that the Services * * * ''shall consult with the affected Indian tribe(s) when considering the designation of critical habitat in an area that may impact tribal trust resources, tribally owned fee lands, or the exercise of tribal rights. Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species.''

Pursuant to the requirements of the Secretarial Order and in response to written and verbal comments provided by the Hoopa Valley Tribe (HVT) and other tribes in California, as well as the Bureau of Indian Affairs (BIA), NMFS engaged several tribes in government-to-government consultation concerning the inclusion of tribal lands in the final critical habitat designation for coho salmon. Prior to initiating government-to-government consultation, NMFS reviewed available information from the BIA and concluded that the tribal lands most likely to be affected by a final critical habitat designation for coho salmon were the Yurok Reservation, Hoopa Valley Reservation, Karuk Reservation, and the Round Valley Reservation, all of which are located in the Southern Oregon/Northern California Coasts ESU. The major river basins containing these reservation lands and listed coho salmon populations are the Klamath, Trinity, and Eel River basins. Accordingly, NMFS' government-to-government consultation efforts concerning coho salmon critical habitat were focused on these tribes. In addition to these larger tribal reservations, there are a large number of smaller Indian rancherias located in both the Southern Oregon/Northern California Coasts and Central California Coast ESUs which could potentially be affected, depending on their specific locations.

As part of the government-to-government consultation process called for in the Secretarial Order, NMFS solicited written comments from the Yurok Tribe, Karuk Tribe of California, HVT, and the Round Valley Tribe regarding the inclusion of tribal lands in the final critical habitat designation, and also met with representatives from each tribe to discuss the issue and their concerns in greater detail. In the course of these discussions, each tribe expressed its opposition to the inclusion of tribal lands in the final critical habitat designation. The Yurok Tribe expressed its support for the recovery of coho salmon and other non-listed species, but felt that its current resource management plans and practices already promoted the conservation and recovery of these species. They were also concerned that designating tribal lands as critical habitat would place an additional burden upon the Tribe, but recognized that impacts to critical habitat would only be considered in the course of section 7 consultations. Similarly, HVT expressed its support for coho salmon recovery, but argued that its existing resource management plans and other efforts already contribute to the recovery of coho salmon and other species on the reservation, and more

than compensate for the small impact that tribal activities have on the listed species when compared with non-tribal activities in the Trinity River basin (e.g., Federal water project operations, timber harvest, etc). In its view, NMFS should give deference to tribal management efforts in accordance with the Secretarial Order and thereby recognize the contribution that tribal management makes for the recovery of listed coho salmon. In addition, the tribe asserted that including tribal lands in the critical habitat designation would infringe on its sovereignty and was inconsistent with the approach taken by FWS when it excluded HVT lands from the critical habitat designation for the marbled murrelet.

Based on a consideration of the Federal Government's trust responsibilities to Indian tribes, particularly as addressed in the Secretarial Order, and following government-to-government consultation with affected Indian tribes, NMFS has determined that tribal lands should be excluded from the final critical habitat designation for coho salmon. Although NMFS continues to believe that habitat on tribal lands which is currently accessible to coho salmon is important for the long-term survival and recovery of the species, we believe that ESA section 7 consultations through BIA and other Federal agencies, in combination with the continued development and implementation of tribal resource management programs that support coho salmon conservation represent an alternative to designating critical habitat that will result in a proportionate and essential contribution to coho salmon conservation that is also consistent with the goals of the Secretarial Order.

The tribal lands (reservations or rancherias) which are excluded from the final critical habitat designation for coho salmon are identified in Tables 5 (Central California Coast ESU) and 6 (Southern Oregon/Northern California Coasts ESU) by individual USGS hydrologic unit. Excluded tribal lands in the Central California Coast ESU include: the Cloverdale Rancheria, Coyote Valley Rancheria, Dry Creek Rancheria, Guidiville Rancheria, Hopland Rancheria, Lytton Rancheria, Manchester/Point Arena Rancheria, Pinoleville Rancheria, and Stewarts Point Rancheria. Excluded tribal lands in the Southern Oregon/Northern California Coast ESU include: the Big Lagoon Rancheria, Blue Lake Rancheria, Elk Valley Rancheria, Hoopa Valley Reservation, Karuk Reservation, Laytonville Rancheria, Quartz Valley Reservation, Resighini Rancheria, Round Valley Reservation, Sherwood Valley Rancheria, Smith River Rancheria, and Yurok Reservation.

Consistent with the provisions of the Secretarial Order, NMFS will respect the exercise of tribal sovereignty over the management of Indian lands and tribal trust resources, and give deference to tribal conservation and management plans for tribal trust resources to the extent that they address the conservation needs of coho salmon or other listed species. NMFS is currently engaged in a programmatic ESA section 7 consultation with BIA and a government-to-government consultation with HVT regarding its Forest Management Plan (FMP) and its associated standards and guidelines. Through these consultation processes, NMFS is working with HVT and BIA to determine the effects of FMP implementation on coho salmon and its habitat, including adjacent riparian and upslope habitat, as well as to ensure that FMP implementation on tribal lands supports the conservation of coho salmon.

Agencies Affected by Critical Habitat Designation

Comment 13: NPS requested that NMFS include them as an agency affected by the critical habitat designation due to the fact that they manage and fund salmonid restoration projects at Golden Gate National Recreation Area, Muir Woods National Monument, and Redwood National and State Parks. The U.S. Department of Interior requested that the Natural Resource Conservation Service (NRCS) and FEMA be identified as well, because both agencies can conduct or authorize activities that alter coho salmon critical habitat. In addition, they requested that NMFS identify an ''emergency communications network'' which would allow NMFS to provide these agencies with fisheries technical expertise during cleanups associated with floods and other emergencies.

Response: NMFS has reviewed, and concurs with, the information submitted by both commenters and will add the NPS, NRCS, and FEMA to the list of affected agencies.

NMFS agrees with the commenters requesting that guidelines be established so that emergency response agencies (e.g., FEMA) can avoid adversely modifying critical habitat during their mitigation actions after a natural disaster. To that end, NMFS is in contact with the NRCS and is giving input on their Programmatic Environmental Impact Statement on Emergency Watershed Protection actions. NMFS hopes that through such input it will be able to help establish a strong set of guidelines for protecting critical habitat when a natural disaster strikes and immediate action must be taken to protect human life and property. Further, it is NMFS' position that with such a set of guidelines in place, there will be no reason for NMFS to become involved in making on-the-ground decisions regarding disaster mitigation actions. The guidelines will protect critical habitat in advance and, in most cases, thereby take the place of the difficult and potentially time-consuming process of emergency consultation. Thus, the guidelines themselves will largely obviate the need for an emergency communications network.

Changes to the Proposed Rule

Based on comments and new information received on the proposed rule, NMFS is modifying the final critical habitat designation for these two ESUs as follows:

(1) Phoenix, Willow Lake, Fish Lake, Agate Lake, Emigrant Lake, and Selmac Lake Dams have been added to the list of dams/reservoirs representing the upstream extent of critical habitat for these ESUs.

(2) Matthews Dam is removed from the list of dams/reservoirs representing the upstream extent of critical habitat for the Southern Oregon/Northern California Coasts ESU.

(3) Nicasio Dam is corrected to ''Seeger Dam.''

(4) Mill Valley Creek is corrected to ''Arroyo Corte Madera Del Presidio.''

(5) Adjacent riparian zones have been re-defined and are now based on a functional (rather than quantitative) description.

(6) NPS, Environmental Protection Agency (EPA), NRCS, FEMA, and BIA have been included as agencies affected by the critical habitat designation.

(7) Beaver removal, diking, and streambank stabilization have been identified as activities that may require special management consideration.

(8) Tribal lands in northern California are excluded from the critical habitat designations.

Critical Habitat of California and Southern Oregon Coho Salmon

Biological information for listed coho salmon can be found in NMFS' species status reviews (Bryant, 1994; Weitkamp *et al.*, 1995; NMFS, 1997), species life history summaries (Shapavalov and Taft, 1954; Laufle *et al.*, 1986; Hassler, 1987; Anderson, 1995; Sandercock, 1991), and in **Federal Register** notices of proposed and final listing determinations (59 FR 21744, April 26, 1994; 60 FR 38011, July 25, 1995; 61 FR

56138, October 31, 1996; 62 FR 24588, May 6, 1997).

The current geographic range of coho salmon from the Oregon and California coasts includes vast areas of the North Pacific ocean, nearshore marine zone, and extensive estuarine and riverine areas. The marine distribution south of Punta Gorda, California, appears to encompass a relatively narrow, nearshore strip approximately 100 km wide (Taft, 1937; Shapovalov and Taft, 1954; Laufle *et al.*, 1986; NOAA, 1990; Weitkamp *et al.*, 1995). North of Punta Gorda, the distribution widens to encompass nearly all marine areas north of 41° latitude (Wright, 1968; Godfrey *et al.*, 1975; NOAA, 1990). Major rivers, estuaries, and bays known to support coho salmon within the Southern Oregon/Northern California Coasts ESU include the Rogue River, Smith River, Klamath River, Mad River, Humboldt Bay, Eel River, and Mattole River. Within the range of the Central California Coast ESU, major rivers, estuaries, and bays include the Ten Mile, Noyo, Big, Navarro, Garcia, Gualala, and Russian Rivers, and Tomales and San Francisco Bays (Emmett *et al.*, 1991; Nickelson *et al.*, 1992; Brown and Moyle, 1991; Bryant, 1994; California Department of Fish and Game (CDFG), 1994; Weitkamp *et al.*, 1995). Many smaller coastal rivers and streams in each ESU also provide essential estuarine habitat for coho salmon, but access is often constrained by seasonal fluctuations in hydrologic conditions.

Any attempt to describe the current distribution of coho salmon must take into account the fact that extant populations and densities are a small fraction of historical levels. All coho salmon stocks in the Central California Coast ESU are extremely depressed relative to past abundance and there are limited data to assess population numbers or trends. The main coho salmon stocks in this region are from the Ten Mile River, Big River, Nolo River, Navarro River, Garcia River, Gualala River, Russian River, Lagunitas Creek, Waddell Creek, and Scott Creek. Several of these stocks are heavily influenced by hatcheries and, apparently, have little natural production in mainstem reaches. Historically, coho salmon abundance within this region was estimated from 50,000 to 125,000 native coho salmon. Presently, coho salmon abundance within this region is estimated to be less than 5,000 naturally reproducing fish, and a vast majority of these are considered to be hatchery origin fish (Brown and Moyle, 1991; Bryant, 1994; CDFG, 1994).

All coho salmon stocks between Punta Gorda and Cape Blanco in the Southern Oregon/Northern California Coasts ESU are also depressed relative to past abundance, and there are limited data to assess population numbers or trends currently. The main coho salmon stocks in this region are from the Rogue, Klamath, and Trinity Rivers, and the latter two are heavily influenced by hatcheries and have little natural production in mainstem reaches. Other important stocks within this ESU include the Winchuck, Chetco, Smith, Mad, Elk, Eel, and the Mattole Rivers. Historically, coho salmon abundance within this region was estimated from 150,000 to 400,000 native fish. Presently, abundance is estimated to be less than 30,000 naturally reproducing coho salmon, and a vast majority of these (roughly 20,000) are considered to be hatchery origin fish (Brown and Moyle, 1991, Bryant, 1994; CDFG, 1994; Weitkamp *et al.*, 1995).

Within the range of both ESUs, the species' life cycle can be separated into five essential habitat types: (1) Juvenile summer and winter rearing areas ; (2) juvenile migration corridors; (3) areas for growth and development to adulthood; (4) adult migration corridors; and (5) spawning areas. Areas 1 and 5 are often located in small headwater streams and side channels, while areas 2 and 4 include these tributaries as well as mainstem reaches and estuarine zones. Growth and development to adulthood (area 3) occurs primarily in near-and off-shore marine waters, although final maturation takes place in freshwater tributaries when the adults return to spawn. Within these areas, essential features of coho salmon critical habitat include adequate; (1) substrate, (2) water quality, (3) water quantity, (4) water temperature, (5) water velocity, (6) cover/shelter, (7) food, (8) riparian vegetation, (9) space, and (10) safe passage conditions. Given the vast geographic range occupied by each of these coho salmon ESUs and the diverse habitat types used by the various life stages, it is not practical to describe specific values or conditions for each of these essential habitat features. However, good summaries of these environmental parameters and freshwater factors that have contributed to the decline of this and other salmonids can be found in reviews by CDFG, 1965; California Advisory Committee on Salmon and Steelhead Trout, 1988; Brown and Moyle, 1991; Bjornn and Reiser, 1991; Nehlsen *et al.*, 1991; Higgins *et al.*, 1992; California State Lands Commission, 1993; Botkin *et al.*, 1995; NMFS, 1996b; and Spence *et al.*, 1996.

NMFS believes that the current range of the species encompasses all essential habitat features and is adequate to ensure the species' conservation. Therefore, designation of habitat areas outside the species' current range (i.e., historical habitats above the 17 dams identified in Tables 5 and 6) is not necessary. For reasons described earlier in this document, NMFS has revised its designation of freshwater and estuarine critical habitat to include riparian areas that provide the following functions: shade, sediment, nutrient or chemical regulation, streambank stability, and input of large woody debris or organic matter. It is important to note that habitat quality in this range is intrinsically related to the quality of riparian and upland areas and of inaccessible headwater or intermittent streams which provide key habitat elements (e.g., large woody debris, gravel, water quality) crucial for coho in downstream reaches. Marine habitats (i.e., oceanic or nearshore areas seaward of the mouth of coastal rivers) are also vital to the species, and ocean conditions are believed to have a major influence on coho salmon survival (see review in Pearcy, 1992). Although NMFS has not included the ocean as critical habitat in this final rule, the agency will be re-evaluating this issue and may propose including specific marine zones for each ESU in a separate **Federal Register** document.

The regulatory descriptions of critical habitat for each ESU can be found at the end of this **Federal Register** document.

Need for Special Management Considerations or Protection

To ensure that the essential areas and features are maintained or restored, special management may be needed. Activities that may require special management considerations for freshwater and estuarine life stages of listed coho salmon include, but are not limited to (1) land management; (2) timber harvest; (3) point and non-point water pollution; (4) livestock grazing; (5) habitat restoration; (6) beaver removal; (7) irrigation water withdrawals and returns; (8) mining; (9) road construction; (10) dam operation and maintenance; (11) diking and streambank stabilization; and (12) dredge and fill activities. Not all of these activities are necessarily of current concern within every watershed; however, they indicate the potential types of activities that will require consultation in the future. No special management considerations have been identified for listed coho salmon while

they are residing in the ocean environment.

Activities That May Affect Critical Habitat

A wide range of activities may affect the essential habitat requirements of listed coho salmon in freshwater and estuarine habitats. More in-depth discussions are contained in the response to comments under ''Scope and Extent of Critical Habitat'' and in **Federal Register** documents announcing the listing determinations for each ESU (61 FR 56138, October 31, 1996; 62 FR 24588, May 6, 1997). These activities include water and land management actions of Federal agencies (i.e., USFS, U.S. Bureau of Land Management (BLM), U.S. Army Corps of Engineers (COE), U.S. Bureau of Reclamation (BOR), the Federal Highway Administration (FHA), NRCS, NPS, BIA, and the Federal Energy Regulatory Commission (FERC)) and related or similar actions of other federally regulated projects and lands, including livestock grazing allocations by the USFS and BLM; hydropower sites licensed by the FERC; dams built or operated by COE or BOR; timber sales conducted by the USFS and BLM; road building activities authorized by the FHA, USFS, BLM, and NPS; and mining and road building activities authorized by the states of California and Oregon. Other actions of concern include dredge and fill, mining, diking, and bank stabilization activities authorized or conducted by COE, habitat modifications authorized by the FEMA, and approval of water quality standards and pesticide labeling and use restrictions administered by EPA.

The Federal agencies that will most likely be affected by this critical habitat designation include the USFS, BLM, BOR, COE, FHA, NRCS, NPS, BIA, FEMA, EPA, and FERC. This designation will provide these agencies, private entities, and the public with clear notification of critical habitat designated for listed coho salmon and the boundaries of the habitat and protection provided for that habitat by the ESA section 7 consultation process. This designation will also assist these agencies and others in evaluating the potential effects of their activities on listed coho salmon and their critical habitat and in determining if consultation with NMFS is needed.

Expected Economic Impacts of Designating Critical Habitat

The economic impacts to be considered in a critical habitat designation are the incremental effects of critical habitat designation above the economic impacts attributable to listing or attributable to authorities other than the ESA (see response to comments under Economic Considerations). Incremental impacts result from special management activities in those areas, if any, outside the present distribution of the listed species that NMFS has determined to be essential to the conservation of the species. For these coho salmon ESUs NMFS has determined that the present geographic extent of their freshwater and estuarine range is likely sufficient to provide for conservation of the species, although the quality of that habitat needs improvement on many fronts. Because NMFS is not designating any areas beyond the current range of these coho ESUs as critical habitat, the designation will result in few, if any, additional economic effects beyond those that may have been caused by listing and by other statutes.

Change in Designation of Critical Habitat and Need for Correction

In the proposed rule issued on November 25, 1997, (62 FR 62741), Central California Coast and Southern Oregon/Northern California Coasts coho salmon ESUs were added to part 226, subpart C as §§ 226.24 and 226.25 respectively. Since November 25, NMFS has issued a final rule (64 FR 140525, March 23, 1999) consolidating and reorganizing existing regulations regarding implementation of the ESA. In this final rule, critical habitat designations for the Central California Coast and Southern Oregon/Northern California Coasts ESUs have been added as § 226.210 paragraphs (a) and (b), respectively.

This document also corrects the date for the USGS citation for Hydrologic units as defined by the Department of the Interior (DOI), U.S. Geological Survey contained in § 226.23. The final rule consolidating and reorganizing existing regulations regarding implementation of the ESA (64 FR 14052, March 23, 1999) also redesignated § 226.23 as § 226.206.

References

The complete citations for the references used in this document can be obtained by contacting Garth Griffin, NMFS (see **FOR FURTHER INFORMATION CONTACT**).

Classification

NMFS has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for critical habitat designations made pursuant to the ESA. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

This rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS is designating only the current range of these coho salmon ESUs as critical habitat. Given the affinity of this species to spawn in small streams, this current range encompasses a wide range of habitat, including small tributary reaches, as well as mainstem, off-channel and estuarine areas. Areas excluded from this designation include historically-occupied areas above 17 impassable dams and headwater areas above impassable natural barriers (e.g., long-standing, natural waterfalls). Since NMFS is designating the current range of the listed species as critical habitat, this designation will not impose any additional requirements or economic effects upon small entities, beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to insure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat (ESA section 7(a)(2)). The consultation requirements of section 7 of the ESA are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of habitat areas outside the species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of that action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act. Until that time, a more detailed analysis would be premature and would not reflect the true economic impacts of the action on local businesses, organizations, and governments.

Accordingly, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration with the proposed rule that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities. NMFS received two comments, addressed above, concerning this certification. These comments did not result in any change regarding the certification. As a result, no final Regulatory Flexibility Act analysis was prepared.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 226

Endangered and threatened species, Incorporation by reference.

Dated: April 28, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 226 is amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

§ 226.206 [Corrected]

2. In § 226.206(a), in the fourth sentence, remove ''1986'' and add in its place, ''1987''.

3. Section 226.210 is added to read as follows:

§ 226.210 Central California Coast Coho Salmon (Oncorhynchus kisutch), Southern Oregon/Northern California Coasts Coho Salmon (Oncorhynchus kisutch).

Critical habitat is designated to include all river reaches accessible to listed coho within the range of the ESUs listed, except for reaches on Indian lands defined in Tables 5 and 6 to this part. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches in hydrologic units and counties identified in Tables 5 and 6 to this part for all of the coho ESUs listed in this section. Accessible reaches are those within the historical range of the ESUs that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years) and specific dams within the historical range of each ESU identified in Tables 5 and 6 to this part. Hydrologic units are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, ''Hydrologic Unit Maps,'' Water Supply Paper 2294, 1987, and the following DOI, USGS, 1:500,000 scale hydrologic unit maps: State of Oregon, 1974 and State of California, 1978 which are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, 525 NE Oregon Street—Suite 500, Portland, OR 97232–2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(a) *Central California Coast Coho Salmon (Oncorhynchus kisutch).* Critical habitat is designated to include all river reaches accessible to listed coho salmon from Punta Gorda in northern California south to the San Lorenzo River in central California, including Arroyo Corte Madera Del Presidio and Corte Madera Creek, tributaries to San Francisco Bay. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches (including off-channel habitats) in hydrologic units and counties identified in Table 5 of this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 5 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(b) *Southern Oregon/Northern California Coasts Coho Salmon (Oncorhynchus kisutch).* Critical habitat is designated to include all river reaches accessible to listed coho salmon between Cape Blanco, Oregon, and Punta Gorda, California. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches (including off-channel habitats) in hydrologic units and counties identified in Table 6 of this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 6 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

3. Tables 5 and 6 are added to part 226 to read as follows: Table 5 to Part 226—Hydrologic Units and Counties Containing Critical Habitat for Central California Coast Coho Salmon, Tribal Lands within the Range of the ESU, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat

Hydrologic unit name	Hydrologic unit No.	Counties and tribal lands contained in hydrologic unit and within the range of ESU[1 2]	Dams (reservoirs)
San Lorenzo-Soquel	18060001	Santa Cruz (CA), San Mateo (CA)	Newell Dam (Loch Lomond).
San Francisco Coastal South.	18050006	San Mateo (CA).	
San Pablo Bay	18050002	Marin (CA), Napa (CA)	Phoenix Dam (Phoenix Lake).
Tomales-Drake Bays	18050005	Marin (CA), Sonoma (CA)	Peters Dam (Kent Lake); Seeger Dam (Nicasio Reservoir).
Bodega Bay	18010111	Marin (CA), Sonoma (CA).	
Russian	18010110	Sonoma (CA), Mendocino (CA)—*Cloverdale Rancheria; Coyote Valley Rancheria; Dry Creek Rancheria; Guidiville Rancheria; Hopland Rancheria; Lytton Rancheria; Pinoleville Rancheria; Stewarts Point Rancheria.*	Warm Springs Dam (Lake Sonoma); Coyote Dam (Lake Mendocino).
Gualala-Salmon	18010109	Sonoma (CA), Mendocino (CA).	
Big-Navarro-Garcia	18010108	Mendocino (CA)— *Manchester/Point Arena Rancheria*;.	

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

[2] Tribal lands are specifically excluded from critical habitat for this ESU.

Table 6 to Part 226—Hydrologic Units and Counties Containing Critical Habitat for Southern Oregon/Northern California Coasts Coho Salmon, Tribal Lands within the Range of the ESU, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.

Hydrologic unit name	Hydrologic unit No.	Counties and tribal lands contained in hydrologic unit and within the range of ESU[1 2]	Dams (reservoirs)
Mattole	18010107	Humboldt (CA), Mendocino (CA).	
South Fork Eel	18010106	Mendocino (CA), Humboldt (CA)—*Laytonville Rancheria; Sherwood Valley Rancheria.*	
Lower Eel	18010105	Mendocino (CA), Humboldt (CA), Trinity (CA).	
Middle Fork Eel	18010104	Mendocino (CA), Trinity (CA), Glenn (CA), Lake (CA)—*Round Valley Reservation.*	
Upper Eel	18010103	Mendocino (CA), Glenn (CA), Lake (CA)	Scott Dam (Lake Pillsbury).
Mad-Redwood	18010102	Humboldt (CA), Trinity (CA)—*Big Lagoon Rancheria; Blue Lake Rancheria.*	
Smith	18010101	Del Norte (CA), Curry (OR)—*Elk Valley Rancheria; Smith River Rancheria.*	
South Fork Trinity	18010212	Humboldt (CA), Trinity (CA).	
Trinity	18010211	Humboldt (CA), Trinity (CA)—*Hoopa Valley Reservation.*	Lewiston Dam (Lewiston Reservoir).
Salmon	18010210	Siskiyou (CA).	
Lower Klamath	18010209	Del Norte (CA), Humboldt (CA), Siskiyou (CA)—*Karuk Reservation; Resighini Rancheria; Yurok Reservation.*	
Scott	18010208	Siskiyou (CA)—*Quartz Valley Reservation.*	
Shasta	18010207	Siskiyou (CA)	Dwinnell Dam (Dwinnell Reservoir).
Upper Klamath	18010206	Siskiyou (CA), Jackson (OR)	Irongate Dam (Irongate Reservoir).
Chetco	17100312	Curry (OR), Del Norte (CA).	
Illinois	17100311	Curry (OR), Josephine (OR), Del Norte (CA)	Selmac Lake Dam (Lake Selmac).
Lower Rogue	17100310	Curry (OR), Josephine (OR), Jackson (OR).	
Applegate	17100309	Josephine (OR), Jackson (OR), Siskiyou (CA)	Applegate Dam (Applegate Reservoir).
Middle Rogue	17100308	Josephine (OR), Jackson (OR)	Emigrant Lake Dam (Emigrant Lake).
Upper Rogue	17100307	Jackson (OR), Klamath (OR), Douglas (OR)	Agate Lake Dam (Agate Lake); Fish Lake Dam (Fish Lake); Willow Lake Dam (Willow Lake); Lost Creek Dam (Lost Creek Reservoir).
Sixes	17100306	Curry (OR).	

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.
[2] Tribal lands are specifically excluded from critical habitat for this ESU.

[FR Doc. 99–11187 Filed 5–4–99; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 981231333–8333–01; I.D. 042299A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces changes to the restrictions to the Pacific Coast groundfish limited entry fisheries for Dover sole and trawl-caught sablefish in the April-May cumulative limit period, and for *Sebastes* complex species (including bocaccio, canary rockfish, and yellowtail rockfish) and for widow rockfish in the June-July, and August-September cumulative limit periods. NMFS announces changes to the restrictions on open access landings of groundfish by vessels fishing with exempted trawl gear. NMFS also announces the season start and end dates, and the tier limits for the 1999 limited entry, regular sablefish fishery. These restrictions are intended to extend the fisheries as long as possible during the year while keeping landings within the 1999 optimum yields (OYs) for these species and allocations.

DATES: Effective from 0001 hours local time (l.t.) May 1, 1999, for changes to limited entry Dover sole and trawl-caught sablefish limits, for changes to open access exempted trawl groundfish limits, and for the announcement of the limited entry, fixed gear regular sablefish fishery; effective from 0001 hours l.t. June 1, 1999, for changes to limited entry widow rockfish, *Sebastes* complex, yellowtail rockfish, canary rockfish, and bocaccio. For vessels operating in the B platoon, effective from 0001 hours l.t. May 16, 1999, for changes to limited entry Dover sole and trawl-caught sablefish limits; effective from 0001 hours l.t. June 16, 1999, for changes to limited entry widow rockfish, *Sebastes* complex, yellowtail rockfish, canary rockfish, and bocaccio. These changes are in effect, unless modified, superseded or rescinded, until the effective date of the 2000 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through May 20, 1999.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or William Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Katherine King or Yvonne deReynier, Northwest Region, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council), in consultation with the States of Washington, Oregon, and California, at its April 5 through 9, 1999, meeting in Sacramento, CA.

Dover Sole and Trawl-Caught Sablefish Trip Limit Increases—Effective May 1, 1999

As described in the 1999 annual specifications and management measures (64 FR 1316, January 8, 1999), the Council introduced a new cumulative trip limit regime for 1999 that divides the fishing year into three different phases based on 3-month, 2-month, and 1-month periods, with specified limits for the different time periods for each species in each phase. The limits were set to keep landings within OYs for managed species, and to distribute varying percentages of the landings of each species between the different cumulative limit periods.

The first fishing phase in 1999 was a single 3-month cumulative limit period from January 1 through March 31, 1999. The Dover sole vessel cumulative trip limit for that period was 70,000 lb (31,752 kg), and the fleet was expected to take 35 percent of the 1999 Dover sole landed catch OY of 8,955 mt, or 3,134 mt, during that period. The best available information at the April Council meeting indicates that 2,570 mt of Dover sole had been landed through March 27, 1999. To give the fleet access to Dover sole not taken in the January 1 through March 31 cumulative limit period, the Council recommended increasing the Dover sole cumulative limit for the April 1 through May 31 cumulative limit period from 20,000 lb (9,072 kg) to 25,000 lb (11,340 kg). This change would be effective for only the April 1 through May 31 cumulative limit period; the June 1 through July 31, and the August 1 through September 30 cumulative trip limits for Dover sole will return to 20,000 lb (9,072 kg), unless altered by future inseason actions.

The trawl-caught sablefish cumulative trip limit for the January 1 through March 31 period was 13,000 lb (5,897 kg), and the fleet was expected to take 20 percent of the 1999 limited entry trawl-caught sablefish allocation of 3,475 mt, or 695 mt, during that period. The best available information at the April Council meeting indicates that 504 mt of sablefish had been landed by limited entry trawl vessels through March 27, 1999. To give the fleet access to sablefish not taken in the January 1 through March 31 cumulative limit period, the Council recommended increasing the trawl-caught sablefish cumulative limit for the April 1 through May 31 cumulative limit period from 10,000 lb (4,536 kg) to 12,000 lb (5,443 kg). This change would also be effective for only the April 1 through May 31 cumulative limit period; the June 1 through July 31 and August 1 through September 30 cumulative trip limits for trawl-caught sablefish will return to 10,000 lb (4,536 kg), unless altered by future inseason actions. These lower limits for Dover sole and sablefish are expected to be more appropriate for the summer months, when Dover sole and sablefish are more aggregated with thornyheads. Shortspine thornyheads are relatively low in abundance, so trip limits for other species in the Dover sole/thornyheads/trawl-caught sablefish complex are higher in the months when those species are less inter-mixed.

Changes to Open Access Groundfish Landings Restrictions for Vessels Fishing With Exempted Trawl Gear—Effective May 1, 1999

On April 7, 1999, NMFS published an inseason action for groundfish trip limit changes that were effective April 1 (64 FR 16862). Among other changes, that document implemented a March 1999 Council recommendation to restrict open access landings of groundfish by vessels engaged in fishing for pink shrimp with exempted trawl gear such that the amount of groundfish in any one landing could not exceed the amount of pink shrimp in that landing. At its April meeting, the Council recommended placing a similar restriction on vessels targeting other species (spot and ridgeback prawns, California halibut, and sea cucumber) with exempted trawl gear. These changes are intended to discourage fishers from targeting groundfish with exempted trawl gear. The Council recommended an exception to this restriction for spiny dogfish, such that the amount of spiny dogfish in a landing made by vessels using exempted trawl gear and targeting spot or ridgeback prawns, California halibut, or sea cucumber could exceed the amount of the target species in that landing. Spiny dogfish are abundant off the Pacific coast and fishers targeting spot or ridgeback prawns occasionally find that their prawn-targeting tows have inadvertently captured a net full of spiny dogfish. Spiny dogfish landings would continue to be constrained by the overall groundfish 300 lb (136 kg) per trip limit.

Widow Rockfish Trip Limit Decrease—Effective June 1, 1999

The widow rockfish vessel cumulative trip limit for the January 1 through March 31 period was 70,000 lb (31,753 kg), and the limited entry fleet was expected to take 35 percent of its 1999 widow rockfish allocation of 3,777 mt, or 1,322 mt, during that period. The best available information at the April Council meeting indicated that 1,362 mt of widow rockfish had been landed coastwide through March 27, 1999. Although this amount is close to the 1,322 mt target for that period, the Council's Groundfish Management Team commented that the pace of the fishery indicated that widow rockfish cumulative limits for the summer cumulative limit periods were set too high, and that the expected rates of landings could result in the fishery reaching the widow rockfish allocation before the end of the year. For these reasons, the Council recommended decreasing the widow rockfish cumulative limit for the June 1 through July 31 and for the August 1 through September 30 cumulative limit periods from 16,000 lb (7,257 kg) to 11,000 lb (4,990 kg).

Sebastes Complex and Component Species Trip Limit Changes—Effective June 1, 1999

The distribution of landings of different species in the 1999 cumulative trip limit regime was designed in part to correspond with the times when particular species are most available for harvest without bycatch. For Dover sole and trawl-caught sablefish, trip limits were higher in the winter months; but for *Sebastes* complex species, trip limits were higher in the summer months. Overall *Sebastes* complex landings, and landings of particular component species within the *Sebastes* complex north of Cape Mendocino, have been lower than expected for the January 1 through March 31 cumulative trip limit period, probably due to bad weather. To give the fleet access to fish not taken in the first fishing phase, yet continue *Sebastes* complex landing emphasis in the summer months, the Council recommended increasing several *Sebastes* limits north of Cape Mendocino for the June 1 through July 31 and for the August 1 through September 30 cumulative trip limit periods. Conversely, *Sebastes* complex landings south of Cape Mendocino have been proceeding much faster than had been expected, resulting in Council recommendations to decrease *Sebastes* limits south of Cape Mendocino for those same periods.

The overall *Sebastes* complex vessel cumulative trip limit north of Cape Mendocino for the January 1 through March 31 period was 24,000 lb (10,866 kg), within which no more than 15,000 lb (6,804 kg) could be yellowtail rockfish and no more than 9,000 lb (4,082 kg) could be canary rockfish. The fleet was expected to take 20 percent of the 1999 *Sebastes* complex Vancouver-Columbia areas limited entry target

harvest of 4,033 mt, or 807 mt, during the January 1 through March 31 cumulative limit period. The limited entry fleet was also expected to take 20 percent of its 1999 yellowtail rockfish Vancouver-Columbia areas target harvest of 2,080 mt, or 416 mt, during the January 1 through March 31 cumulative limit period, and the fleet was expected to take 20 percent of the 1999 canary rockfish Vancouver-Columbia areas limited entry allocation of 618 mt, or 124 mt, during that same period. The best available information at the April Council meeting indicates that 432 mt of *Sebastes* complex species had been landed from the Vancouver-Columbia areas through March 27, 1999, and that 269 mt of yellowtail rockfish and 33 mt of canary rockfish had been landed from the Vancouver-Columbia areas for that period. The Council recommended increasing cumulative limits for the June 1 through July 31 and for the August 1 through September 30 cumulative limit periods as follows: *Sebastes* complex north of Cape Mendocino from 25,000 lb (11,340 kg) to 30,000 lb (13,608 kg); yellowtail rockfish north of Cape Mendocino from 13,000 lb (5,897 kg) to 16,000 lb (7,257 kg); and canary rockfish north of Cape Mendocino from 9,000 lb (4,082 kg) to 14,000 lb (6,350 kg).

The overall *Sebastes* complex vessel cumulative trip limit south of Cape Mendocino for the January 1 through March 31 period was 13,000 lb (5,897 kg), within which no more than 750 lb (340 kg) per month could be bocaccio, and within which no more than 9,000 lb (4,082 kg) could be canary rockfish [The canary rockfish cumulative limit for the January 1 through March 31 period was a coastwide limit]. The fleet was expected to take 31 percent of the 1999 *Sebastes* complex Eureka-Monterey-Conception areas limited entry allocation of 941 mt, or 292 mt, during the January 1 through March 31 cumulative limit period. The best available information at the April Council meeting indicates that 665 mt of *Sebastes* complex species had been landed from the Eureka-Monterey-Conception areas through March 27, 1999.

At its November 1998 meeting, the Council anticipated that bocaccio would be considered overfished upon approval of Amendment 11 to the groundfish fishery management plan (FMP). The 1999 bocaccio Eureka-Monterey-Conception areas limited entry allocation is 101 mt and 1999 bocaccio cumulative limits were set low to discourage targeting. In March 1999, NMFS notified the Council that bocaccio is considered overfished, and that the Council must implement a bocaccio rebuilding plan for 2000. During its April 1999 meeting, the Council reviewed a petition from several environmental organizations asking for emergency inseason action to further reduce bocaccio catch and landings. Bocaccio landings in 1999 are already below 1998 landings for a comparative time period, and the best available information at the April 1999 Council meeting indicates that 17 mt of bocaccio had been landed from the Eureka-Monterey-Conception areas through March 27, 1999. The Council noted that it would be lowering the overall *Sebastes* complex limits south of Cape Mendocino for the June 1 through July 31 and for the August 1 through September 30 cumulative limit periods, expecting that bocaccio bycatch also would be reduced by this action. Additionally, the Council recommended reducing the current cumulative limit for bocaccio south of Cape Mendocino from 750 lb (340 kg) per month to 1,000 lb (454 kg) per 2-month period, with a 500 lb (227 kg) per trip limit.

To ensure that the fleet does not exceed the limited entry allocations for *Sebastes* complex species, and to provide protection for an overfished species, the Council recommended decreasing cumulative limits south of Cape Mendocino for the June 1 through July 31 and for the August 1 through September 30 cumulative limit periods as follows: *Sebastes* complex south of Cape Mendocino from 6,500 lb (2,948 kg) to 3,500 lb (1,588 kg); canary rockfish south of Cape Mendocino limited to not exceed the overall *Sebastes* complex limit, resulting in a canary rockfish cumulative limit decrease from 6,500 (2,948 kg) to 3,500 lb (1,588 kg) south of Cape Mendocino; and, bocaccio would be managed under a new cumulative limit of 1,000 lb (454 kg) per 2-month period with a 500 lb (227 kg) per trip limit. Limited Entry, Fixed Gear, Regular Sablefish Fishery.

At its April 1999 meeting, the Council considered season structure options for the 1999 limited entry, nontrawl (fixed gear) regular sablefish fishery. For 1999, the Council recommended that the regular season begin on August 16, 1999, at noon (l.t.) and last for 9 days, ending at noon on August 25, 1999. There will be no limited entry, daily trip limit fishery for sablefish taken with fixed gear during the regular season. During the regular season, each vessel with a limited entry permit with a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit for the tier to which the permit is assigned. The Council recommended the following tier limits: Tier 1, 84,800 lb (40,823 kg); Tier 2, 38,300 lb (17,373 kg); Tier 3, 22,000 lb (9,979 kg). These tier limits are expected to keep the overall fleet landings from exceeding the 2138.6 mt of sablefish available to this fishery.

The pre-season and post-season closures described for this fishery at 50 CFR § 660.323(a)(2) will be in effect. The preseason closure will begin on August 14, 1999 at noon l.t., last for 48 hours, and end when the regular season begins on August 16, 1999, at noon l.t. During the preseason closure, sablefish taken with fixed gear in the limited entry or open access fisheries north of 36° N. lat. may not be retained or landed. Also during the preseason closure, all fixed gear used to take and retain groundfish must be out of the water. The post-season closure will begin when the regular season ends on August 25, 1999, at noon l.t., last for 30 hours, and end on August 26, 1999, at 1800 hours l.t. No sablefish taken with fixed gear north of 36° N. lat. may be retained during the post-season closure. Sablefish taken and retained during the regular season may be possessed and landed during the post-season closure, and gear may remain in the water during the post-season closure. However, during the post-season closure, fishers may not set or pull from the water fixed gear used to take and retain groundfish.

NMFS Action

For the reasons stated, NMFS concurs with the Council's recommendations and announces the following changes to the 1999 annual management measures (64 FR 1316, January 8, 1999, as amended). The annual management measures are modified as follows:

1. In section IV, under B. *Limited Entry Fishery,* table 2 under paragraph B.(1), paragraphs B.(2)(b) and (i) and table 3 under paragraph B.(2)(b)(i), paragraph B.(6)(c) and table 6 under B.(6)(c), and paragraph B.(6)(d)(i) are revised to read as follows:

B. Limited Entry Fishery

* * * * *

(1) * * *

TABLE 2.—WIDOW ROCKFISH

Fishing phase	Cumulative trip limit periods	Cumulative trip limit (in pounds)	Length of cumulative trip limit period (months)
I	Jan 1–Mar 31	70,000 31,752 kg	3
II	Apr 1–May 31	16,000 7,257 kg	2
	June 1–July 31	11,000	2
	Aug 1–Sept 30	11,000 4,990 kg	2
III	Oct 1–31	30,000	1
	Nov 1–30	30,000	1
	Dec 1–31	30,000 13,608 kg	1

(2) * * *

(b) *Trip limits for the Sebastes complex.* Harvest of all *Sebastes* complex species, including those species with their own cumulative limits (yellowtail rockfish, canary rockfish, bocaccio), count toward the overall applicable *Sebastes* cumulative limits for the areas north and south of Cape Mendocino.

(i) Crossover provisions for operating on both sides of Cape Mendocino during a cumulative trip limit period are found in Section IV, paragraph (A)(12), with special provisions for chilipepper rockfish, splitnose rockfish, and the *Sebastes* complex. The cumulative trip limits for the *Sebastes* complex and its component species are as follows, unless otherwise announced in the **Federal Register**:

TABLE 3.—SEBASTES COMPLEX AND ITS COMPONENT SPECIES

Phase	Cumulative trip limit periods	Cumulative trip limits (in pounds)						Length of cumulative trip limit period (months)
		Sebastes complex (north and south of Cape Mendocino)		Yellowtail rockfish [1] (north of Cape Mendocino)	Canary rockfish [1] (coastwide)		Bocaccio [1] (south of Cape Mendocino)	
		North	South		North	South		
I	Jan 1–Mar 31	24,000 (10,886 kg)	13,000 (5,897 kg)	15,000 (6,804 kg)	9,000 (4,082 kg)	9,000 (4,082 kg)	750 per month. (340 kg)	3
II	Apr 1–May 31	25,000 (11,340 kg)	6,500 (2,948 kg)	13,000 (5,897 kg)	9,000 (4,082 kg)	6,500 (2,948 kg)	750 per month. (340 kg)	2
	June 1–July 31	30,000	3,500	16,000	14,000	3,500	[2] 1,000	2
	Aug 1–Sept 30	30,000 (13,608 kg)	3,500 (1,588 kg)	16,000 (7,257 kg)	14,000 (6,350 kg)	3,500 (1,588 kg)	[2] 1,000 (454 kg)	2
III	Oct 1–31	10,000	5,000	5,000	3,000	3,000	500	1
	Nov 1–30	10,000	5,000	5,000	3,000	3,000	500	1
	Nov 1–30	10,000 (4,536 kg)	5,000 (2,268 kg)	5,000 (2,268 kg)	3,000 (1,361 kg)	3,000 (1,361 kg)	500 (227 kg)	1

[1] Also counts toward the overall *Sebastes* complex limit.

[2] No more than 500 lb (227 kg) of bocaccio may be landed per trip, which counts towards the cumulative trip limits for bocaccio and the *Sebastes* complex south of Cape Mendocino.

* * * * *

(6) * * *

(c) *Limited entry trip and size limits for the DTS complex.* ''DTS complex'' means Dover sole (*Microstomus pacificus*), thornyheads (*Sebastolobus* spp.), and trawl-caught sablefish (*Anoplopoma fimbria*). Sablefish are also called blackcod. Thornyheads are also called idiots, channel rockfish, or hardheads, and include two species: Shortspine thornyheads (*S. alascanus*) and longspine thornyheads (*S. altivelis*). These provisions apply to Dover sole and thornyheads caught with any limited entry gear and to sablefish caught with limited entry trawl gear. The cumulative trip limits for the DTS complex are as follows, unless otherwise announced in the **Federal Register**:

TABLE 6.—DTS COMPLEX

[Coastwide]

Phase	Cumulative trip limit periods	Cumulative trip limits (in pounds)				Length of cumulative trip limit period (months)
		Dover sole cumulative trip limit	Longspine thornyhead cumulative trip limit	Shortspine thornyhead cumulative trip limit	Trawl-caught sablefish* cumulative trip limit	
I	Jan 1–Mar 31	70,000 (31,752 kg)	12,000 (5,443 kg)	3,000 (1,361 kg)	13,000 (5,897 kg)	3
II	Apr 1–May 31	25,000 (11,340 kg)	8,000	2,000	12,000 (5,443 kg)	2
	June 1–July 31	20,000	8,000	2,000	10,000	2 months
	Aug 1–Sept 30	20,000 (9,072 kg)	8,000 (3,629 kg)	2,000 (907 kg)	10,000 (4,536 kg)	2 months
III	Oct 1–31	22,000	4,000	1,000	6,000	1
	Nov 1–30	22,000	4,000	1,000	6,000	1 month
	Dec 1–31	22,000 (9,979 kg)	4,000 (1,814 kg)	1,000 (454 kg)	6,000 (2,722 kg)	1 month

*At any time of year unless otherwise announced, no more than 500 lb (227 kg) per trip may be trawl-caught sablefish smaller than 22 inches (56 cm) total length. (See paragraph IV.A.(6) regarding length measurement.) The increases to the Dover sole and trawl-caught sablefish trip limits for the April 1 through May 31 period are not effective until May 1, 1999.

(d) * * *

(i) *Regular season*. The regular season will begin at 12 noon l.t. on August 16, 1999, and end at noon on August 25, 1999. Pre-season and post-season closures described at 50 CFR § 660.323(a)(2) are in effect. The pre-season closure will begin at 12 noon l.t. on August 14, 1999, and end when the regular season begins, at 12 noon l.t. on August 16, 1999. The post-season closure will begin when the regular season ends at noon l.t. on August 25, 1999, and end at 1800 hours l.t. on August 26, 1999. During the regular season, each vessel with a limited entry permit with a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit for the tier to which the permit is assigned. For 1999, the following tier limits are in effect: Tier 1, 84,800 lb (40,823 kg); Tier 2, 38,300 lb (17,373 kg); Tier 3, 22,000 lb (9,979 kg).

* * * * *

2. In section IV, under C. *Trip Limits in the Open Access Fishery*, paragraph C. (6) is revised to read as follows:

C. Trip Limits in the Open Access Fishery

* * * * *

(6) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for spot and ridgeback prawns, California halibut, and sea cucumbers*—(a) *Trip limits.* No more than 300 lb (136 kg) of groundfish may be taken per vessel per fishing trip. Limits and closures in paragraphs IV.C(1) through IV.C(5) also apply and are counted toward the 300 lb (136 kg) groundfish limit. In any landing by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers with exempted trawl gear, the amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish (*Squalus acanthias*) landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb (136 kg) per trip overall groundfish limit. The daily trip limits for sablefish (paragraph IV.C.2) and thornyheads south of Pt. Conception (paragraph IV.C.1(a)) may not be multiplied by the number of days of the fishing trip. The groundfish ''per trip'' limit may not be multiplied by the number of days in the fishing trip, although this was allowed in 1998.

* * * * *

Classification

These actions are authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours. Because of the need to implement these changes by May 1, consistent with the states of Washington, Oregon, and California, and because the public had an opportunity to comment on the action at the April 1999 Council meeting, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under E.O. 12866.

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

Dated: April 28, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–11158 Filed 4–29–99; 4:52 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990318076–9109–02; I.D. 030599A]

RIN 0648–AL72

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 27

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

ACTION: Final rule and 1999 target total allowable catch (TAC) levels.

SUMMARY: NMFS issues final regulations to implement Framework Adjustment 27 to the Northeast Multispecies Fishery Management Plan (FMP). Framework Adjustment 27 is necessary to address overfishing of several stocks, in particular Gulf of Maine (GOM) cod, and to achieve the rebuilding goals of the FMP for the 1999 multispecies fishing year. This final rule implements management measures that establish GOM Rolling Closures of greater size

and duration than the current GOM Inshore Closure Areas, reconfigure and increase the duration of the Cashes Ledge Closure Area, reduce the GOM cod landing limit to 200 lb/day-at-sea (DAS) (90.7 kg/DAS), modify the haddock landing limit, increase the minimum square-mesh size to 6.5 inches (16.51 cm) for the Gulf of Maine/Georges Bank and Southern New England (SNE) Regulated Mesh Areas, and clarifies the method of calculating the weight of fish parts and fillets, for purposes of possession limits. Framework 27 also includes mechanisms that allow the Regional Administrator, Northeast Region, NMFS (Regional Administrator) to reduce the GOM cod landing limit to between 5 and 100 lb/DAS (2.3 and 45.3 kg/DAS) when 30 percent of the FMAX GOM cod target TAC (402 mt) is harvested, depending upon the risk of exceeding the target TAC, and allows the Regional Administrator to either increase or decrease the haddock trip limit based upon the percentage of TAC which is projected to be harvested.

DATES: Effective on May 1, 1999, except for amendments to §§ 648.14(a)(43) and (a)(116), 648.80(a)(2), (a)(5), (a)(12), (a)(13), (b)(2)(i), (d)(2), and (e)(2), 648.83 and 648.87, which are effective on June 10, 1999.

ADDRESSES: Copies of Framework Adjustment 27, its Environmental Assessment, Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Jon Rittgers, Acting Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 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: Richard A. Pearson, Fishery Policy Analyst, 978–281–9279.

SUPPLEMENTARY INFORMATION: Framework Adjustment 27 to the Northeast Multispecies Fishery Management Plan was prepared by the New England Fishery Management Council (Council). A proposed rule, requesting public comment, was published on March 29, 1999 (64 FR 14846). The comment period ended on April 13, 1999. A complete discussion of the process used to develop the management measures in Framework Adjustment 27 appears in the preamble to the proposed rule and is not repeated here.

The closed areas, possession and landing restrictions, and associated definitions, DAS notification requirements, prohibitions, transiting provisions, exemptions, and permit restrictions contained in this rule are effective on May 1, 1999. The increased minimum square mesh size to 6.5 inches (16.51 cm), prohibition on roller and rockhopper gear in excess of 12 inches (30.48 cm) diameter in the GOM Inshore Restricted Roller Gear Area, elimination of the 6 inch (15.24 cm) square mesh requirement in the Stellwagen Bank/Jeffreys Ledge Juvenile Protection Area, new method of calculating the weight of fish parts and fillets for purposes of possession limits, and exemptions not occurring during the month of May are effective on June 10, 1999.

1999 Target Total Allowable Catches

Based on projected 1999 stock sizes and Amendment 7's fishing mortality targets, the target TACs for the 1999 fishing year, as recommended by the Multispecies Monitoring Committee, are as follows:

Species/area	Target TACs (metric tons)	
	1999	1998
Georges Bank cod	5,354	4,700
Georges Bank haddock	5,600	4,797
Georges Bank yellowtail flounder	2,725	2,145
Southern New England yellowtail flounder	1,115	814
Gulf of Maine cod (F_{MAX})	1,340	1,783
Gulf of Maine cod (F0.1)	782	1,783
Aggregate for remaining regulated species	25,500	25,500

Summary of Approved Management Measures

This final rule implementing Framework Adjustment 27: (1) Replaces the current GOM Inshore Closure Areas with larger and longer GOM Rolling Closure Areas; (2) reconfigures the area and increases the duration of the Cashes Ledge Closure Area; (3) maintains the current year-round Western GOM Closure Area; (4) eliminates the 1-month NE Closure Area; (5) exempts scallop dredge gear from the GOM Rolling Closure Areas and Cashes Ledge Closure Area with no possession of regulated multispecies allowed; (6) reduces the daily GOM cod landing limit to 200 lb/DAS (90.7 kg/DAS); (7) authorizes the Regional Administrator to reduce the GOM cod landing limit to between 5 and 100 lb/DAS (2.3–45.3 kg/DAS), when 30 percent of the GOM cod F_{MAX} target TAC is caught; (8) changes the haddock landing limit to 2,000 lb/DAS (907.2 kg/DAS) with a 20,000-lb (9071.8-kg) trip limit, and authorizes the Regional Administrator to adjust the haddock limit up or down based upon the likelihood of reaching the target TAC; (9) increases the minimum square-mesh size from 6 inches (15.24 cm) to 6.5 inches (16.51 cm) in the GOM/GB and SNE Regulated Mesh Areas; (10) eliminates the mesh restrictions in the Stellwagen Bank and Jeffreys Ledge Juvenile Protection Area; (11) limits the size of roller and rockhopper gear to a maximum diameter of 12 inches (30.48 cm) in a defined GOM inshore area; and (12) clarifies the method of calculating the weight of fish parts and fillets for purposes of determining compliance with possession and landing limits. In addition, this framework codifies a method of on-reel net stowage for vessels transiting the GOM Closure Areas. These measures are described in the following sections.

Area Closures and Exemptions

The closures implemented by Framework 27 modify the current GOM Inshore Closure Areas (now referred to as the GOM Rolling Closure Areas) by increasing their geographic size, primarily eastward and by increasing their duration from 1 to 2 months. In addition, this framework action changes the configuration and increases the duration (from 1 month to 4 months) of the Cashes Ledge Closure Area, adds an additional 2-month closure encompassing portions of Massachusetts Bay from October 1 to November 30, and eliminates the 1-month multispecies Northeast Closure Area. This framework adjustment maintains the existing year-round Western GOM Closure comprising parts of Stellwagen Bank, Jeffreys Ledge, and Wildcat Knoll. Exemptions to the GOM Rolling Closure Areas and Cashes Ledge Closure Area remain the same, except that scallop dredge gear is considered exempted gear in the newly closed areas when fishing under a scallop DAS or participating in the Scallop Dredge Fishery Exemption Area, provided that a vessel does not retain any regulated multispecies during any part of a trip. The Council clarified that ''newly closed areas'' refer only to the Rolling Closure Areas specified in Framework 27, as well as the Cashes Ledge Closure Area. It does not refer to Closed Areas I and II, the Nantucket Lightship Closed Area and the Western GOM Area Closure. Vessels may transit

through any of the GOM Inshore Closure Areas, provided gear is stowed properly according to the regulations. This framework also codifies an additional method of on-reel net stowage for vessels transiting the GOM Rolling Closure Areas. For these areas, the requirement to remove the codend has been eliminated, provided that other requirements are met, including that the net is entirely covered, the towing wires are detached, and no containment rope or codend tripping device is attached to the codend.

GOM Cod Landing Limit

This action reduces the GOM cod landing limit at the start of the fishing year from 400 lb/DAS (181.4 kg) to 200 lb/DAS (90.7 kg/DAS), or any part of a DAS. For instance, a vessel that has called-in to the multispecies DAS program at 3 p.m. on a Monday and ends its trip the next day (Tuesday) at 4 p.m. (accruing a total of 25 hours) may legally land up to 400 lb (181.4 kg) of cod on such a trip, but the vessel may not end any subsequent trip with cod on board until after 3 p.m. on the following day (Wednesday). As is currently the case, however, vessels may allow their DAS clock to run in order to account for any cod overages, provided they report their hail weight to the Regional Administrator, as described in the multispecies regulations. When 30 percent of the GOM cod F_{MAX} TAC (886,000 lb (402 mt), in 1999) is projected by the Regional Administrator to be harvested, the Regional Administrator could reduce the trip landing limit to an amount in the range between 5 lb/DAS (2.3 kg/DAS) and 100 lb/DAS (45.3 kg/DAS), depending upon an evaluation of the risk of exceeding the target TAC.

Haddock Landing Limit

This action changes the haddock landing limit to 2,000 lb (907.2 kg) per DAS, or any part of a DAS, up to 20,000 lb (9,071.8 kg) per trip. When 75 percent of the target TAC for Georges Bank haddock for the 1999 fishing year is reached (9.3 million lb (4,218.5 mt)), the Regional Administrator is authorized to reduce the trip limit either to a 1,000 lb (453.6 kg) per trip possession limit restriction, or to a landing limit restriction of 1,000 lb/DAS (453.6 kg/DAS), with a 10,000 lb (4,536.0 kg) maximum per trip, based on a determination of the risk of exceeding the target TAC. Beginning October 1, 1999, if the Regional Administrator projects that less than 75 percent of the target TAC will be harvested by April 30, 2000, NMFS may publish a notification in the **Federal Register** that, on a specific date, the limit shall be increased to an amount that the Regional Administrator projects will be sufficient to allow landings of at least 9.3 million lb (4,218.5 mt) by April 30, 2000.

Gear Restrictions

This action imposes two gear restrictions. They become effective on June 10, 1999. The first is an increase in the minimum square-mesh size for otter trawl vessels in the GOM/GB and SNE Regulated Mesh Areas from 6-inch (15.24 cm) square to 6.5-inch (16.51 cm) square. The diamond mesh size of 6 inches (15.24 cm) is not changed. Concurrent with the increase in the minimum square mesh size, the requirement to use 6-inch (15.24 cm) square mesh only, in the Stellwagen Bank/Jeffreys Ledge Juvenile Protection Area, is eliminated.

The second gear restriction limits the size of roller or rockhopper gear on trawl footropes to a maximum diameter of 12 inches (30.48 cm) within a newly established GOM/GB Inshore Restricted Roller Gear Area.

Calculation of the Weight of Fish Parts

Possession and landing limits for regulated multispecies are determined on the basis of the weight of whole, whole-gutted, or gilled fish. This action clarifies the method of calculating the weight of parts of fish and fillets by specifying that they will be multiplied by three, to equate to the weight of whole, whole-gutted, or gilled fish.

Other Measures

This final rule also clarifies that measures concerning areas closed to gillnet gear to prevent right whale takes specified at § 648.87(b) apply to limited access multispecies permit holders using gillnet gear in the entire area described at § 648.87(b)(1) and (b)(2), including state waters.

Comments and Responses

Twelve comments were received on Framework 27 and its proposed implementing regulations. Two of the comments were supportive of measures in Framework 27. Specific comments and responses on Framework 27 and the proposed implementing regulations are provided here.

Comment 1: Several commenters indicated that the 12 inch (30.48 cm) size limitation on roller and rockhopper gear within the GOM/GB Inshore Restricted Roller Gear Area should not be implemented because: (1) the public was not provided adequate opportunity to comment during the framework process because the description of these measures did not appear on Council meeting notices and the measure was not voted upon until after midnight on the meeting day; (2) there was not adequate documentation in the Council's Framework 27 documentation or the proposed rule explaining how these measures meet the conservation objectives for GOM cod; and (3) the assessment of the economic impact of these measures does not address the fact that the measure will prevent access to certain hard bottom areas in the inshore GOM area by otter trawl vessels and will allocate these areas entirely to other gear sectors. Similarly, mobile gear vessels with rockhopper and roller gear greater that 12 inches (30.48 cm) would always have to transit the inshore restricted area in compliance with burdensome gear stowage provisions. The commenters also stated that the discussion in Framework 27 on the 12-inch (30.48 cm) roller gear restriction and the analysis of the economic costs are not thorough enough.

Response: There were many opportunities to comment upon the 12 inch maximum size inshore roller gear limitation during the development of Framework 27. This measure, either in the form of an inshore/offshore category declaration or a gear restriction, has been an integral component of Draft Framework Option 1 (Gulf of Maine Fishermens Alliance (GOMFA) proposal) of Framework 27 since the inception of the document. The delineated area, and the option to include gear restrictions instead of an inshore/offshore declaration, are contained in the draft Framework 27 document which was available prior to the final framework meeting on January 28, 1999. The measure was indeed voted upon late in the evening. However, this is because the Council heard from many commenters during the meeting. Also, the public was given additional opportunity to comment upon the measure through the proposed rule.

The economic analysis conducted for Framework Adjustment 27 concluded that this action, in its entirety, would have a significant economic impact on a substantial number of small entities. It is not possible to precisely estimate how the roller gear restriction would impact vessels because gear configurations, usage, and fishing areas vary by vessel. Existing data are inadequate to determine gear usage at such a fine degree of resolution. Trawlers will still be allowed to fish in the inshore area with roller gear less than 12 inches diameter (30.48 cm), but it is not possible to accurately predict whether they will. Vessels could also change to other gear types in response to the

measure. The cost of purchasing a 116 foot footrope with rollers was estimated in the IRFA to range from $1,100 to $2,500. There were 127 vessels that fished, to varying degrees, in both inshore and offshore areas, and may be impacted by the measure. Those with rollers less than 12 inches (30.48 cm) would not be impacted. Thirty-six of the inshore/offshore vessels received 75 percent or more of their GOM revenue from offshore areas. Those 36 inshore/offshore vessels, without rollers less than 12 inches (30.48 cm), will have to decide whether their inshore activity warrants the cost of converting existing nets or buying a new net. For the remaining 91 inshore/offshore vessels that relied on inshore fishing for at least 25 percent of gross revenues, it is unclear how they might be impacted, because they may already be using conforming roller gear. They would be faced of refitting their gear or shifting to offshore areas. Reliable data concerning many important variables such as gear usage practices, alternative gear availability, behavioral response to the measure, the amount of ocean bottom which actually becomes inaccessible for trawlers not using the smaller roller gear, and the amount of foregone revenue from these areas is not available. Therefore, quantifying the measure with confidence is not possible. That is why the capital costs of compliance were estimated only for those measures for which reliable data is available.

NMFS notes that both the cost to industry and the benefits of this measure are unquantifiable, at this time. In light of this uncertainty, NMFS has approved the measure rather than substitute its judgement for that of the Council on the grounds that it may reduce the amount of larger vessels fishing inshore, which could result in conservation benefits. The Council considered, but rejected, a delineation of the inshore and offshore area, using these same coordinates, and requiring vessels to annually declare into one of the areas. The Council did not adopt the declaration program because of concerns about administration and enforcement.

Regarding stowage provisions for roller and rockhopper gear in excess of 12 inches diameter (30.48 cm), the Regional Administrator may authorize alternative gear stowage methods and has urged the industry to propose alternatives that are less burdensome.

Comment 2: Several commenters wrote that the measure to increase the minimum square mesh size from 6 inches (15.24 cm) to 6.5 inches (16.51 cm) will greatly reduce the financial viability and profitability of the industry in the Long Island, New York area, and advocated disapproval. The commenters proposed an alternative measure that would require vessels calling into the DAS program that fish west of the 71°30′ W. Long. line to be limited to 6 inch mesh (15.24 cm) and those fishing east of the 71°30′W. Long. line to be limited to 6.5 inch mesh (16.51 cm). The 72°30′W. Long. line would apply to vessels fishing outside the DAS program.

Response: Much of the opposition to this measure relates to the controversy about the appropriate minimum size for winter flounder. Amendment 9 to the FMP proposed a winter flounder size increase to 13 inches (33 cm) which NMFS disapproved, because the recent assessment indicated that this stock is not overfished. Many commenters felt that the increase to 6.5 inch (16.51 cm) square mesh is inappropriate to use for 12 inch (30.5 cm) winter flounder. However, there are other reasons to support this measure. Most importantly, it aligns the selectivity characteristics of square mesh with those of 6-inch (15.24 cm) diamond mesh in all flounder fisheries and contributes to reducing discards of all sub-legal size flatfish, including American plaice, yellowtail flounder, and summer flounder, which are also caught in the SNE region.

Comment 3: One commenter supported the measure to increase the minimum square mesh size from 6 inches (15.24 cm) to 6.5 inches (16.51 cm).

Response: The comment has been noted, and the measure is approved.

Comment 4: Several commenters requested NMFS to disapprove the measure which closes all of Block 124 for 2 months, because the closure would prevent trawling for whiting in two important seasonal areas where the Provincetown, Massachusetts fleet has been conducting an experimental fishery using a raised footrope trawl. The commenters wrote that the fishery does not capture large amounts of cod, and that approval of the measure will destroy the historically based whiting fishery in Provincetown, Massachusetts.

Response: The whiting fishery referred to is currently under review as both an experiment and as a potential exempted gear fishery. It would be inappropriate to revise the Framework 27 management measures to conform to the experiment/exemption request. NMFS will continue to work with the sponsors of the experimental fishery as it goes through the review process. NMFS notes that experimental results, to date, have shown that this fishery may capture cod during certain times and areas.

Comment 5: Several commenters stated that the wrong areas were proposed for closure, if the objective of Framework 27 is to protect GOM cod. Several of these areas have historically produced low cod landings. Also, significant cod spawning areas would remain open in May. For these specific reasons, the comments recommended that NMFS could eliminate the March Block 121 closure; the April Block 121, 122, 129, and 130 closures; the May Block 129, 130, and 131 closures; and the June Block 141, 142, and 143 closures because these closures have no potential benefit to rebuild GOM cod.

Response: In developing Framework 27, the Council considered three alternatives. During the final framework meeting, the three alternatives were combined to create a composite plan. The composite plan, including the closed areas and trip limits, was analyzed and found to meet the GOM cod F_{max} Amendment 7 objective, primarily because the lower value associated with a fishing mortality rate of $F_{0.1}$ had been used as a benchmark in developing the measures. Consequently, NMFS finds that an appropriate combination of area closures and trip limits has been chosen to conserve GOM cod while minimizing the displacement of fishing effort into other productive areas, thereby providing conservation for other overfished GOM regulated multispecies.

Comment 6: NMFS received many comments suggesting that the running clock measure allows a directed cod fishery to occur in areas of high cod concentration, because latent DAS are being activated to account for cod landings in excess of the daily cod trip limit. Consequently, this measure increases the likelihood that the target TAC will be exceeded in a very short time, and the trip limit will need to be reduced early in the fishing year. Several commenters believe that maintaining the running clock measure at current trip levels directly counters national standard 8 and 9 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) because different fishing communities may suffer by losing even incidental catch levels of cod after the trip limit is reduced, while other communities gain the benefit of directed cod fishing at the start of the year.

Response: The running clock continues to be the subject of debate; however it is intended to prevent discards. The Council and NMFS have publicly stated their intent to discourage

a directed GOM cod fishery and only allow landings of GOM cod at incidental levels. The running clock attempts to balance these objectives by allowing for occasionally high levels of incidental catch but not creating an incentive to target GOM cod. The degree to which a 200 lb/DAS (90.7 kg/DAS) trip limit could create a directed GOM cod fishery will be examined in 1999, as fishery data becomes available. The Council has directed the Multispecies Oversight Committee to reevaluate the running clock measure in conjunction with Framework 31, and it would be premature for NMFS to take action while that work is under way. Moreover, the running clock is a pre-existing measure that was not proposed by this framework and, therefore, it is not appropriate for NMFS to remove the measure as part of this framework procedure.

When 30 percent of the GOM cod F_{max} TAC (886,000 lb (402 mt)) is projected to be harvested, the Regional Administrator is authorized to reduce the trip limit to an amount in the range of between 5 and 100 lb/DAS (2.3 and 45.3 kg/DAS), depending upon an evaluation of the risk of exceeding the target TAC. This ''backstop'' measure is intended to keep landings below the TAC, to the extent practicable, because of the critical condition of GOM cod. If fishing patterns in 1999 are similar to previous years, this ''backstop'' could be triggered early in the fishing year. However, times and areas of traditionally high levels of GOM cod landings will be closed so that the opportunity to land large amounts of GOM cod is diminished. Prior to implementation of the ''backstop'', all vessels in the fishery, regardless of their port, will be under the 200 lb/DAS ((90.7 kg/DAS) GOM cod trip limit.

Comment 7: The GOM cod trip limits and ''backstop'' measure would turn the TAC established in Amendment 7 into a specific, or ''hard'', quota which: (1) would reduce the harvest level below any reasonably attainable bycatch level, (2) would worsen the potential to turn catch into discards, and (3) would run afoul of the legal requirement to prevent discards. As an alternative, NMFS should set the ''backstop'' trip limit no lower than 100 lb (45.4 kg) per DAS.

Response: SAW 27 indicated that the GOM cod is on the verge of collapse and that directed fishing on this stock should cease. The ''backstop'' trip limit allows between 5 and 100 lb/DAS (2.3—45.3 kg/DAS) of GOM cod to be landed and, therefore, is neither a ''hard'' quota, nor contrary to Amendment 7. The purpose of the ''backstop'' is to prevent a TAC overage, so that more stringent measures are not necessary in future years. If it becomes necessary to reduce the trip limit, NMFS will consider the impact of the new limit on discards.

Comment 8: One commenter supported the measure allowing scallop fishing in the new GOM Rolling Closure Areas.

Response: The comment has been noted, and the measure is approved.

Comment 9: The provision which prohibits the possession of regulated multispecies for scallop dredge vessels fishing under a DAS in the new GOM closed areas should be changed, due to enforceability, because other scallop vessels using DAS and not fishing in the closed areas will be allowed to retain 300 lb (136.1 kg) of regulated multispecies. The trip limit for scallop dredge vessels fishing in the GOM closed areas should be set at zero for the small dredge exempted fishery, and 300 lb (136.1 kg) for scallop DAS vessels.

Response: Within the new GOM Rolling Closure Areas, scallop dredge gear is exempt. On any trip that a scallop dredge vessel fishes in a closed area, for any part of the trip, the vessel may not possess any regulated species. The Vessel Monitoring System is mandatory for scallop DAS vessels and will facilitate enforcement of this measure.

Comment 10: The haddock trip limit should not be reduced to 2,000 lb/DAS (907.2 kg/DAS) with a 20,000 lb (9,071.8 kg) cap. There is no biological basis to reduce the haddock trip limit. It will result in discards of haddock. The haddock trip limit should continue to be accumulated at a per-day rate.

Response: The haddock trip limit had been scheduled to revert to 1,000 lb/DAS (453.6 kg/DAS) (as of May 1, 1999), so the haddock limit is actually being increased by this rule. The Regional Administrator has the authority to increase the trip limit as of October 1, 1999, if 75 percent of the TAC is not projected to be reached. The haddock trip limit will continue to be accumulated on a per-DAS basis, with the upper limit of 20,000 lb (9,071.8 kg) intended to accommodate most trips.

Comment 11: One commenter was concerned that scallop dredge vessels may catch large amounts of regulated multispecies if they are allowed into the GOM newly closed areas.

Response: The Council did consider this when exempting scallop dredge vessels from the new GOM Rolling Closure Areas. However, it was decided that the benefits of exempting scallop dredge gear outweighed the costs of excluding scallop dredge gear from the new GOM Rolling Closure Areas.

Comment 12: Many of the commenters wrote that, in general, Framework 27 is not specifically designed to protect GOM cod; instead, it disproportionately impacts vessels prosecuting other groundfish fisheries.

Response: Framework Adjustment 27 does meet the Amendment 7 F_{max} GOM cod TAC, because $F_{0.1}$ has been used as a benchmark in developing the management measures. The closures that were selected by the Council have been analyzed and found to reduce landings of GOM cod by a larger percentage than either of the two other options that were considered for the framework. However, while GOM cod is a major concern, Framework 27 is intended to make the annual adjustment required by Amendment 7 to conserve and manage all of the species included in the multispecies complex. Thus, the measure is also intended to impact those fisheries, since many of the other regulated multispecies are overfished.

Changes From the Proposed Rule

In the proposed regulations, a coordinate for Small Mesh Area 2 (SM 13) at § 648.80(a)(8) was incorrectly published as 4°05.6′ 69°55.0′. It has been corrected to read 43°05.6′ 69°55.0′.

Classification

Magnuson-Stevens Act

The Regional Administrator, Northeast Region, NMFS determined that this annual framework adjustment to the Northeast Multispecies FMP is necessary for the conservation and management of the Northeast multispecies fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Partial Waiver of 30 Day Delay in Effectiveness

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(d)(3), to waive the 30 day delay in effective date for certain provisions of this rule. The good cause is based upon the need to have these provisions in place by May 1, 1999, the start of the multispecies fishing year. The measures are essential for the conservation of GOM cod, which is on the verge of collapse. Given the extremely low biomass of GOM cod, it is essential to have the measures in Framework Adjustment 27 that relate to GOM cod effective at the beginning of the fishing year because the species aggregates for spawning during this period and is very susceptible to large catches per unit effort. Without these measures in place by May 1, 1999, the GOM cod trip limit will revert from 400

lb/DAS (181.4 kg/DAS) to 700 lb/DAS (317.5 kg/DAS) and areas of high cod abundance in Rolling Closure Area III will remain open. Because May has historically been a month of very high GOM cod landings, a failure to implement these measures immediately could result in potentially irreparable damage to GOM cod stocks and undermine the very purpose of this framework. Specific measures for which the waiver applies include: the cod trip limit and the backstop trip limit and the new GOM Rolling Closure Areas. In addition, the new haddock trip limit is being made effective without a 30-day delay under authority at 5 U.S.C. 553(d)(1), because it relieves a restriction. If the new haddock trip limit is not implemented on May 1, 1999, the trip limit will revert to 1,000 lb/DAS (453.6 kg/DAS) rather than 2,000 lb/DAS (907.2 kg/DAS). The fishing industry will be notified of these measures by way of a fax to interested parties including state agencies, industry groups, U.S. Coast Guard and NMFS port agents. A National Weather Service radio announcement may be broadcast, if necessary. All of the other measures in Framework 27 become effective on June 10, 1999.

Executive Order 12866

This final rule has been determined to be significant under Section (3)(f)(4) of Executive Order 12866.

Final Regulatory Flexibility Analysis

The proposed rule to implement Framework Adjustment 27 was published in the **Federal Register** on March 29, 1999. A copy of the Initial Regulatory Flexibility Analysis (IRFA) analysis is available from the Council (see **ADDRESSES**). The FRFA incorporates the IRFA and its findings, the responses to public comments that mentioned possible effects of Framework Adjustment 27 on small entities, and the following discussion which is based on the IRFA.

The following description summarizes the impact of the measures in the final rule (closed areas, trip limits, increased mesh size, restrictions on roller gear) on vessels, dealers, and processors, the alternatives that were considered and rejected, and measures that minimize the economic impact of this action.

Based upon calendar year 1997, 1729 vessels held limited access multispecies permits. Of these vessels, 1287 actually participated in the multispecies fishery and, thereby, constitute the universe of vessels. Of these vessels, 601 (47 percent) would be impacted by the measures because they fished within one or more of the GOM Rolling Closure Areas and/or would be affected by the trip limits. Using estimated proportional reductions in gross revenues from 1997 (i.e., excluding measures enacted in fishing year 1998 by Frameworks 25 and 26), 456 vessels out of a universe of 1287 vessels (35 percent) would be affected by a reduction in gross revenues of more than 5 percent as a result of Framework 27. When Framework 25 and 26 measures are included, 32 additional vessels would be impacted by a reduction in gross revenues of more than 5 percent.

The impact of the measures (closed areas and trip limits) on profitability and on the financial viability of vessels in the northeast multispecies fishery was also analyzed. Compared to the 1997 baseline, the cumulative profitability for the median vessel was estimated to decline 66 percent from $21,409 to $7,282. A total of 115 vessels were found to be operating below break even (i.e., zero profit) as a result of the combined measures implemented by Frameworks 25 and 26. Carrying those losses forward into Framework 27 and adding the accumulated debt under Frameworks 25, 26, and 27 results in a total of 155 vessels that were estimated to be below break-even profit. Therefore, 155 out of 1,287 vessels (12 percent), may not be able to maintain their economic viability and may be forced to cease their operations.

In terms of absolute numbers, Framework 27 would impact the most vessels in Massachusetts (317) followed by Maine (82), New Hampshire (35), New York (7), and Rhode Island (1). As a proportion of total vessels in a state, New Hampshire had the highest proportion (90 percent) of impacted vessels, followed by Massachusetts (79 percent) and Maine (74 percent).

The economic impacts of the increase in square-mesh size are expected to be small because, with the elimination of the Stellwagen Bank/Jeffreys Ledge Juvenile Protection Area, vessels will still be able to use existing 6-inch (15.24-cm) diamond mesh wherever they fish, and the cost of 6.5-inch (16.51-cm) square mesh is likely to be similar to that of 6-inch (15.24-cm) mesh when periodically replacing worn-out gear.

Depending upon current gear usage and fishing patterns, the requirement to use roller gear of a maximum 12-inch (30.48 cm) diameter in a defined GOM inshore area may result in vessels spending money on gear changes. The cost of the gear change is difficult to estimate because gear configurations, usage and fishing areas vary by vessel. Existing data is inadequate to determine gear usage at such a fine degree of resolution. However, if a vessel does have to purchase a new footrope with rollers, the onetime cost could range from $1,100 to $2,500.

Compared to the 1997 baseline, 186 dealers were estimated to be affected by the Framework 27 measures. Using estimated proportional reductions in gross revenues from a 1997 baseline (i.e., excluding Frameworks 25 and 26), 77 dealers out of these 186 dealers (41 percent) would be affected by a reduction in gross revenues of more than 5 percent as a result of Framework 27. When Framework 25 and 26 measures are included, 4 additional dealers are impacted by a reduction in gross revenues of more than 5 percent. However, dealers may have some flexibility by marketing alternative product lines or by obtaining product from alternative sources.

The impacts of the Framework 27 measures on processors are difficult to predict because the extent to which domestic and foreign imports can adequately offset local supply shortages is unknown. Nevertheless, processors in Maine, Massachusetts, and New Hampshire who rely on a stable supply of fresh groundfish to meet their demands will likely be disproportionately affected by Framework 27.

Using a no-displacement model (i.e., vessels stop fishing and do not fish in other open areas), the decline in total revenues of the action is estimated at $7.3 million. The impacts on net revenues (i.e., revenues minus costs), however, will be less than these levels since operating costs will also decline as effort is reduced by the closures under the no-displacement scenario. Assuming 50-percent displacement at 50-percent revenue per unit effort (i.e., 50 percent of vessels fish in other open areas and obtain 50 percent of the revenue they would have otherwise obtained in the closed area), the decline in total revenues of the action is estimated at $5.5 million.

The impacts of the various alternatives that were analyzed for Framework 27 were estimated in the IRFA to be more severe than those of the selected action, except for the GOMFA alternative which would have closed large areas, both inshore and offshore, for shorter periods of time. The GOMFA option was not selected because the Council indicated that the closures in the Preferred Alternative would better protect GOM cod. The selected action, a combination of the various alternatives, considered all of the alternatives and their impacts, and simultaneously attempted to reach the

Amendment 7 rebuilding goals while minimizing the negative impacts on the fishing industry, to the extent practicable given the severity of the necessary mortality reduction for GOM cod. Measures which minimize the negative impacts of Framework 27 include an exemption for scallop dredge gear in the new GOM Rolling Closure Areas, an increase in the haddock trip limit, and a relaxation of the gear stowage provisions for vessels transiting the GOM Rolling Closure Areas.

Paperwork Reduction Act (PRA)

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.

This rule clarifies collection-of-information requirements subject to the PRA and which have been cleared by OMB, under OMB control number 0648–0202. The estimated response times are as follows:

1. Declaration of transit to another port under the exception to the cod landing limit requirement to remain in port (1 minute/response when made in conjunction with a cod hail line call, 3 minutes/response when made as a separate call).

2. Reporting of cod catch on board and to be off-loaded for vessels fishing north of the cod exemption line, specified at § 648.86(b)(1), while fishing under a NE multispecies DAS requires vessel notification (3 minutes/response).

3. The DAS call-in requirement for vessels under a DAS upon return to port (2 minutes/response).

This rule also clarifies collection-of-information requirements subject to the PRA and which have been cleared by OMB, under OMB control number 0648–0351. The estimated response time includes marking of pelagic gillnet (1 minute/net).

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 29, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, the definition for ''Gillnet gear capable of catching multispecies'' is revised, and a definition for ''Rockhopper and roller gear'' is added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Gillnet gear capable of catching multispecies means all gillnet gear except pelagic gillnet gear specified at § 648.81(g)(2)(ii) and pelagic gillnet gear that is designed to fish for and is used to fish for or catch tunas, swordfish, and sharks.

* * * * *

Rockhopper and roller gear means trawl gear configured with disks, rollers, or other similar shaped devices that are attached to the bottom belly of the trawl, contact the sea bottom, and that are designed to raise the bottom panel of the trawl off the ocean bottom so as to enable the gear to be fished on hard bottom.

* * * * *

3. In § 648.10, paragraph (f)(3)(ii) is revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(f) * * *

(3) * * *

(ii) A vessel subject to the cod landing limit restriction specified in § 648.86(b)(1)(i) that exceeds or is expected to exceed the allowable limit of cod based on the duration of the trip must enter port no later than 14 DAS after starting a multispecies DAS trip and must report, upon entering port and before offloading, its hailed weight of cod under the separate call-in system specified in § 648.86(b)(1)(ii)(B). Such vessel must remain in port, unless for transiting purposes as allowed in § 648.86(b)(3), until sufficient time has elapsed to account for and justify the amount of cod on board in accordance with § 648.86(b)(1)(ii), and may not begin its next fishing trip until the vessel has called-out of the multispecies DAS program to end its trip.

4. In § 648.14, paragraphs (a)(43), (a)(52), (a)(90), (a)(101), (a)(104), (a)(112), (c)(10), (c)(24), and (c)(25) are revised and (a)(116) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(4), the Cultivator Shoals whiting fishery exemption area; (a)(8), Small Mesh Area 1/Small Mesh Area 2; (a)(9), the Nantucket Shoals dogfish fishery exemption area; (a)(11), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(12), the GOM/GB monkfish gillnet exemption area; (a)(13), the GOM/GB dogfish gillnet exemption area; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(7), the SNE dogfish gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; or (b)(9), the SNE little tunny gillnet exemption area. A violation of any of these paragraphs in § 648.80 is a separate violation.

* * * * *

(52) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81 (g)(1) through (i)(1) during the time periods specified, except as provided in § 648.81(d), (g)(2), (h)(2) and (i)(2).

* * * * *

(90) Use, set, haul back, fish with, possess on board a vessel, unless stowed in accordance with § 648.81(e)(4), or fail to remove, sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), in the areas and for the times specified in § 648.87(a) and (b), except as provided in § 648.81(g)(2)(ii) and 648.87(a) and (b), or unless otherwise authorized in writing by the Regional Administrator.

* * * * *

(101) Enter, fail to remove gear from, or be in the areas described in § 648.81(g)(1) through (i)(1) during the time period specified, except as provided in § 648.81(d), (g)(2), (h)(2), and (i)(2).

* * * * *

(104) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a), (b), (c), (g), (h), and (i), unless otherwise specified in § 648.81(c)(2)(iii), (g)(2)(i), and (g)(2)(iii).

* * * * *

(112) Fish for, harvest, possess, or land in or from the EEZ, when fishing with trawl gear, any of the exempted species specified in § 648.80(a)(8)(i), unless such species were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(3)(ii) or (a)(8)(ii).

* * * * *

(116) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller Gear Area described in § 648.80(a)(2)(iv) with trawl gear where the diameter of any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.48 cm).

* * * * *

(c) * * *

(10) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from, or be in the areas, and for the times, described in § 648.87(a) and (b), except as provided in § 648.81(d) and (g)(2), and in § 648.87(a)(1)(ii).

* * * * *

(24) Enter port, while on a multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1)(i) without reporting the cod hail weight, unless the vessel is fishing under the cod exemption specified in § 648.86(b)(2). Under no circumstances may such a trip exceed 14 days in length.

(25) Fail to remain in port for the appropriate time specified in § 648.86(b)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3).

* * * * *

5. In § 648.23, paragraph (b)(4) is redesignated as paragraph (b)(5) and a new paragraph (b)(4) is added to read as follows:

§ 648.23 Gear restrictions.

* * * * *

(b) * * *

(4) *On-reel stowage for vessels transiting the GOM Rolling Closure Areas.* (i) The net is on a reel, and its entire surface is covered with canvas or other similar material that is securely bound;

(ii) The towing wires are detached from the doors; and

(iii) No containment rope, codend tripping device, or other mechanism to close off the codend is attached to the codend.

* * * * *

6. In § 648.80, paragraphs (a)(2)(i), (a)(6)(i), (a)(8), (a)(10) introductory text, (a)(10)(i)(C), (a)(12) introductory text, (a)(13) introductory text, (b)(2)(i), (d)(2), (e)(2), (h), and (i)(8) are revised; paragraph (d)(3) is amended by removing the word ''and''; paragraph (d)(4) is amended by removing the period and adding ''; and'' in its place; paragraph (a)(5) is removed and reserved; paragraph (a)(2)(iv) is added and paragraph (a)(12)(ii) is added and reserved to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(2) * * *

(i) *Minimum mesh size.* Except as provided in paragraphs (a)(2) (i) and (iii) of this section, and unless otherwise restricted under paragraph (a)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM/GB Regulated Mesh Area is 6-inch (15.24-cm) diamond mesh or 6.5-inch (16.51 cm) square mesh throughout the entire net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(2)(iv) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

* * * * *

(iv) *Rockhopper and roller gear restrictions.* For all trawl vessels fishing in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.48 cm). Any gear on a vessel that does not meet the specifications in this paragraph (a)(2)(iv) must be stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

INSHORE RESTRICTED ROLLER GEAR AREA

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM23	42°00′	69°50′
GM24	43°00′	69°50′
GM11	43°00′	70°00′
GM17	43°30′	70°00′
GM18	43°30′	(4)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] Maine shoreline.

* * * * *

(5) [Reserved]

(6) * * * (i) Vessels fishing in the Small Mesh Northern Shrimp Fishery or the Small Mesh Area 1/Small Mesh Area 2 fishery, as specified in paragraphs (a)(3) and (a)(8) of this section, may transit through the Small Mesh Northern Shrimp Fishery Exemption Area as specified in paragraph (a)(3) of this section with nets of mesh size smaller than the minimum mesh size specified in paragraph (a)(2) of this section, provided that the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b).

* * * * *

(8) *Small Mesh Area 1/Small Mesh Area 2.* (i) Unless otherwise prohibited in § 648.81, vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraph (a)(3)(ii) or (a)(8)(ii) of this section, from July 15 through November 15 when fishing in Small Mesh Area 1 and from January 1 through June 30 when fishing in Small Mesh Area 2. A vessel may not fish for, possess on board, or land any species of fish other than: butterfish, dogfish, herring, mackerel, ocean pout, scup, squid, silver hake, and red hake, except for the following allowable incidental species (bycatch as the term is used elsewhere in this part), with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less. These areas are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter)):

SMALL MESH AREA 1

Point	N. lat.	W. long.
SM1	43°03′	70°27′
SM2	42°57′	70°22′
SM3	42°47′	70°32′
SM4	42°45′	70°29′
SM5	42°43′	70°32′
SM6	42°44′	70°39′
SM7	42°49′	70°43′
SM8	42°50′	70°41′
SM9	42°53′	70°43′
SM10	42°55′	70°40′
SM11	42°59′	70°32′
SM1	43°03′	70°27′

SMALL MESH AREA 2

Point	N. lat.	W. long.
SM13	43°05.6′	69°55.0′

SMALL MESH AREA 2—Continued

Point	N. lat.	W. long.
SM14	43°10.1′	69°43.3′
SM15	42°49.5′	69°40.0′
SM16	42°41.5′	69°40.0′
SM17	42°36.6′	69°55.0′
SM13	43°05.6′	69°55.0′

(ii) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(8)(ii) (A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom:

(A) Eight inch (20.3 cm) diameter floats must be attached to the entire length of the headrope with a maximum spacing of 4 feet (12.2 cm) between floats;

(B) The ground gear must all be bare wire not larger than ½-inch (1.2 cm) for the top leg, not larger than ⅝-inch (1.6 cm) for the bottom leg, and not larger than ¾-inch (1.9 cm) for the ground cables. The top and bottom legs must be equal in length with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms from the doors to wingends;

(C) The footrope must be at least 20 feet (6.1 m) longer than the length of the headrope; and

(D) The sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long dropper chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging must be made entirely of 5/16 inch (0.8 cm) diameter bare chain. No wrapping or cookies are allowed on the chain. The total length of the sweep must be at least 7 feet (2.1 m) longer than the total length of the footrope, or 3.5 feet (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner (the quarter or the junction of the bottom wing to the belly at the footrope). The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at 8-foot (2.4-m) intervals from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 feet (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

* * * * *

(10) *Scallop Dredge Fishery Exemption within the Gulf of Maine (GOM) Small Mesh Northern Shrimp Fishery Exemption Area.* Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or have used up their DAS allocations, and vessels issued a general scallop permit, may fish in the GOM Small Mesh Northern Shrimp Fishery Exemption Area when not under a NE multispecies DAS providing the vessel complies with the requirements specified in paragraph (a)(10)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is the same as the area defined in paragraph (a)(3) of this section and designated as the Small Mesh Northern Shrimp Fishery Exemption Area.

(i) * * *

(C) The exemption does not apply to the Western GOM Area Closure specified in § 648.81(i).

* * * * *

(12) *GOM/GB Monkfish Gillnet Exemption.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(12)(i) of this section. The GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area is defined by straight lines connecting the following points in the order stated:

N. lat.	W. long.
41°35″	70°00′
42°49.5″	70°00′
42°49.5″	69°40′
43°12″	69°00′
(1)	69°00′

[1] Due north to Maine shoreline.

* * * * *

(ii) [Reserved]

(13) *GOM/GB Dogfish Gillnet Exemption.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(13)(i) of this section. The area coordinates of the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area are specified in paragraph (a)(12) of this section.

* * * * *

(b) * * *

(2) * * * (i) *Minimum mesh size.* Except as provided in paragraphs (b)(2)(i) and (iii) of this section, and unless otherwise restricted under paragraph (b)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or midwater trawl, not stowed and not available for immediate use in accordance with § 648.23(b), by a vessel fishing under a DAS in the multispecies DAS program in the SNE regulated mesh area, is 6-inch (15.24-cm) diamond mesh or 6.5-inch (16.51-cm) square mesh throughout the entire net, or any combination thereof. This minimum mesh size restriction does not apply to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

* * * * *

(d) * * *

(2) When fishing under this exemption in the GOM/GB Regulated Mesh Area, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof;

* * * * *

(e) * * *

(2) When fishing under this exemption in the GOM/GB Regulated Mesh Area, the vessel has on board a letter of authorization issued by the Regional Administrator;

* * * * *

(h) *Scallop vessels.* (1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a multispecies combination vessel permit or a scallop multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(a)(2) and (b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and provided the vessel has at least one standard tote on board.

(2) Combination vessels fishing under a NE multispecies DAS are subject to the gear restrictions specified in

§ 648.80 and may possess and land unlimited amounts of regulated species, unless otherwise restricted by § 648.86(b). Such vessels may simultaneously fish under a scallop DAS.

(i) * * *

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small mesh species specified under paragraphs (a)(3)(i), (a)(8)(i), (b)(3), and (c)(3) of this section when fishing in the areas specified under paragraphs (a)(3), (a)(8), (b)(1), and (c)(1) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters may also possess and retain skate as incidental take in this fishery.

* * * * *

7. In § 648.81, paragraphs (d), (g), (h) and (i)(2) are revised; paragraph (f) is removed and reserved; and paragraphs (n) and (o) are removed to read as follows:

§ 648.81 Closed areas.

* * * * *

(d) *Transiting.* Vessels may transit Closed Area I, the Nantucket Lightship Closed Area, the GOM Rolling Closure Areas, the Cashes Ledge Closure Area, and the Western GOM Closure Area, as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1), (h)(1), and (i)(1), respectively, of this section, provided that their gear is stowed in accordance with the provisions of paragraph (e) of this section.

* * * * *

(f) [Reserved]

(g) *GOM Rolling Closure Areas.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, GOM Rolling Closure Areas I through V, as described in paragraphs (g)(1) (i) through (v) of this section, for the times specified in paragraphs (g)(1) (i) through (v) of this section, except as specified in paragraphs (d), and (g)(2) of this section. A chart depicting these areas is available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter)).

(i) *Rolling Closure Area I.* From March 1 through March 31, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area I, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA I

(March 1–March 31)

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM5	42°00′	68°30′
GM6	42°30′	68°30′
GM9	42°30′	(1)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.

(ii) *Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA II

[April 1–April 30]

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM5	42°00′	68°30′
GM13	43°00′	68°30′
GM10	43°00′	(4)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.
4 New Hampshire shoreline.

(iii) *Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA III

[May 1–May 31]

Point	N. lat.	W. long.
GM9	42°30′	(1)
GM6	42°30′	68°30′
GM14	43°30′	68°30′
GM18	43°30′	(2)

1 Massachusetts shoreline.
2 Maine shoreline.

(iv) *Rolling Closure Area IV.* From June 1 through June 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA IV

[June 1–June 30]

Point	N. lat.	W. long.
GM10	43°00′	(1)
GM11	43°00′	70°00′
GM17	43°30′	70°00′
GM19	43°30′	67°32.0′ or (2)
GM20	44°00′	67°21.0′ or (2)
GM21	44°00′	69°00′
GM22	(3)	69°00′

1 New Hampshire shoreline.
2 U.S.-Canada maritime boundary.
3 Maine shoreline.

(v) *Rolling Closure Area V.* From October 1 through November 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area V, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA V

[October 1–November 30]

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM8	42°30′	70°00′
GM9	42°30′	(1)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.

(2) Paragraph (g)(1) of this section does not apply to persons aboard fishing vessels or fishing vessels:

(i) That have not been issued a multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, subject to the restrictions on midwater trawl gear in paragraph (a)(2)(iii) of this section, and excluding pelagic gillnet gear capable of catching multispecies, except for vessels fishing with a single pelagic gillnet, not longer

than 300 ft (91.44 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.62 cm), provided:

(A) The net is attached to the boat and fished in the upper two-thirds of the water column;

(B) The net is marked with the owner's name and vessel identification number;

(C) There is no retention of regulated species; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are classified as charter, party, or recreational; or

(iv) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(a)(10), provided the vessel does not retain any regulated multispecies during a trip, or on any part of a trip.

(h) *Cashes Ledge Closure Area.* (1) From July 1 through October 31, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (h)(2) of this section:

CASHES LEDGE CLOSURE AREA

[July 1–October 31]

Point	N. lat.	W. long.
CL1	43°07′	69°02′
CL2	42°49.5′	68°46′
CL3	42°46.5′	68°50.5′
CL4	42°43.5′	68°58.5′
CL5	42°42.5′	69°17.5′
CL6	42°49.5′	69°26′
CL1	43°07′	69°02′

(i) A chart depicting this area is available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter)).

(ii) [Reserved]

(2) Paragraph (h)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That meet the criteria in paragraph (g)(2)(ii), (iii), or (iv) of this section.

(ii) [Reserved]

(i) Western GOM Area Closure. * * *

(2) Paragraph (i)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (g)(2)(ii), (iii) or (iv) of this section.

* * * * *

8. In § 648.82, paragraph (b)(3)(i) is revised to read as follows:

§ 648.82 Effort-control program for limited access vessels.

* * * * *

(b) * * *

(3) * * * (i) *DAS allocation.* A vessel qualified and electing to fish under the small vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip without being subject to DAS restrictions, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(a)(2) and (b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip. Such a vessel is not subject to a possession limit for other NE multispecies.

* * * * *

9. In § 648.83, paragraphs (a)(2) and (b)(1) are revised to read as follows:

§ 648.83 Minimum fish sizes.

(a) * * *

(2) The minimum fish size applies to whole fish or to any part of a fish while possessed on board a vessel, except as provided in paragraph (b) of this section, and to whole, whole gutted or gilled fish only, after landing. For purposes of determining compliance with the possession limits in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. ''Skin on'' means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

(b) * * * (1) Each person aboard a vessel issued a multispecies limited access permit and fishing under the DAS program may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter. For purposes of determining compliance with the possession limits specified in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3.

* * * * *

10. In § 648.86, the section heading, paragraphs (a)(1), (b)(1) heading, (b)(1)(i), (b)(1)(ii) introductory text, (b)(1)(ii)(A) and (c) are revised; paragraph (b)(3) is removed; paragraph (b)(4) is redesignated as paragraph (b)(3) and revised; and paragraph (d) is added to read as follows:

§ 648.86 Possession and landing restrictions.

* * * * *

(a) * * * (1) *NE multispecies DAS vessels.* (i) Except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, a vessel that fishes under a NE multispecies DAS may land up to 2,000 lb (907.2 kg) of haddock per DAS fished, or any part of a DAS fished, up to 20,000 lb (9071.8 kg) per trip, provided it has at least one standard tote on board. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) When the Regional Administrator projects that 75 percent of the target TAC will be harvested (9.3 million lb (4,218.5 mt) for the 1999 fishing year), NMFS may publish a notification in the **Federal Register** that, as of a specific date, the limit specified in paragraph (a)(1)(i) of this section is reduced to either a 1,000 lb (453.6 kg) per trip possession limit restriction, or to a landing limit restriction of 1,000 lb (453.6 kg) per DAS fished, 10,000 lb (4,536.0 kg) maximum, depending on the risk of exceeding the target TAC. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection. Vessels subject to this landing limit must have at least one standard tote on board.

(iii) Paragraph (a)(1)(ii) of this section notwithstanding, beginning October 1, 1999, through April 30, 2000, if the Regional Administrator projects that less than 75 percent of the target TAC will be harvested (9.3 million lb (4,218.5 mt) for the 1999 fishing year) by April 30, 2000, NMFS may publish a notification in the **Federal Register** that, as of a specific date, the limit is increased to the amount that the Regional Administrator projects will be sufficient to allow harvesting of at least 9.3 million lb (4,218.5 mt) by April 30, 2000. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection. Vessels subject to this landing limit must have at least one standard tote on board.

* * * * *

(b) * * * (1) *Landing limit.* (i) Except as provided in paragraphs (b)(1)(ii) and (b)(2) of this section, and subject to the cod landing limit call-in provision specified at § 648.10(f)(3)(i), a vessel fishing under a NE multispecies DAS may land up to 200 lb (90.7 kg) of cod per DAS, or any part of a DAS, unless otherwise specified in this paragraph. Vessels calling-out of the multispecies DAS program under § 648.10(c)(3) that have utilized part of a DAS (less than 24 hours) may land up to an additional 200 lb (90.7 kg) of cod for that part of a DAS; however, such vessels may not end any subsequent trip with cod on board within the 24-hour period following the beginning of the part of the DAS utilized (e.g., a vessel that has called-in to the multispecies DAS program at 3 p.m. on a Monday and ends its trip the next day (Tuesday) at 4 p.m. (accruing a total of 25 hours) may legally land up to 400 lb (181.4 kg) of cod on such a trip, but the vessel may not end any subsequent trip with cod on board until after 3 p.m. on the following day (Wednesday)). When the Regional Administrator projects that 30 percent of the FMAX target TAC will be harvested (886,000 lb (402 mt) for the 1999 fishing year), NMFS will publish a notification in the **Federal Register** that, as of a specific date, the limit is reduced to a specified amount between 5 lb (2.3 kg) and 100 lb (45.3 kg) per DAS, depending on the risk of exceeding the target TAC. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel subject to the cod landing limit restrictions described in paragraph (b)(1)(i) of this section, and subject to the cod landing limit call-in provision specified at § 648.10(f)(3)(ii), may come into port with and offload cod in excess of the landing limit as determined by the number of DAS elapsed since the vessel called into the DAS program, provided that:

(A) The vessel operator does not call-out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port to engage in fishing, unless transiting as allowed in paragraph (b)(3) of this section, until sufficient time has elapsed to account for and justify the amount of cod harvested at the time of offloading regardless of whether all of the cod on board is offloaded (e.g., a vessel subject to the landing limit restriction, described in paragraph (b)(1)(i) of this section, that has called-in to the multispecies DAS program at 3 p.m. on Monday and that fishes and comes back into port at 4 p.m. on Wednesday of that same week with 800 lb (362.9 kg) of cod to offload some or all of its catch cannot call-out of the DAS program or leave port until 3:01 p.m. the next day, Thursday (i.e., 3 days plus one minute)); and

* * * * *

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraph (b)(1) of this section, and is, therefore, subject to the requirement to remain in port for the period of time described in paragraph (b)(1)(ii)(A) of this section may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator (see Table 1 to § 600.502 of this chapter) either at the time the vessel reports its hailed weight of cod or at a later time prior to transiting and provides the following information: vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.81(e) and may not have any fish on board the vessel.

(c) *Other possession restrictions.* Vessels are subject to all other applicable possession limit restrictions, as specified under §§ 648.82(b)(3), 648.83(b)(1), 648.88(a) and (c), and § 648.89(c).

(d) *Calculation of weight of fillets or parts of fish.* The possession limits described under this part are based on the weight of whole, whole-gutted, or gilled fish. For purposes of determining compliance with the possession limits specified in paragraph (a), (b), or (c) of this section, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, as allowed under § 648.83(a) and (b) will be multiplied by 3.

11. In § 648.87, introductory text for paragraphs (a) and (b) is revised, and paragraph (a)(4) is added to read as follows:

§ 648.87 Gillnet requirements to reduce or prevent marine mammal takes.

(a) *Areas closed to gillnet gear capable of catching multispecies to reduce harbor porpoise takes.* All persons owning or operating vessels in the EEZ portion of the areas and times specified in paragraphs (a)(1), (2), (3) and (4) of this section must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnet gear or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnet gear (as described in § 648.81(g)(2)(ii)) in the EEZ portion of the areas and for the times specified in paragraphs (a)(1) through (a)(4) of this section. Also, all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), from the areas and for the times specified in paragraphs (a)(1) through (a)(4) of this section, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnets or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)) in the areas and for the times specified in paragraphs (a)(1) through (a)(4) of this section.

* * * * *

(4) *NE Closure Area.* From August 15 through September 13, of each fishing year, the restrictions and requirements specified in this paragraph (a) apply to the NE Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

NORTHEAST CLOSURE AREA

Point	N. lat.	W. long.
NE1	(1)	68°55.0′
NE2	43°29.6′	68°55.0′
NE3	44°04.4′	67°48.7′
NE4	44°06.9′	67°52.8′
NE5	44°31.2′	67°02.7′
NE6	(1)	67°02.7′

[1] Maine shoreline.

(i) Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) [Reserved]

(b) *Areas closed to gillnet gear capable of catching multispecies to prevent right whale takes.* All persons owning or operating vessels must remove all of their sink gillnet gear and gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), from the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnet gear or gillnet gear capable of catching multispecies, with the exception of single pelagic gillnet gear (as described in § 648.81(g)(2)(ii)) in the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section. Also, all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), from the areas and for the times specified in paragraphs (b)(1) and (2) of this section, and, may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnet gear or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)) in the areas and for the times specified in paragraphs (b)(1) and (2) of this section.

* * * * *

12. In § 648.88, paragraphs (a)(1) and (c) are revised to read as follows:

§ 648.88 Open access permit restrictions.

(a) * * *

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip, and unlimited amounts of the other NE multispecies, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(a)(2) and (b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and that the vessel does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

* * * * *

(c) *Scallop multispecies possession limit permit.* Unless otherwise prohibited in § 648.86(b), a vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species per trip when fishing under a scallop DAS allocated under § 648.53, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(a)(2) and (b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and that the vessel does not fish for, possess, or land haddock from January 1 through June 30 as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

* * * * *

[FR Doc. 99–11157 Filed 4–30–99; 2:27 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990430113–913–01; I.D. 042799A]

RIN 0648–AL64

Fisheries off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; 1999 Management Measures

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

ACTION: Annual management measures for the ocean salmon fishery; request for comments.

SUMMARY: NMFS establishes fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California for 1999 and 2000 salmon seasons opening earlier than May 1, 2000. Specific fishery management measures vary by fishery and by area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the exclusive economic zone (3–200 nm) off Washington, Oregon, and California. These management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian and non-treaty commercial and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement and for inside fisheries.

DATES: Effective from 0001 hours Pacific Daylight Time (P.d.t.), May 1, 1999, until the effective date of the 2000 management measures, as published in the **Federal Register**. Comments must be received by May 17, 1999.

ADDRESSES: Comments on the management measures and the related environmental assessment (EA) may be sent to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., Seattle, WA 98115–0070; or William Hogarth, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213. Copies of the EA and other documents cited in this document are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2130 S.W. Fifth Ave., Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William Robinson at 206–526–6140, or Svein Fougner at 562–980–4040.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries in the exclusive economic zone off Washington, Oregon, and California are managed under a ''framework'' fishery management plan entitled the Pacific Coast Salmon Plan (FMP). Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the FMP, by notification in the **Federal Register**.

These management measures for the 1999 and pre-May 2000 ocean salmon fisheries were recommended by the Pacific Fishery Management Council (Council) at its April 5 to 9, 1999, meeting.

Schedule Used To Establish 1999 Management Measures

In accordance with the FMP, the Council's Salmon Technical Team (STT) and staff economist prepared several reports for the Council, its advisors, and the public. The first report, ''Review of 1998 Ocean Salmon Fisheries,'' (Review) summarizes the 1998 ocean salmon fisheries and assesses how well the Council's management objectives were met in 1998. The second report, ''Preseason Report I Stock Abundance Analysis for 1999 Ocean Salmon Fisheries'' (PRE I), provides the 1999 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 1998 regulations or regulatory procedures

were applied to the 1999 stock abundances.

The Council met from March 8 to 12, 1999, in Portland, Oregon, to develop proposed management options for 1999. Three commercial and three recreational fishery management options were proposed for analysis and public comment. These options presented various combinations of management measures designed to protect numerous weak stocks of coho and chinook salmon and to provide for ocean harvests of more abundant stocks. After the March Council meeting, the STT and Council staff economist prepared a third report, ''Preseason Report II Analysis of Proposed Regulatory Options for 1999 Ocean Salmon Fisheries'' (PRE II), which analyzes the effects of the proposed 1999 management options. This report also was made available to the Council, its advisors, and the public.

Public hearings on the proposed options were held on March 29, 1999, in Westport, WA, and North Bend, OR; and on March 30, 1999, in Astoria, OR, Moss Landing, CA, and Eureka, CA.

The Council met on April 5 to 9, 1999, in Sacramento, CA, to adopt its final 1999 recommendations. Following the April Council meeting, the STT and Council staff economist prepared a fourth report, ''Preseason Report III Analysis of Council-Adopted Management Measures for 1999 Ocean Salmon Fisheries'' (PRE III), which analyzes the environmental and socio-economic effects of the Council's final recommendations. This report also was made available to the Council, its advisors, and the public.

Resource Status

Aside from salmon species listed and proposed for listing under the Endangered Species Act (ESA) discussed here, the primary resource concerns are for Klamath River fall chinook, and Washington coastal and Puget Sound natural coho. Management of all of these stocks is affected by interjurisdictional agreements among tribal, State, Federal, and/or Canadian managers.

Chinook Salmon Stocks

California Central Valley fall chinook stocks are abundant compared to other chinook stocks of the Pacific coast. The Central Valley Index of abundance of combined Central Valley chinook stocks is projected to be 847,700 for 1999, 12 percent below the 1998 pre-season estimate (PRE I). The spawning escapement of Sacramento River adult fall chinook was 237,500 adults in 1998 (PRE III), well above the escapement goal range of 122,000 to 180,000 adult spawners.

Winter chinook from the Sacramento River are listed under the ESA as an endangered species (59 FR 440, January 4, 1994). The 1998 spawning run size was estimated to be approximately 1800 adults, a 38 percent increase over the estimated 1995 adult escapement. Neither pre-season nor post-season estimates of ocean abundance are available for winter chinook; however, the run is expected to remain depressed in 1999.

Klamath River fall chinook ocean abundance is projected to be 105,400, age-3 and age-4, fish at the beginning of the fishing season. The abundance forecast is 17 percent below the 1998 pre-season abundance estimate and 45 percent below the average of post-season estimates for 1989–1998 (PRE I). The spawning escapement goal for the stock is 33 to 34 percent of the potential natural adults, but no fewer than 35,000 natural spawners (fish that spawn outside of hatcheries). The natural spawning escapement in 1998 was 41,900 adults (Review).

Oregon coastal chinook stocks include south-migrating and localized stocks primarily from southern Oregon streams and north-migrating chinook stocks which generally originate in central and northern Oregon streams. Abundance of south-migrating and localized stocks is expected to be similar to the levels observed in 1998 (PRE I). These stocks are important contributors to ocean fisheries off Oregon and northern California. The generalized expectation for north-migrating stocks is for an average abundance (PRE I). These stocks contribute primarily to ocean fisheries off British Columbia and Alaska. It is expected that the aggregate Oregon coastal chinook spawning escapement goal of 150,000 to 200,000 naturally spawning adults will be met in 1999 (PRE I).

Estimates of Columbia River chinook abundance vary by stock as follows:

(1) *Upper Columbia River spring and summer chinook.* Numbers of upriver spring chinook predicted to return to the river in 1999 are 24,600 fish, less than two-thirds of the 1998 return of 38,300 and only 22 percent of 1997 return of 114,000 adult fish (PRE I). The 1999 forecast indicates a return to recent year escapement levels and the continued depressed status of this stock. In recent years, the natural component of this stock generally has comprised less than one-third of the upriver spring chinook run, compared to approximately 70 percent of the run when the original escapement goal was developed. The 1997 return of 114,100 fish was at least two-thirds of hatchery origin. The natural stock component remains severely depressed, with Snake River spring/summer chinook listed as threatened under the ESA. The 1998 return of 21,500 adult summer chinook was 24 percent above the preseason expectation and the largest return since 1990 (PRE III). Expected ocean escapement of adult upriver summer chinook is 16,500 adult fish (PRE III). The 1999 stock status remains extremely depressed, with a forecast return of 16,500 fish being only 21 percent of the lower end of the spawning escapement goal range of 80,000 to 90,000 adults counted at Bonneville Dam. Upriver summer chinook migrate to the far north and are not a major contributor to ocean fisheries off Washington and Oregon. Snake River spring and summer chinook are listed as threatened under the ESA (57 FR 14653, April 22, 1992).

(2) *Willamette River spring chinook.* Willamette River spring chinook returns are projected to be 46,500 fish, close to the 1998 return of 45,000 fish (PRE I), and the sixth consecutive year that the adult return is less than 50,000 fish. Lower Columbia River spring chinook stocks are important contributors to Council area fishery catches north of Cape Falcon; Willamette River spring chinook stocks generally contribute to Canadian and Alaskan ocean fisheries.

(3) *Columbia River fall chinook.* Abundance estimates are made for five distinct fall chinook stock units, as follows:

(a) Upriver bright fall chinook ocean escapement is expected to be 147,500 adults, 4 percent above the 1998 observed return of 141,500 adults (PRE III). This stock has a northern ocean migratory pattern and constitutes less than 10 percent of Council area fisheries north of Cape Falcon.

(b) Lewis River wild chinook ocean escapement is forecast at 2,600 adults, 37 percent of the 1998 run size of 7,000 adults (PRE III). One of the primary reasons for this decline and for Lewis River not being expected to meet the spawning escapement goal for wild chinook is because of short term impacts from previous flooding events; therefore, this decline should not be a long term trend.

(c) Lower river hatchery (Tules) fall chinook ocean escapement is forecast at 34,800 adults, 18 percent below the 1998 observed return of 42,600 adults (PRE III). This stock has declined sharply since the record high return in 1987. Lower Columbia River fall chinook stocks normally account for more than half the total catch in Council area fisheries north of Cape Falcon, with

lower river hatchery fall chinook being the single largest contributing stock. The March forecast return is only 9 percent above the current estimated ocean escapement of 32,000 adults needed to meet brood stock requirements.

(d) Spring Creek hatchery (Tules) fall chinook ocean escapement is projected to be 65,800 adults, over 300 percent greater than the 1998 observed return of 19,500 adults (PRE III). The Spring Creek hatchery fall chinook stock generally has been rebuilding slowly since the record low return in 1987, but this year's projection of 65,800 adults is the largest return since 1982.

(e) Mid-Columbia bright fall chinook ocean escapement is projected to be 38,000 adults, close to the 1998 return of 36,600 adults (PRE III).

(4) *Snake River wild fall chinook.* Snake River wild fall chinook are listed under the ESA as a threatened species (57 FR 14653, April 22, 1992). Information on the stock's ocean distribution and fishery impacts are not available. Attempts to evaluate fishery impacts on Snake River fall chinook have used the Lyons Ferry Hatchery stock to represent Snake River wild fall chinook. The Lyons Ferry stock is widely distributed and harvested by ocean fisheries from southern California to Alaska.

Washington coastal and Puget Sound chinook generally migrate to the far north and are affected insignificantly by ocean harvests from Cape Falcon to the U.S.-Canada border.

Coho Salmon Stocks

Central California coast coho and southern Oregon/northern California coast coho are listed as threatened species under the ESA (61 FR 56138, October 31, 1996, and 62 FR 24588, May 6, 1997). Coho populations in California have not been monitored closely in the past, and no forecasts of the ocean abundance of listed coho originating from California are available; these runs have been generally at low abundance levels for many years.

Oregon coastal natural, recently listed as threatened under the ESA (63 FR 42587, August 10, 1998), and Columbia River coho stocks are the primary components of the Oregon Production Index (OPI), an annual index of coho abundance from Leadbetter Point, WA, to the U.S.-Mexico border. The 1999 OPI is forecast to be 620,600 coho, 374 percent of the 1998 preseason forecast of 165,800 coho, and 266 percent of the 1998 observed level of 233,100 coho (PRE I). The 1999 estimate for OCN is 60,700 coho, 29 percent above the 1998 preseason forecast of 47,200 coho, and 209 percent of the 1998 observed level of 29,200 coho (PRE I). The 1998 spawning escapement of the OCN stock was 29,200 fish, the second smallest for the last 7 years.

Most Washington coastal natural coho stocks and Puget Sound combined natural coho stocks are expected to be more abundant in 1999 than forecast in 1998. The 1999 Willapa Bay hatchery total ocean stock abundance forecast is 40,500 adults, approximately 95 percent greater than 1998 (PRE I). The prediction is based upon an average terminal area return per release (1992–1997) adjusted by a mean jack return rate for the same brood years. Willapa Bay coho production is predominately hatchery origin, and until 1998, only hatchery abundance was predicted. This year, the estimate of natural coho is 8,300. The estimate of Grays Harbor natural stock ocean abundance for 1999 is 57,700 adults, an increase of 92 percent from the 1998 preseason expected abundance (PRE I). The estimate of hatchery stock ocean abundance is 30,400 adults, an increase of 19 percent from the preseason 1998 estimate (PRE I). The Quinault natural coho ocean run size is 7,300 fish, an increase of 17 percent from the 1998 projected level (PRE I). The Quinault hatchery coho ocean run size is forecast at 8,200 fish, an increase of 111 percent compared to the 1998 level (PRE I). The Queets natural coho ocean run size is 4,300 fish, a slight increase of from the 1998 projected level of 4,200 (PRE I). The Queets hatchery coho ocean run size is forecast at 10,800 fish, an increase of 134 percent compared to the 1998 level (PRE I). The Hoh River natural coho ocean run size is 3,200 fish, a decrease of 6 percent compared to the 1998 projected level (PRE I). The 1999 forecast abundance of Quillayute River natural and hatchery components are 1,200 and 3,500, respectively (PRE I). The 1999 forecast abundance of natural summer coho is 8 percent below the 1998 forecast, while the hatchery is 94 percent above it's 1998 forecast.

Pink Salmon Stocks

Major pink salmon runs return to the Fraser River and Puget Sound only in odd-numbered years. In 1997, abundance was 8.2 million Fraser River pink salmon, and 4.41 million Puget Sound pink salmon. The preseason forecasts for 1999 ocean abundance of Fraser River and Puget Sound pink salmon are not available at this time.

Management Measures for 1999

The Council recommended allowable ocean harvest levels and management measures for 1999 designed to apportion the burden of protecting the weak stocks previously discussed equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs. NMFS finds the Council's recommendations responsive to the goals of the FMP, the requirements of the resource, and the socio-economic factors affecting resource users. The recommendations are consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law, including the ESA and U.S. obligations to Indian tribes with Federally recognized fishing rights. Accordingly, NMFS hearby adopts them.

Since completion of the April 29, 1998, supplement to the March 8, 1996, biological opinion on the status of endangered and threatened salmon in the ocean salmon fisheries, NMFS has listed Oregon coastal coho as threatened under the ESA (63 FR 42587, August 10, 1998) and four populations of chinook (Puget Sound, Lower Columbia River, Upper Willamette River, and Upper Columbia River spring) as threatened (64 FR 14308, March 24, 1999). Three populations of chinook (Central Valley spring, Central Valley fall, and southern Oregon/northern California coastal) remain proposed for listing (64 FR 14329, March 24, 1999). In a March 1, 1999, letter to the Council, NMFS provided guidance on protective measures for listed species for the 1999 season.

Amendment 13 to the FMP, which has been approved by NMFS, provides separate exploitation rate targets for four OCN sub-stocks that depend on measures of prior escapement and ocean survival. NMFS ESA guidance required that the three northern sub-stocks be managed in accordance with Amendment 13, which permits an exploitation rate of 15 percent under the medium level of ocean survival. The southern sub-stock is part of the southern Oregon/northern California coastal coho. However, NMFS urged the Council to target a precautionary exploitation rate of 10 percent or less, expressing strong concern that actual OCN abundance may fall considerably short of the preseason forecast if the current trend of the previous two years in overestimated forecasts continue. This precautionary approach was also recommended by both the Council's Scientific and Statistical Committee and STT advisory bodies. NMFS ESA guidance required that Council fisheries be managed so that the total ocean exploitation rate on the southern Oregon/northern California coastal coho be constrained to 13 percent or less, the

lowest exploitation rate specified under the rebuilding provisions of Amendment 13. In addition, NMFS required that the retention of coho in recreational and commercial fisheries off California continue to be prohibited. In accordance with the NMFS guidance, the Council's recommendations result in a 8.79-percent exploitation rate for OCN coho (freshwater and marine), a 4.9-percent marine exploitation rate impact for Rogue/Klamath coho, and retention of coho off California is prohibited for the fifth consecutive year.

The Council recommended measures expected to produce an 8.79-percent OCN coho exploitation rate based on the current estimate of 8-percent hooking mortality in recreational fisheries, including selective fisheries. However, several recent studies indicate that the hooking mortality rate may be much higher. Therefore, the Council also analyzed the recommended measures assuming a 16 percent hooking mortality in selective fisheries which produced an estimated 10.11 percent OCN coho exploitation rate. The Council has appointed an ad hoc committee to initiate a review of hooking mortality issues and recommend any changes for the year 2000 season.

Sacramento River winter chinook is listed as an endangered species under the ESA. A March 8, 1996, biological opinion and a February 18, 1997, addendum require that NMFS reduce all harvest-related impacts to the Sacramento River winter chinook salmon population by a level that would achieve at least a 31-percent increase in the age-3 spawner-to-spawner replacement rate over a base period of 1989 through 1993. The increase in the spawner-to-spawner replacement rate projected for 1999 achieves the minimum 31 percent rate over the base period.

NMFS concluded that incidental fishery impacts that occur in the ocean salmon fishery proposed for the period from May 1, 1999, through April 30, 2000 (or until the effective date of the 1999 management measures), will not jeopardize the continued existence of populations of chinook proposed for listing. However, NMFS requested the Council to reserve final action on those seasons opening prior to May 1 off California for the Council's November 1999 meeting, by which time NMFS will provide the Council with any necessary guidance regarding anticipated consultation standards for newly listed populations.

From the U.S.-Canada border to Cape Falcon, ocean fisheries are managed to protect depressed lower Columbia River fall chinook salmon and Washington coastal and Puget Sound natural coho salmon stocks and to meet ESA requirements for Snake River fall chinook salmon. Ocean treaty and non-treaty harvests and management measures were based in part on negotiations between Washington State fishery managers, commercial and recreational fishing groups, and the Washington coastal, Puget Sound, and Columbia River treaty Indian tribes as authorized by the U.S. District Court in *U.S.* v. *Washington, U.S.* v. *Oregon,* and *Hoh Indian Tribe* v. *Baldrige.*

North of Cape Falcon, Oregon, the 1999 management measures are more liberal than during 1998. They are the largest chinook and coho quotas since 1993, but are still restricted to protect depressed Washington coastal, Puget Sound, and Oregon Coastal Natural (OCN) coho stocks.

The Council adopted a new commercial troll fishery for all salmon that will open between Cape Flattery to Cape Alava, WA West of 125°05′00″ W. long. and Cape Alava to Leadbetter Point, WA on July 10 through earliest of September 30 or attainment of the overall chinook quota. The new boundary in Washington was suggested by industry representatives to try to prevent impacts to the newly listed Puget Sound chinook ESU. This new boundary closes the area off the mouth of the Strait of Juan de Fuca at the time when the chinook from Puget Sound are thought to be migrating back to their spawning grounds.

The Columbia Control Zone was another area where the Council adopted new boundaries. The new boundaries cover the ocean area at the Columbia River mouth bounded by a line extending for 6 nm due west from North Head along 46°18′00″ N. lat. to 124°13′18″ W. long., then southerly to 46°13′24″ N. lat. and 124°11′00″ W. long. (green, Columbia River Entrance Lighted Bell Buoy #1), then southerly to 46°11′06″ N. lat. and 124°11′00″ W. long. (red, Columbia River Approach Lighted Whistle Buoy), then northeast along red buoy line to the tip of the south jetty.

South of Cape Falcon, OR, the retention of coho is prohibited for the fifth consecutive year, except for a recreational selective fishery off Oregon in July with a 15,000 fish quota of marked hatchery coho. Chinook fisheries are constrained primarily to meet the Klamath River fall chinook natural spawner escapement floor and ESA standards for Sacramento River winter chinook. These constraints also limit impacts on threatened Snake River fall chinook, Oregon Coastal coho, Southern Oregon/Northern California Coast coho, and Central California coho. Size limit, gear, and seasonal restrictions are intended to reduce harvest impacts on endangered Sacramento River winter chinook.

The selective fishery proposal off the Oregon coast is controversial because of potential impacts on Oregon coastal natural (OCN) coho, which include the Oregon Coastal and the northern end of the Southern Oregon/Northern California Coastal Coho ESUs listed as threatened under the ESA. The options for the selective fishery originally ranged from allowing a landed catch of 60,000 coho (option 1), to a 20,000 catch (option 2), to no selective fishery (option 3).

Several concerns arose. The forecasted return, although better than last year, is not sufficiently large to replace the parent brood. There is no evidence yet that OCN stocks are recovering from record low spawning escapement levels. There is substantial uncertainly surrounding estimates of hooking and handling mortality to natural (unmarked) coho in a selective fishery. Finally, there is the perception that by proposing new fisheries, Oregon's efforts to achieve voluntary improvements in freshwater habitat from land owners and businesses will be damaged. NMFS' view is that the uncertainties and potential risks described above called for an extremely precautionary approach to allowing selective fisheries on marked hatchery coho.

The ODFW proposed a 10,000 fish quota. However, based on a proposed exchange between the commercial troll and recreational fishery advisory panel representatives, the selective fisheries quota was raised from 10,000 to 15,000 fish, coupled with a reduction in the number of days of commercial trolling off Oregon that would result in no change in impacts on OCN coho from the original motion for a selective fishery with a 10,000 fish quota. Oregon will also intensively monitor this selective fishery to gain more information regarding impacts of the selective fishery and to help in the shaping of future selective fisheries. NMFS believes the modest selective fishery and planned monitoring program are sufficiently precautionary.

The Council recommended the continued use of an increase in the minimum size limit in the recreational fishery to 24 in (61.0 cm) south of Horse Mountain in conjunction with restricted seasons to reduce incidental ocean harvest of Sacramento River winter chinook. The Council recommended the continuation of gear restrictions for

recreational fisheries off California to minimize hooking mortality.

The Council recommended an August 1 through September 6 recreational fishery between Point Arena and the U.S.-Mexico Border in which the bag limit will be the first two fish caught (excluding coho) with no minimum size limit. Any coho salmon caught must be released.

The Council also recommended a commercial troll test fishery operating inside 6 nm from July 1 through July 14 between Fort Ross and Point Reyes under a 2,500 fish quota. The test fishery is designed to assess the relative contribution of Klamath River fall chinook to the catch of a near-shore commercial fishery in the test area.

Commercial Troll Fisheries

North of Cape Falcon

The size limit for chinook is 28 in (71.1 cm) (21.5 in (54.6 cm) head-off), 16 in (40.6 cm) (12 in (30.5 cm) head-off) for coho, and there is no size limit for pink salmon.

The commercial troll fishery for all salmon except coho will open between the U.S.-Canada border and Cape Falcon, OR, on May 1 and continue through the earlier of June 15 or attainment of the 24,000 chinook quota. The Columbia Control Zone is closed. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall quota.

The commercial troll fishery for all salmon will open between Cape Flattery to Cape Alava, WA, West of 125°05′00″ W. long. and Cape Alava to Leadbetter Point, WA, on July 10 and continue through the earliest of September 30 or attainment of the overall chinook quota (preseason 4,500 chinook guideline) or 20,000 coho quota. The season follows a cycle of 4 days open/3 days closed. No more than 4 spreads are allowed per line. Gear is restricted to plugs 6 in (15.2 cm) or longer. Flashers without hooks may be used if installed below the second spread from the top and will not be counted as a spread. No more than one flasher is allowed per line. Each vessel may possess, land and deliver no more than 100 coho per open period (trip limits, gear restrictions and guidelines may be adjusted inseason). Vessels must land and deliver their fish within 24 hours of any closure of this fishery within the area or adjacent closed area.

South of Cape Falcon

Retention of coho salmon is prohibited in all areas south of Cape Falcon, OR. All seasons listed below are restricted to all salmon species except coho salmon. Off California, no more than six lines are allowed per vessel. Off Oregon, no more than four spreads are allowed per line. The size limit for chinook is 26 in (66.0 cm) (19.5 in (49.5 cm) head-off), except south of Point Arena after June when the size limit increases to 27 in (68.6 cm) (20.25 in (51.4 cm) head-off).

From Cape Falcon to Humbug Mountain, OR, the commercial fishery opened April 1 and will continue through July 17, then reopen August 1 through August 29, and then reopen September 1 through October 31.

From Humbug Mountain, OR, to the Oregon-California border, the commercial fishery will open May 1 and will continue through May 31.

From Sisters Rocks to Mack Arch, OR, the commercial fishery will open August 1 and continue through the earlier of August 31 or attainment of the 2,500 chinook quota. The open area is restricted to 0 to 4 nm (7.4 km) off shore. All salmon must be landed and delivered to Gold Beach, Port Orford, or Brookings, OR within 24 hours of each closure.

From House Rock, OR, to Humboldt South Jetty, CA, the commercial fishery will open September 1 and continue through the earlier of September 30 or attainment of the 7,000 chinook quota. Restrictions include a possession and landing limit of no more than 30 fish per day; all fish caught in this area must be landed within the area; and the Klamath Control Zone is closed. Within the 7,000 chinook quota is a 1,000 chinook harvest guideline for landings to the port of Brookings, OR. If this guideline is reached prior to the overall quota, the fishery will close north of the Oregon-California border. When the fishery is closed north of the Oregon-California border and open to the south, Oregon State regulations provide that: Vessels with fish on board caught in the open area off California may seek temporary mooring in Brookings, OR, prior to landing in California only if such vessels first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide the name of the vessel, number of fish on board, and estimated time of arrival.

From Horse Mountain to Point Arena, CA, the commercial fishery will open September 1 through September 30. The minimum size limit is 26 in (66.0 cm).

From Point Arena to Point Reyes, CA, the commercial fishery will open July 17 through September 30. The minimum size limit is 27 in (68.6 cm).

From Fort Ross to Point Reyes, CA, a test troll commercial fishery inside 6 nm will open July 1 through the earlier of July 14 or an overall 2,500 chinook quota, for all salmon except coho. The minimum size limit is 26 in (66.0 cm) for consistency with the 1998 test fishery. There is a landing limit of no more than 30 fish per day. All fish caught in this area must be landed in Bodega Bay, CA. Fish taken outside this test fishery may not be landed at Bodega Bay while this fishery is open. These restrictions are necessary to assure the data collected from the test fishery are valid.

From Point Reyes to Point San Pedro, CA, the commercial fishery will open July 1 through September 30. The minimum size limit is 27 in (68.6 cm).

From Point San Pedro, CA, to the U.S.-Mexico border, the commercial fishery will open May 1 through August 21 and September 1 through September 30. The minimum size limit is 26 in (66.0 cm) through June 30, and 27 in (68.6 cm) after June 30.

Recreational Fisheries

North of Cape Falcon

The size limit for chinook is 24 in (61.0 cm), 16 in (40.6 cm) for coho, and there is no size limit for pink salmon. All retained coho must have a healed adipose fin clip.

From the U.S.-Canada border to Cape Alava, WA the fishery will open on July 19 through the earlier of September 30 or attainment of the 10,200 coho subarea quota. All salmon may be retained except chinook (7 days per week). There is a 2-fish per day daily bag limit.

From Cape Alava to the Queets River, WA the fishery will open on July 19 through the earlier of September 30 or attainment of the 2,600 coho subarea quota. The fishery is open 7 days per week with a 2-fish daily bag limit. Inseason management may be used to sustain season length and keep harvest within a guideline of 400 chinook.

From the Queets River to Leadbetter Point, WA the fishery will open on July 19 through the earlier of September 30 or attainment of the 42,200 coho subarea quota. The fishery is open Sunday through Thursday only, for all salmon, with a two-fish daily bag limit, but no more than 1 chinook, and no more than six fish in a calender week (Sunday through Saturday). The fishery is closed 0 to 3 nm (4.8 km) offshore beginning August 22. Inseason management may be used to sustain season length and keep harvest within a guideline of 13,400 chinook.

From Leadbetter Point, WA, to Cape Falcon, OR, the fishery will open on July 19 through the earlier of September 30 or attainment of the 55,000 coho subarea quota. The fishery is open

Sunday through Thursday only, for all salmon, with a 2-fish daily bag limit, but no more than 1 chinook a day. No more than six fish may be retained in a calender week (Sunday through Saturday). Coho retention is prohibited between Tillamook Head and Cape Falcon beginning August 1 (i.e., all salmon except coho and a daily bag limit of 1 chinook). The fishery is closed in Recreational Columbia Control Zone (a newly defined area for 1999 defined previously and in Table 2). Inseason management may be used to sustain season length and keep harvest within a guideline of 7,600 chinook.

South of Cape Falcon

Retention of coho salmon is prohibited in all areas south of Cape Falcon, except for a recreational selective fishery off Oregon in July with a 15,000 fish quota of marked hatchery coho. The size limit for chinook is 20 in (50.8 cm) from Cape Falcon to Horse Mountain and 24 in (61.0 cm) from Horse Mountain south. The size limit for coho is 16 in (40.6 cm) in the selective fishery and all retained coho must have a healed adipose fin clip. There is no size limit for pink salmon off Washington and Oregon. The size limit for pink salmon off California is 20 in (50.8 cm). In the ''first two fish bag limit'' areas there are no size restrictions. All seasons listed below are restricted to all salmon species except coho salmon, except in the specified selective fishery. North of Point Conception, CA, persons fishing for salmon and persons fishing from a boat with salmon on board are restricted to no more than one rod per angler. From Horse Mountain to Point Conception, CA, the following restrictions apply:

If angling by any other means than trolling, then no more than two single point, single shank, barbless circle hooks shall be used. The distance between the two hooks must not exceed 5 in (12.7 cm) when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). A circle hook is defined as a hook with a generally circular shape and a point which turns inwards, pointing directly to the shank at a 90 degree angle. Circle hooks are not required when artificial lures are used without bait. Trolling is defined as: Angling from a boat or floating device that is moving forward by means of a source of power (other than drifting by means of the prevailing water current or weather conditions) except when landing a fish.

From Cape Falcon to Humbug Mountain, OR the recreational fishery, which opened April 1, will continue October 31, except as provided below during the selective fishery for all salmon except coho. Anglers may retain 2 fish per day, but no more than 6 fish in 7 consecutive days. Legal gear is limited to artificial lures and plugs of any size, or bait no less than 6 in (15.2 cm) long (excluding hooks and swivels). All gear must have no more than 2 single point, single shank barbless hooks. Divers are prohibited and flashers may be used only with downriggers. See Oregon State regulations for a description of a closure at the mouth of Tillamook Bay.

Selective fishery. July 10 through the earlier of July 31 or a landed catch of 15,000 coho for all salmon. Anglers may retain 2 fish per day. All retained coho must have a healed adipose fin clip. There are no special gear restrictions except B.3. (single point, single shank, barbless hooks). The season will follow a cycle of 2 days open/2 days closed (i.e., open July 10–11; 14–15; 18–19; 22–23; 26–27; and 30–31). Depending on fishing effort and catch, inseason action may be used to adjust open days to effectively utilize the available quota. Note: On closed days during the selective fishery no angling for any species of salmon is allowed.

From Humbug Mountain, OR, to Horse Mountain, CA, the recreational fishery will open May 29 through July 4, then reopen July 29 through September 14. Both seasons include a one-fish daily bag limit, but no more than four fish mat be retained in seven consecutive days, and a 20 in (50.8 cm) minimum size limit; the Klamath Control Zone closed in August.

From Horse Mountain to Point Arena, CA, the recreational fishery which opened on February 13 will continue through July 4, then reopen July 25 through November 14 with a 2-fish daily bag limit and a 24 in (61.0 cm) minimum size limit for both seasons.

From Point Arena to Pigeon Point, CA, the recreational fishery, which opened on March 27, will continue through October 31 with a 2-fish daily bag limit and a 24 in (61.0 cm) minimum size limit, except from August 1 through September 6, the bag limit will be the first two fish other than coho and no size limit (no catch-and-release angling). Sacramento Control Zone will be closed from the season opening through March 31.

From Pigeon Point, CA, to the U.S.-Mexico border, the recreational fishery which opened on March 13 will continue through September 6 with a 2-fish daily bag limit and a 24 in (61.0 cm) minimum size limit, except from August 1 through September 6, the bag limit will be the first two fish other than coho and no size limit (no catch-and-release angling).

Treaty Indian Fisheries

Ocean salmon management measures proposed by the treaty Indian tribes are part of a comprehensive package of treaty Indian and non-treaty salmon fisheries in the ocean and inside waters agreed to by the various parties. Treaty troll seasons, minimum length restrictions, and gear restrictions were developed by the tribes and agreed to by the Council. Treaty Indian troll fisheries north of Cape Falcon are governed by quotas of 30,000 chinook (20,000 for the May-June chinook-directed fishery and 10,000 for the August-September all-salmon fishery) and 38,500 coho. The all-salmon-except-coho seasons open May 1 and extend through June 30 or until the overall harvest guideline of 20,000 chinook is reached, whichever is earlier. The all-salmon seasons open August 1 and extend through the earliest of September 15 or attainment of the chinook or coho quotas. If the chinook quota from the May-June fishery is not fully utilized, the excess fish may not be rolled into the later all-salmon season. The minimum length restrictions for all treaty ocean fisheries, excluding ceremonial and subsistence harvest, is 24 in (61.0 cm) for chinook and 16 in (40.6 cm) for coho.

2000 Fisheries

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before May 1 of the same year. Therefore, the 2000 fishing seasons opening earlier than May 1 are also established in this action. The Council recommended and NMFS concurs that the following seasons will open off California in 2000. The following recreational seasons have two-fish daily bag limits and a minimum size limit of 24 in (61.0 cm) for chinook salmon (see special gear restrictions B.5). From Pigeon Point, CA to the U.S.-Mexico border, a recreational fishery for all salmon except coho will open on March 18. However, at the November 1999 meeting, the Council will consider the proposed 2000 opening of the fishery south of Pigeon Point, CA and make its final recommendations for the opening of that fishery. From Point Arena to Pigeon Point, CA, a recreational fishery for all salmon except coho will open on April 1. From Horse Mountain to Point Arena, CA a recreational fishery for all salmon, except coho, will open on February 12. At the March 2000 meeting, the Council will consider in season

recommendations to (1) establish management measures for an all-salmon-except-coho fishery prior to May 1, in areas off Oregon, and (2) recommend the areas, season, quota, and special regulations for a test fishery off California in April south of Pillar Point.

The following tables and text are the management measures recommended by the Council and approved by NMFS for 1999 and, as specified, for 2000.

Table 1.—Commercial Management Measures for 1999 Ocean Salmon Fisheries

Note: This table contains important restrictions in parts A, B, C, and D which must be followed for lawful participation in the fishery.

A. SEASON DESCRIPTION

North of Cape Falcon

U.S.-Canada Border to Cape Falcon, OR

May 1 through earlier of June 15 or 24,000 chinook guideline. All salmon except coho. Columbia Commercial Control Zone closed (C.7.) Harvest guidelines in later fisheries may be modified if necessary to meet the overall quota.

Cape Flattery (48°23′00″ N. lat.) to Cape Alava (48°10′00″ N. lat.) West of 125°05′00″ W. long. and Cape Alava to Leadbetter Point, WA

July 10 through earliest of September 30 or the overall chinook quota (preseason 4,500 chinook guideline) or 20,000 coho quota. All salmon. Cycle of 4 days open/3 days closed. No more than 4 spreads per line. Gear restricted to plugs 6 in (15.2 cm) or longer. Flashers without hooks may be used if installed below the second spread from the top and will not be counted as a spread. No more than one flasher per line. Each vessel may possess, land and deliver no more than 100 coho per open period (trip limits, gear restrictions and guidelines may be adjusted inseason). Vessels must land and deliver their fish within 24 hours of any closure of this fishery within the area or adjacent closed area.

South of Cape Falcon

Cape Falcon to Humbug Mountain, OR

April 1 through July 17, August 1 through August 29, and September 1 through October 31. All salmon except coho. See Oregon State regulations for a description of the closed area at the mouth of Tillamook Bay. See gear restriction (C.3.a.).

Humbug Mountain, OR to Oregon-California Border

May 1 through May 31. All salmon except coho. See gear restriction (C.3.a.).

Sisters Rocks to Mack Arch, OR

August 1 through earlier of August 31 or 2,500 chinook quota. All salmon except coho. Open 0–4 nm (7.4 km) offshore. All salmon must be landed and delivered to Gold Beach, Port Orford or Brookings, OR within 24 hours of any closure. See gear restriction (C.3.a.).

House Rock, OR to Humboldt South Jetty, CA

September 1 through earlier of September 30 or 7,000 chinook quota. All salmon except coho. Possession and landing limit of 30 fish per day. All fish caught in this area must be landed within the area. Klamath Control Zone closed (see C.7.). Within the 7,000 chinook quota is a harvest guideline limiting landings at the port of Brookings to no more than 1,000 chinook. If this guideline is reached prior to the overall quota, the fishery will close north of the Oregon-California border. When the fishery is closed north of the Oregon-California border and open to the south, Oregon State regulations provide for the following action: Vessels with fish on board caught in the open area off California may seek temporary mooring in Brookings, OR prior to landing in California only if such vessels first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide the vessel name, number of fish on board, and estimated time of arrival. See gear restriction (C.3.).

Horse Mountain to Point Arena, CA

September 1 through September 30. All salmon except coho. See gear restriction (C.3.b.).

Point Arena to Point Reyes, CA

July 17 through September 30. All salmon except coho. Minimum size limit 27 in. See gear restriction (C.3.b.).

Fort Ross (38°31′00″ N. lat.) to Point Reyes, CA (test fishery inside 6 nm [11.1 km])

July 1 through earlier of July 14 or 2,500 chinook quota. All salmon except coho. Minimum size limit 26 in (to be consistent with 1998 test fishery). Open only inside 6 nm (11.1 km). Landing limit of 30 fish per day. All fish caught in this area must be landed in Bodega Bay. Fish taken outside this area may not be landed at Bodega Bay while this fishery is open. See gear restriction (C.3.b.).

Point Reyes to Point San Pedro, CA

July 1 through September 30. All salmon except coho. Minimum size limit 27 in. See gear restriction (C.3.b.).

Point San Pedro to U.S.-Mexico Border

May 1 through August 21 and September 1 through September 30. All salmon except coho. Minimum size limit 27 in after June 30. See gear restriction (C.3.b.).

B.—MINIMUM SIZE LIMITS

[Inches]

Area (when open)	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
North of Cape Falcon	28.0	21.5	16.0	12.0	None.
Cape Falcon to Oregon-California Border*	*26.0	*19.5	.....	.....	None.
Oregon-California Border to Point Arena*	*26.0	*19.5	.....	.....	None.
South of Point Arena prior to July 1*	*26.0	*19.5	.....	.....	None.
South of Point Arena after June 30*	*27.0	*20.25	.....	.....	None.

*Chinook not less than 26 in (19.5 in head-off) taken in open seasons south of Cape Falcon may be landed north of Cape Falcon only when the season is closed north of Cape Falcon.

Metric equivalents for chinook: 28.0 in=71.1 cm, 27.0 in=68.6 cm, 26.0 in=66.0 cm, 21.5 in=54.6 cm, 20.25 in=51.4 cm, 19.5 in=49.5 cm.

Metric equivalents for coho: 16.0 in=40.6 cm, 12.0 in=30.5 cm.

C. SPECIAL REQUIREMENTS, DEFINITIONS, RESTRICTIONS, OR EXCEPTIONS

C.1. *Hooks:* Single point, single shank barbless hooks are required.

C.2. *Spread:* A single leader connected to an individual lure or bait.

C.3. *Line, Spread, and Gear Restrictions:*

a. Off Oregon south of Cape Falcon, no more than 4 spreads are allowed per line.

b. Off California, no more than 6 lines are allowed per vessel.

C.4. *Compliance with Minimum Size or Other Special Restrictions:* All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

C.5. *Transit Through Closed Areas With Salmon on Board:* It is unlawful for a vessel to have troll gear in the water while transiting any area closed to salmon fishing while possessing salmon.

C.6. *Notification When Unsafe Conditions Prevent Compliance with Regulations:* If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board and the estimated time of arrival. This stipulation will be implemented by state regulations for California, Oregon and Washington, as required.

C.7. *Control Zone Definitions:*

a. Columbia Commercial Control Zone—The ocean area at the Columbia River mouth bounded by a line extending for 6 nm (11.1 km) due west from North Head along 46°18′00″ N. lat. to 124°13′18″ W. long., then southerly to 46°13′24″ N. lat. and 124°11′00″ W. long. (green, Columbia River Entrance Lighted Bell Buoy #1), then southerly to 46°11′06″ N. lat. and 124°11′00″ W. long. (red, Columbia River Approach Lighted Whistle Buoy), then northeast along red buoy line to the tip of the south jetty.

b. Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nm (11.1 km) north of the Klamath River mouth), on the west by 124°23′00″ W. long. (approximately 12 nm [22.2 km] offshore), and on the south by 41°26′48″ N. lat. (approximately 6 nm [11.1 km] south of the Klamath River mouth).

C.8. *Incidental Halibut Harvest:* The operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A, during authorized periods, while trolling for salmon. License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (phone 206/634–1838). Applicants must apply prior to April 1 of each year. Incidental harvest is authorized only during May and June troll seasons and after July 31 if quota remains and if announced on the NMFS hotline (phone 800–662–9825). ODFW and WDFW will monitor landings and if they are projected to exceed the 23,490 pound (10.7 mt) preseason allocation or the Area 2A non-Indian commercial halibut TAC, NMFS will take inseason action to close the incidental halibut fishery.

License holders may land no more than 1 halibut per each 5 chinook, except 1 halibut may be landed without meeting the ratio requirement, and no more than 35 halibut may be landed per trip. Halibut retained must meet the minimum size limit of 32 in (81.3 cm).

C.9. *Inseason Management:* In addition to standard inseason actions or inseason modifications already noted under the season description, the following inseason guidance is provided to NMFS:

Transfers of 5,000 fish or less between subarea quotas north of Cape Falcon shall be done on a fish-for-fish basis.

Any difference between the total chinook landings in the May 1 through June 15 non-treaty troll fishery north of Cape Falcon and the 24,000 chinook guideline will be used to adjust the allowable chinook catch for the July 10 through September 30 non-treaty troll fishery north of Leadbetter Point.

At the March 2000 meeting, the Council will consider inseason recommendations to: (1) open commercial seasons for all salmon except coho prior to May 1 in areas off Oregon, and (2) recommend the areas, season, quota, and special regulations (based on the results of the 1999 fishery) for the experimental April fishery off California south of Pillar Point.

C.10. Consistent with Council management objectives, the State of Oregon may establish additional late-season, chinook-only fisheries in state waters. Check state regulations for details.

C.11. For the purposes of California Department of Fish and Game Code, Section 8232.5, the definition of the KMZ for the ocean salmon season shall be that area from Humbug Mountain, Oregon to Horse Mountain, California.

D. QUOTAS

D.1. *North of Cape Falcon:* All non-treaty troll and recreational ocean fisheries will be limited by overall quotas of either 50,000 chinook or 130,000 coho. Preseason species trade of 12,500 coho to the recreational fishery for 3,500 chinook to the commercial fishery. Therefore, the troll fishery will be limited by overall catch quotas of 28,500 chinook and 20,000 coho.

D.2. *U.S.-Canada Border to Cape Falcon:* The troll fishery will have a 24,000 chinook guideline.

D.3. *Cape Flattery to Cape Alava West of 125°05′00″ W. long. and Cape Alava to Leadbetter Point:* The troll fishery will be limited by the overall chinook quota (preseason 4,500 chinook guideline) or 20,000 coho quota.

D.4. *Sisters Rocks to Mack Arch:* The troll fishery will be limited by a catch quota of 2,500 chinook.

D.5. *House Rock, Oregon to Humboldt South Jetty, California:* The troll fishery will be limited by a catch quota of 7,000 chinook.

D.6. *Fort Ross to Point Reyes:* The troll fishery will be limited by an overall catch quota of 2,500 chinook.

Table 2.—Recreational Management Measures for 1999 Ocean Salmon Fisheries

Note: This table contains important restrictions in parts A, B, C, and D which must be followed for lawful participation in the fishery.

A. SEASON DESCRIPTION

North of Cape Falcon

U.S.-Canada Border to Cape Alava, WA

July 19 through earlier of September 30 or 10,200 coho subarea quota. All salmon except chinook (7 days per week). 2 fish per day, all retained coho must have a healed adipose fin clip.

Cape Alava to Queets River, WA

July 19 through earlier of September 30 or 2,600 coho subarea quota. All salmon (7 days per week). 2 fish per day, all retained coho must have a healed adipose fin clip. Inseason management may be used to sustain season length and limit harvest within a guideline of 400 chinook.

Queets River to Leadbetter Point, WA

July 19 through earlier of September 30 or 42,200 coho subarea quota. All salmon. Open Sunday through Thursday, 2 fish per day, but only 1

chinook and all retained coho must have a healed adipose fin clip. No more than 6 fish per calendar week (Sunday through Saturday). Closed 0–3 nm (4.8 km) off shore beginning August 22. Inseason management may be used to sustain season length and limit harvest within a guideline of 13,400 chinook.

Leadbetter Point, WA to Cape Falcon, OR

July 19 through earlier of September 30 or 55,000 coho subarea quota. All salmon. Open Sunday through Thursday, 2 fish per day, but only 1 chinook and all retained coho must have a healed adipose fin clip. No more than 6 fish per calendar week (Sunday through Saturday). Coho retention is prohibited between Tillamook Head and Cape Falcon beginning August 1 (i.e., all salmon except coho and a daily bag limit of 1 chinook). Closed in Recreational Columbia Control Zone (newly defined for 1999, see C.5.). Inseason management may be used to sustain season length and limit harvest within a guideline of 7,600 chinook.

South of Cape Falcon

Cape Falcon to Humbug Mountain, OR

Except as provided below during the selective fishery, the season will be as follows: April 1 through October 31. All salmon except coho. 2 fish per day. No more than 6 fish in 7 consecutive days. Legal gear is limited to artificial lures and plugs of any size, or bait no less than 6 in (15.2 cm) long (excluding hooks and swivels). All gear must have no more than 2 single point, single shank barbless hooks. Divers are prohibited and flashers may be used only with downriggers. See Oregon State regulations for a description of a closure at the mouth of Tillamook Bay.

Selective fishery: July 10 through earlier of July 31 or a landed catch of 15,000 coho. All salmon. 2 fish per day, all retained coho must have a healed adipose fin clip. No special gear restrictions except C.1. (single point, single shank, barbless hooks). The season will follow a cycle of 2 days open/2 days closed (i.e., open July 10–11; 14–15; 18–19; 22–23; 26–27; and 30–31). Depending on fishing effort and catch, inseason action may be used to adjust open days to effectively utilize the available quota. Note: On closed days during the selective fishery no angling for any species of salmon is allowed.

Humbug Mountain, OR to Horse Mountain, CA

May 29 through July 4 and July 29 through September 14. All salmon except coho. 1 fish per day. No more than 4 fish in 7 consecutive days. Klamath Control Zone (C.5.) closed during August. One rod per angler (C.2.).

Horse Mountain to Point Arena, CA

February 13 through July 4 and July 25 through November 14 (nearest Sunday to November 15). All salmon except coho. 2 fish per day. Special gear restriction C.3. (circle hooks when mooching) and 1 rod per angler (C.2.).

In 2000, the season will open February 12 (nearest Saturday to February 15) through April 30, for all salmon except coho. 2 fish per day, same gear and minimum size restrictions as in 1999.

Point Arena to Pigeon Point, CA

March 27 through October 31 (nearest Sunday to November 1). All salmon except coho. 2 fish per day. Minimum size limit 24 in except no size limit from August 1 through September 6 when the daily bag limit will be the first 2 fish and no catch-and-release angling is allowed. Sacramento Control Zone (C.5.) is closed from the opening of the season through March 31. Special gear restriction C.3. (circle hooks when mooching) and 1 rod per angler (C.2.).

In 2000, the season will open April 1 through April 30, for all salmon except coho. 2 fish per day. Minimum size limit 24 in and same gear restrictions as in 1999.

Pigeon Point to U.S.–Mexico Border

March 13 through September 6. All salmon except coho. 2 fish per day. Minimum size limit 24 in except no size limit from August 1 through September 6 when the daily bag limit will be the first 2 fish and no catch-and-release angling is allowed. North of Point Conception, special gear restriction C.3. (circle hooks when mooching) and one rod per angler (C.2.).

In 2000, the season is tentatively set to open March 18 (nearest Saturday to March 15) through April 30, for all salmon except coho. 2 fish per day. Minimum size limit 24 in and the same gear restrictions as in 1999. The Council will review the tentative opening at its November 1999 Council meeting and make final season recommendations at that time.

B. MINIMUM SIZE LIMITS

[Total length in inches]

Area (when open)	Chinook	Coho	Pink
North of Cape Falcon	24.0	16.0	None.
Cape Falcon to Horse Mountain	20.0	16.0	None, except 20.0 off CA.
South of Horse Mountain*	24.0*	—	20.0.

*Except when a ''first 2 fish bag limit'' is specified under the specific area regulations.
Metric equivalents for chinook: 24.0 in=61.0 cm, 20.0 in=50.8 cm.
Metric equivalents for coho: 16.0 in=40.6 cm.
Metric equivalents for pink: 20.0 in=50.8 cm.

C. SPECIAL REQUIREMENTS, DEFINITIONS, RESTRICTIONS, OR EXCEPTIONS

C.1. *Hooks:* Single point, single shank barbless hooks are required for all fishing gear north of Point Conception, California. Oregon Department of Fish and Wildlife regulations in the state-water fishery off Tillamook Bay may allow the use of barbed hooks to be consistent with inside regulations.

C.2. *Restriction on Number of Fishing Rods North of Point Conception, California:* All persons fishing for salmon, and all persons fishing from a boat with salmon on board, may use no more than one rod per angler.

C.3. *Special Gear Restrictions Between Horse Mountain and Point Conception, California:* Single point, single shank, barbless circle hooks must be used if angling by any means other than trolling and no more than 2 such hooks shall be used. When angling with 2 hooks, the distance between the hooks must not exceed 5 in (12.7 cm) when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). A circle hook is defined as a hook with a generally circular shape and a point which turns inwards, pointing directly

to the shank at a 90° angle. Circle hooks are not required when artificial lures are used *without* bait.

Trolling defined: Angling from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions, except when landing a fish.

C.4. *Compliance with Minimum Size or Other Special Restrictions:* All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

C.5. *Control Zone Definitions:*

a. Columbia Recreational Control Zone (modified from previous years)—An area at the Columbia River mouth bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N. lat., 124°06′50″ W. long.) and the green lighted Buoy #7 (46°15′09″ N. lat., 124°06′16″ W. long.); on the east by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N. lat., 124°03′07″ W. long. to its intersection with the north jetty; on the north by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14′48″ N. lat., 124°05′20″ W. long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and on the south by a line running northeast/southwest between the red lighted Buoy #4 and the tip of the south jetty (46°14′03″ N. lat., 124°04′05″ W. long.) and then along the south jetty to the point of intersection with the Buoy #10 line.

b. Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nm [11.1 km] north of the Klamath River mouth), on the west by 124°23′00″ W. long. (approximately 12 nm [22.2 km] off shore), and on the south by 41°26′48″ N. lat. (approximately 6 nm [11.1 km] south of the Klamath River mouth).

c. Sacramento Control Zone—The ocean area bounded by a line commencing at Bolinas Point (Marin County, 37°54′17″ N. lat., 122°43′35″ W. long.) southerly to Duxbury Buoy (37°51′37″ N. lat., 122°41′43″ W. long.) to Channel Buoy 1 (37°46′10″ N. lat., 122°37′56″ W. long.) to Channel Buoy 2 (37°45′48″ N. lat., 122°37′44″ W. long.) to Point San Pedro (San Mateo County, 37°35′40″ N. lat., 122°31′10″ W. long.).

C.6. *Inseason Management:* Regulatory modifications may become necessary inseason to meet preseason management objectives such as quotas, harvest guidelines and season duration. Actions could include modifications to bag limits or days open to fishing, and extensions or reductions in areas open to fishing.

The procedure for inseason coho transfer among recreational subareas north of Cape Falcon will be:

After conferring with representatives of the affected ports and the Salmon Advisory Subpanel recreational representatives north of Cape Falcon, NMFS may transfer coho inseason among recreational subareas to help meet the recreational season duration objectives (for each subarea). Any transfers between subarea quotas of 5,000 fish or less shall be done on a fish-for-fish basis.

At the November 1999 meeting, the Council will consider the proposed 2000 opening of the fishery south of Pigeon Point and make its final recommendations for the opening of that fishery.

At the March 2000 meeting, the Council will consider an inseason recommendation to open seasons for all salmon except coho prior to May 1 in areas off Oregon.

C.7. *Additional Seasons in State Territorial Waters:* Consistent with Council management objectives, the states of Washington and Oregon may establish limited seasons in state waters. Oregon state-water fisheries are limited to chinook salmon. Check state regulations for details.

D. QUOTAS

D.1. *North of Cape Falcon:* All non-treaty troll and recreational ocean fisheries will be limited by overall quotas of either 50,000 chinook or 130,000 coho. Preseason species trade of 3,500 chinook to the commercial fishery for 12,500 coho to the recreational fishery. Therefore, the recreational fishery will be limited by overall catch quotas of 21,500 chinook and 110,000 coho.

D.2. *Cape Falcon to Humbug Mountain:* Limited by a landed subarea catch quota of 15,000 coho in the July selective fishery.

Table 3.—Treaty Indian Management Measures for 1999 Ocean Salmon Fisheries

Note: This table contains important restrictions in parts A, B, and C which must be followed for lawful participation in the fishery.

A.—SEASON DESCRIPTIONS

Tribe and area boundaries	Open seasons	Minimum size limit (inches)			
		Salmon species	Chinook	Coho	Special restrictions by area
MAKAH—That portion of the Fishery Management Area (FMA) north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long..	May 1 through earlier of June 30 or chinook quota..	All except coho	24	.....	Barbless hooks. No more than 8 fixed lines.
	August 1 through earliest of September 15 or chinook or coho quota.	All	24	16	per boat or no more than 4 hand-held lines per person.
QUILEUTE—That portion of the FMA between 48°07′36″ N. lat. (Sand Point) and 47°31′42″ N. lat. (Queets River) and east of 125°44′00″ W. long..	May 1 through earlier of June 30 or chinook quota.	All except coho	24	.....	Barbless hooks. No more than 8 fixed lines.
	August 1 through earliest of September 15 or chinook or coho quota..	All	24	16	per boat.

A.—SEASON DESCRIPTIONS—Continued

Tribe and area boundaries	Open seasons	Minimum size limit (inches)			
		Salmon species	Chinook	Coho	Special restrictions by area
HOH—That portion of the FMA between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River) and east of 125°44′00″ W. long.	May 1 through earlier of June 30 or chinook quota.	All except coho	24	.....	Barbless hooks. No more than 8 fixed lines.
	August 1 through earliest of September 15 or chinook or coho quota..	All	24	16	Per boat.
QUINAULT—That portion of the FMA between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis) and east of 125°44′00″ W. long.	May 1 through earlier of June 30 or chinook quota.	All except coho	24	.....	Barbless hooks. No more than 8 fixed lines per boat.
	August 1 through earliest of September 15 or chinook or coho quota.	All	24	16	Per boat.

*Metric equivalents: 24 in=61.0 cm, 16 in=40.6 cm.

B.—SPECIAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS

B.1. All boundaries may be changed to include such other areas as may hereafter be authorized by a federal court for that tribe's treaty fishery.

B.2. Applicable lengths, in inches, for dressed, head-off salmon, are 18 in (45.7 cm) for chinook and 12 in (30.5 cm) for coho. Minimum size and retention limits for ceremonial and subsistence harvest are as follows: *Makah Tribe*—None. *Quileute, Hoh and Quinault tribes*—Not more than 2 chinook longer than 24 in (61.0 cm) in total length may be retained per day. Chinook less than 24 in total length may be retained.

B.3. The area within a 6-mile (9.7 km) radius of the mouths of the Queets River (47°31′42″ N. lat.) and the Hoh River (47°45′12″ N. lat.) will be closed to commercial fishing. A closure within 2 miles (3.2 km) of the mouth of the Quinault River (47°21′00″ N. lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C.—QUOTAS

C.1. The overall treaty troll ocean quotas are 30,000 chinook and 38,500 coho. The overall chinook quota is divided into 20,000 chinook for the May–June chinook-directed fishery and 10,000 chinook for the August–September all-salmon season. If the chinook quota for the May–June fishery is not fully utilized, the excess fish may not be transferred into the later all-salmon season. The quotas include troll catches by the S'Klallam and Makah Tribes in Washington State Statistical Area 4B from May 1 through September 30.

Halibut Retention

Under the authority of the Northern Pacific Halibut Act, NMFS promulgated regulations governing the Pacific halibut fishery which appear at 50 CFR part 300, subpart E. In addition, the 1999 management measures were published in the **Federal Register** on March 19, 1999 (64 FR 13519). The regulations and management measures provide that vessels participating in the salmon troll fishery in Area 2A (all waters off the States of Washington, Oregon, and California), which have obtained the appropriate International Pacific Halibut Commission (IPHC) license, may retain halibut caught incidentally during authorized periods in conformance with provisions published with the annual salmon management measures. A salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut, but not both.

The following measures have been approved. The operator of a vessel who has been issued an incidental halibut harvest license by the IPHC may retain Pacific halibut caught incidentally in Area 2A, during authorized periods, while trolling for salmon. Incidental harvest is authorized only during May and June troll seasons. It is also authorized after July 31 if halibut quota remains and if halibut retention is announced on the NMFS hotline (phone 800–622–9825). License holders may land no more than 1 halibut per each 5 chinook, except 1 halibut may be landed without meeting the ratio requirement, and no more than 35 halibut may be landed per trip. Halibut retained must meet the minimum size limit of 32 in (81.3 cm). The Oregon Department of Fish and Wildlife and Washington Department of Fish and Wildlife will monitor landings and, if they are projected to exceed the 23,490-pound (10.7-mt) preseason allocation or the Area 2A non-Indian commercial total allowable catch of halibut, NMFS will take inseason action to close the incidental halibut fishery. License applications for incidental harvest must be obtained from the IPHC. Applicants must apply prior to April 1 of each year.

Gear Definitions and Restrictions

In addition to the gear restrictions shown in Tables 1, 2, and 3, the following gear definitions and restrictions will apply.

Troll Fishing Gear

Troll fishing gear for the ocean salmon fisheries in the exclusive economic zone off Washington, Oregon, and California is defined as one or more lines that drag hooks behind a moving fishing vessel.

In that portion of the fishery management area (FMA) off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Recreational Fishing Gear

Recreational fishing gear for the FMA is defined as angling tackle consisting of a line with no more than one artificial lure or natural bait attached.

In that portion of the FMA off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a

hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington.

In that portion of the FMA off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed 4 pounds (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon and no person fishing from a boat with salmon on board, may use more than one rod and line.

Fishing includes any activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

Geographical Landmarks

Wherever the words ''nautical miles off shore'' are used in this document, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this document are at the following locations:

Cape Flattery	48°23′00″ N. lat.
Cape Alava	48°10′00″ N. lat.
Queets River	47°31′42″ N. lat.
Leadbetter Point	46°38′10″ N. lat.
Cape Falcon	45°46′00″ N. lat.
Humbug Mountain	42°40′30″ N. lat.
Sisters Rocks	42°35′45″ N. lat.
Mack Arch	42°13′40″ N. lat.
House Rock	42°06′32″ N. lat.
Oregon-California Border	42°00′00″ N. lat.
Humboldt South Jetty	40°45′53″ N. lat.
Horse Mountain	40°05′00″ N. lat.
Point Arena	38°57′30″ N. lat.
Fort Ross	38°31′00″ N. lat.
Point Reyes	37°59′44″ N. lat.
Point San Pedro	37°35′40″ N. lat.
Pigeon Point	37°11′00″ N. lat.
Point Conception	34°27′00″ N. lat.

Inseason Notice Procedures

Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, 206–526–6667 or 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed with the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

Classification

This notification of annual management measures is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for public comment. The Council solicited public comment on these measures and has notified the public of the measures it recommended for implementation. In February 1999, the Council made available to the public several documents that compiled and analyzed biological and socioeconomic data for the previous year's fishery and salmon stock abundance estimates for the current year. Two Council meetings followed, one in March and one in April, at which the Council received public testimony. In between these meetings, the Council published proposed management measures and requested public comment on them. After the Council took final action on the annual ocean salmon specifications in April, it published the recommended management measures in its newsletter, which reached a large portion of the affected public. Providing for additional prior notice and opportunity for public comments on these measures through a rulemaking process would be impracticable and contrary to the public interest. Given the extremely low returns of many ocean salmon stocks listed or proposed for listing under the Endangered Species Act, the need to prevent overfishing, and the need to facilitate a level of escapement to meet the requirements of the resource and inside fisheries, it is essential to have these measures effective at the beginning of the fishing year. Failure to implement these measures immediately could compromise the status of certain stocks and negatively impact international, state, and tribal salmon fisheries, thereby undermining the purposes of this agency action.

For the reasons discussed above, NMFS has determined that good cause exists to waive the requirements of 50 CFR 660.411 for prior notice and opportunity for public comments. Section 660.411 of title 50, Code of Federal Regulations, requires NMFS to publish an action implementing management measures for ocean salmon fisheries each year and, if time allows, invite public comment prior to the effective date. Section 660.411 further states that if, for good cause, an action must be filed without affording a prior opportunity for public comment, the measures will become effective; however, public comments on the action will be received for a period of 15 days after filing of the action with the Office of the Federal Register. NMFS will receive public comments on this action for 15 days from the date of filing this action with the Office of the Federal Register.

The AA also finds good cause under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness of this rule. The finding of good cause is based upon the public's interest in having these provisions in place by the start of the ocean salmon fishing year (May 1, 1999). As previously discussed, these measures are essential to conserve threatened and endangered ocean salmon stocks, to provide for harvest of more abundant stocks, and to provide for harvest of ocean salmon in international, state, and tribal fisheries. The finding of good cause to waive the 30-day delay in effectiveness is also based on the limited time available to implement these new measures after the final Council meeting in April and before the commencement of the ocean salmon fishing year on May 1.

To enhance notification of the fishing industry of these new measures, NMFS will announce the new measures over the telephone hotline used for inseason management actions and by U.S. Coast Guard Notice to Mariners Broadcast. NMFS also will advise the States of Washington, Oregon, and California, which announce the seasons for applicable state and Federal fisheries through their own public notification systems.

In a March 8, 1996, biological opinion and a February 18, 1997, addendum, NMFS considered the impacts to the then listed salmon species, including Snake River fall chinook, spring/summer chinook and sockeye salmon, and the Sacramento River winter chinook, resulting from fisheries conducted in conformance with the FMP. Two additional biological opinions were issued April 30, 1997 and April 29, 1998, which addressed impacts to the growing catalog of listed species for the respective annual regulatory year from May 1 to April 30. Since the issuance of the April 29, 1998, opinion, NMFS has listed 10 new populations of salmon as threatened or endangered under the ESA: Two steelhead, four chinook, one coho, two chum, and one sockeye. In addition NMFS has deferred final decision on three proposed evolutionarily significant units (ESUs), and a proposed expansion of one other chinook salmon ESU for listing. NMFS reinitiated consultation and issued two biological opinions which address the potential effects of ocean salmon fisheries to

newly listed species under the ESA; those opinions were signed on April 28, 1999, covering the three listed coho ESUs in the ocean salmon fisheries and Amendment 13 to the FMP, and on April 30, 1999, covering the ocean salmon fisheries for this season through April 30, 2000.

Prior to the start of the preseason planning process, NMFS sent a letter to the Council, dated March 1, 1999, summarizing its guidance on protective measures for listed species. The Council's recommended management measures comply with NMFS guidance, reasonable and prudent alternatives of jeopardy decisions, and the terms and conditions of the incidental take statements in all of the outstanding applicable biological opinions related to listed salmon species that may be affected by Council fisheries.

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

Dated: April 30, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–11278 Filed 4–30–99; 2:43 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 64, No. 86
Wednesday, May 5, 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

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AF79

Production Flexibility Contracts for Wheat, Feed Grains, Rice, and Upland Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Commodity Credit Corporation (CCC) is issuing this Advance Notice of Proposed Rulemaking (ANPRM) to invite comment from all interested parties on reductions of Production Flexibility Contract (PFC) payments that were affected by the planting of fruits or vegetables in violation of section 118 (b)(1) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7218 (b)(1).

DATES: Comments must be received on or before June 2, 1999 to be assured consideration.

ADDRESSES: Comments should be directed to Sharon Biastock, Farm Service Agency (FSA), STOP 0517, 1400 Independence Avenue, S.W., Washington DC 20250–0517.

FOR FURTHER INFORMATION CONTACT: Sharon Biastock, (202) 720–6336.

SUPPLEMENTARY INFORMATION:

Background

The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) provided producers the opportunity to enter into Production Flexibility Contracts (PFC's). The 1996 Act prohibited the planting of fruits and vegetables on PFC acreage except as provided by specific exceptions. Two exceptions require the application of an acre-for-acre payment reduction for each acre of fruit or vegetables planted on PFC acreage. A violation of the PFC occurs when producers do not comply with the fruit and vegetable provisions and the exceptions unless it is determined that the violation is not serious enough to warrant termination of the PFC. The 1996 Act provides that if the Secretary determines that a violation does not warrant termination of the PFC, the Secretary may require the owner or producer subject to the contract to: (1) refund to the Secretary that part of the contract payments received by the owner or producer during the period of the violation, together with interest on the contract payments as determined by the Secretary; or (2) to accept a reduction in the amount of future contract payments that is proportionate to the severity of the violation, as determined by the Secretary.

Under current regulations, if the county FSA committee determines that a planting violation does not warrant termination of the PFC, a reduction may be made in the current or future contract payments, proportionate to the severity of the violation and equal to the sum of either or both: (1) The market value of the fruits and vegetables planted on contract acreage, and (2) the contract payment for each contract acre. The market value is determined by the State committee for the specific fruit or vegetable without any adjustment to reflect costs associated with planting, cultivating or harvesting the fruit or vegetable. If the number of acres on the farm planted to fruits or vegetables exceeds the total PFC acreage and more than one fruit or vegetable has been planted on the farm, the calculation is based on the fruit or vegetable determined to have the highest value. If the acreage of fruit or vegetable with the highest value is less than the acres in violation, the calculation for the remaining acres in violation is based on the fruit or vegetable with the next highest value. The payment reduction is applied to current PFC payments and any future PFC payments for the farm on which the violation occurred and any other farm in which the producers who share in PFC payments on the violating farm have an interest.

For example, if the county committee determines that 25 acres of fruit or vegetables were planted on PFC acreage in violation of the PFC, but the violation did not warrant termination of the PFC, a payment reduction for the planting violation would be assessed in addition to an acre for acre reduction for each of the 25 acres. If, on the farm in this example, the producer planted 100 acres of green peas, which the State committee determined had a value of $500 per acre, and 1 acre of celery, which the State committee determined had a value of $3,000 per acre, the payment reduction for the planting violation in this example would be $15,000 plus a PFC payment reduction for 25 acres. The $15,000 payment reduction for the planting violation represents the value of the 1 acre of celery and 24 acres of green peas, as determined by the State committee. This payment reduction would be applied to the current year PFC payments and any future PFC payments for the farm on which the planting violation occurred and any other farm in which the producers sharing in the PFC payments for the farm on which the planting violation occurred have an interest.

The payment reductions calculated in accordance with the current implementing regulations and procedure are viewed by some to be out of proportion to the severity of the fruit or vegetable planting violation. Accordingly, as indicated below, the public is invited to comment on PFC violations for planting fruits and vegetables.

Purpose

The purpose of this ANPRM is to seek comments on: (1) the appropriateness of the current method of calculating PFC payment reductions as a result of a fruit or vegetable planting violation as set forth in 7 CFR 1412.206; (2) alternative methods for calculating PFC payment reductions for fruit or vegetable planting violations, if the current method of calculation is considered inappropriate; (3) the retroactivity of any change in the method of calculating payment reductions; and (4) the effect any change in the method of calculating payment reductions should have on PFC's which have been terminated, or for which contract acreage was reduced, because of the current method of calculating payment reductions for fruit or vegetable planting violations.

Signed at Washington, DC, on April 28, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–11229 Filed 5–4–99; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 19, 20, 21, 30, 40, 51, 60, 61, and 63

RIN 3150–AG04

Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca, Mountain, Nevada

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On February 22, 1999 (64 FR 8640), the NRC published for a 75-day public comment period a proposed rule establishing licensing criteria for disposal of spent nuclear fuel and high-level radioactive wastes in a proposed geologic repository at Yucca Mountain, Nevada. The comment period for the proposed rule was to have expired on May 10, 1999. The NRC received several requests for extension of the public comment period at public meetings held on the proposed rule in Las Vegas, and Beatty, Nevada, on March 23 and March 25, respectively. The requesters cited the complex, technical nature of the proposed rule, and their need to review other documents being developed as part of the nation's high-level radioactive waste management program, as principal reasons for the extension request.

The NRC has decided to extend the public comment period for an additional 51 days. The extended comment period will now expire on June 30, 1999.

DATES: The public comment period has been extended and now expires June 30, 1999. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent by mail to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site 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 site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received and the regulatory analysis, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Timothy McCartin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6681; e-mail tjm3@nrc.gov, or Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203; e-mail cwp@nrc.gov.

Dated at Rockville, Maryland, this 29th day of April, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–11243 Filed 5–4–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–41–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 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 Boeing Model 747 series airplanes. This proposal would require a one-time inspection to determine whether latch pins on the lower lobe and main deck side cargo doors are installed backward, and corrective actions, if necessary. For certain airplanes, this proposal also would require eventual modification of the latch pin fittings on certain cargo doors. This proposal is prompted by reports that latch pins have been found installed backward on the cargo doors of several airplanes. The actions specified by the proposed AD are intended to prevent improper latching of latch pins and the mating latch cam on the cargo door, which could result in damage to the structure of the cargo door and doorway cutout and consequent opening of the cargo door during flight.

DATES: Comments must be received by June 21, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–41–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Julie Alger, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2779; fax (425) 227–1181.

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 99–NM–41–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. 99–NM–41–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that latch pins have been found installed backward on the forward and aft lower lobe cargo doors of Boeing Model 747 series airplanes. One operator found one latch pin installed backward, and another operator found three of eight latch pins installed backward. In the reported cases, the backward pins have all been found on the lower lobe cargo doors, though similar pins are installed on the main deck side cargo door on airplanes equipped with such a door. Investigation has revealed that latch pins that are removed during maintenance activities can be installed backward such that the pins extend from the wrong end of the latch pin fitting. Backward installation of the latch pins results in improper latching of the pins and the mating latch cam on the cargo door. Such improper latching increases load on the adjacent latch pins and fittings, latch cams, and support structure, which could lead to damage to the structure of the cargo door and doorway cutout. This condition, if not corrected, could result in the cargo door opening during flight.

Explanation of Relevant Service Infomation

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–52A2258, dated June 1, 1995; as revised by Notices of Status Change 747–52A2258 NSC 1, dated July 20, 1995; 747–52A2258 NSC 2, dated August 31, 1995; and 747–52A2258 NSC 03, dated December 14, 1995. That alert service bulletin describes procedures for a one-time visual inspection to determine whether latch pins on the forward and aft lower lobe cargo doors and the main deck side cargo door are installed correctly, and corrective actions, if necessary. The corrective actions include reinstalling the pin correctly, and inspecting the affected cargo door and doorway cutout to detect damage. If any latch pins are found installed backward, the alert service bulletin specifies to contact Boeing for structural inspection procedures.

The FAA also has reviewed and approved Boeing Service Bulletin 747–52–2260, Revision 1, dated March 21, 1996, which describes procedures for modification of the latch pin fittings on the forward and aft lower lobe cargo doors. The modification will prevent backward installation of the latch pins. Accomplishment of the actions specified in the alert service bulletin and the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin and service bulletin described previously, except as discussed below.

Differences Between Alert Service Bulletin and This Proposed AD

Operators should note that, although Boeing Alert Service Bulletin 747–52A2258 specifies that the manufacturer may be contacted for instructions for structural inspections, this AD would require such inspections to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 990 airplanes of the affected design in the worldwide fleet. The FAA estimates that 235 airplanes of U.S. registry would be affected by the proposed AD.

It would take approximately 2 work hours per to accomplish the proposed inspection, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $28,200, or 120 per airplane.

It would be approximately 3 work hours per airplane to accomplish the proposed modification, at the average labor rate $60 per work hour. Required parts would cost approximately $2,045 per airplane. Based on their figures, the cost impact of the proposed AD on U.S. operators is estimated to be $522,875, or $2,225 per airplane.

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.

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:

Boeing: Docket 99–NM–41–AD.

Applicability: Model 747 series airplanes, line positions 1 through 1079 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper latching of latch pins and the mating latch cam on the cargo door, which could result in damage to the structure of the cargo door and doorway cutout and consequent opening of the cargo door during flight, accomplish the following:

Inspection and Corrective Actions

(a) Within 30 days after the effective date of this AD, perform a one-time visual inspection to determine whether latch pins on the forward and aft lower lobe cargo doors and the main deck side cargo door are installed backward, in accordance with Boeing Alert Service Bulletin 747–52A2258, dated June 1, 1995; as revised by Notices of Status Change 747–52A2258 NSC 1, dated July 20, 1995; 747–52A2258 NSC 2, dated August 31, 1995; and 747–52A2258 NSC 03, dated December 14, 1995. If any latch pin is found installed incorrectly, prior to further flight, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Reinstall the affected latch pin correctly, in accordance with the alert service bulletin.

(2) Perform structural inspections to detect damage of the affected cargo door and doorway cutout, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Modification

(b) For airplanes having line positions 1 through 1078 inclusive: Within 2 years after the effective date of this AD, modify the latch pin fittings of the forward and aft lower lobe cargo doors, in accordance with Boeing Service Bulletin 747–52–2260, Revision 1, dated March 21, 1996.

Note 2: Modification of the latch pin fittings accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–52–2260, dated December 14, 1995, is considered acceptable for compliance with paragraph (b) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on April 28, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11225 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA–182P]

21 CFR Part 1308

Schedules of Controlled Substances: Proposed Placement of Zaleplon into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to place the substance zaleplon, including its salts, into Schedule IV of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Assistant Secretary for Health and Surgeon General of the Department of Health and Human Services (DHHS) and on an evaluation of the relevant data by the DEA. If finalized, this action will impose the regulatory controls and criminal sanctions of Schedule IV on those who handle zaleplon and products containing zaleplon.

DATES: Comments, objections and requests for a hearing must be received on or before June 4, 1999.

ADDRESSES: Comments, objections and requests for a hearing should be submitted in quintuplicate to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537; Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION: Zaleplon is a central nervous system (CNS) depressant that is being considered for marketing approval by the Food and Drug Administration (FDA), under the trade name SONATA™. Zaleplon is a sedative-hypnotic in the pyrazolopyrimidine class, chemically distinct from the benzodiazepines, which competitively binds to the gamma-aminobutyric acid, type A ($GABA_A$, central benzodiazepine receptor. Its pharmacology, abuse and dependence liabilities are similar to those of the benzodiazepines that are currently listed in Schedule IV of the CSA. In clinical trials zaleplon was found to be approximately 100-times less potent but equivalent in its potential for abuse when compared to the prototypic benzodiazepine, triazolam; triazolam is in Schedule IV of the CSA. Zaleplon will be marketed as a prescription drug product for the short-term treatment of insomnia.

Zaleplon is N–[3–(3-cyanopyrazol [1,5-alpyrimidin-7-yl]-N-ethylacetamide, and has been identified by code names CL–284,846 and ZAL–846. There are no asymmetric centers in the molecule or any optical isomers. Zaleplon has a rapid onset and short duration of action, and forms no pharmacologically-active metabolite in man. Zaleplon reduces sleep latency but has a relatively insignificant effect on total sleep time. These pharmacokinetic characteristics of zaleplon should prevent any long-term carryover or hangover effects. However, zaleplon has shown a mild to moderate benzodiazepine-like withdrawal syndrome after acute and continuous dosing studies in baboons.

Zaleplon has demonstrated significant muscle relaxant, ataxic, anticonvulsant, and anxiolytic effects and cognitive impairments in preclinical screening assays. Zaleplon is reinforcing in animals as demonstrated by self-administration studies. It produces euphoria, alterations in mood, perception, memory and subjective effects in humans typical of other benzodiazepines with abuse potential in Schedule IV.

The complexity of the synthesis procedure for preparation of zaleplon precludes a likely synthesis of the drug substance outside a laboratory environment and by individuals lacking training in organic chemistry synthesis. Hallucinations, amnesia, depression and hostility were the most serious adverse events related to the use of zaleplon during the clinical trials. Zaleplon-related overdoes were also noted during the clinical trails. Zaleplon-related overdoes were also noted during the clinical development program. The FDA has concluded that zaleplon's abuse potential appears to be lower than that of Schedule II depressants and similar

to the Schedule IV benzodiazepines. On March 31, 1999, the Assistant Secretary for Health and Surgeon General, Department of Health and Human Services (DHHS), sent the Deputy Administrator of DEA a letter recommending that zaleplon, and its salts, be placed into Schedule IV of the CSA (21 U.S.C. 801 *et seq.*). Enclosed with the March 31, 1999, letter was a document prepared by the FDA entitled, ''Basis for the Recommendation for Control of Zaleplon in Schedule IV of the Controlled Substances Act (CSA).'' The document contained a review of the factors which the CSA requires the Secretary to consider [21 U.S.C. 811(b)].

The correspondence from the Assistant Secretary for Health and Surgeon General to the DEA dated March 31, 1999, confirmed that FDA had determined that the New Drug Application (NDA) for zaleplon was ''approvable'' and had issued an approvable letter to the NDA sponsor on January 6, 1999. According to the March 31, 1999, letter from DHHS, ''upon full approval of the NDA, zaleplon will have a currently accepted medical use in treatment in the United States.''

The factors considered by the Assistant Secretary of Health and Surgeon General and the DEA with respect to zaleplon were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effects;

(3) The state of current scientific knowledge regarding the drug;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

21 U.S.C. 811(c).

Relying on the recommendation of the Assistant Secretary for Health and Surgeon General, received in accordance with section 201(b) of the Act [21 U.S.C. 811(b)], and the independent review of the available data by the DEA, the Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the Act [21 U.S.C. 811(a) and 811(b)], find that:

(1) Based on information now available, zaleplon has a low potential for abuse relative to the drugs or other substances in Schedule III;

(2) Zalepon will, upon approval of an NDA by the FDA, have a currently accepted medical use in treatment in the United States; and

(3) Abuse of zaleplon may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

21 U.S.C. 812(b)(4).

Based on these findings, the Deputy Administrator of the DEA concludes that zaleplon, including its salts, warrants control in Schedule IV of the CSA, if and when the zaleplon NDA is approved by the FDA. It is noted that zaleplon does not have optical isomers to be controlled under this action.

Interested persons are invited to submit their comments, objections or requests for a hearing, in writing, with regard to this proposal. Requests for a hearing should state, with particularity, the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Deputy Administrator, Drug Enforcement Administration, Washington, DC, 20537. Attention: DEA Federal Register Representative/CCR. In the event that comments, objections, or requests for a hearing raise one or more issues which the Deputy Administrator finds warrants a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

In accordance with the provisions of the CSA [21 U.S.C. 811(a)], this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, section 3(d)(1). The Deputy Administrator, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Zaleplon products will be prescription drugs used for the short-term treatment of insomnia. Handlers of zaleplon also handle other controlled substances used to treat insomnia which are already subject to the regulatory requirements of the CSA.

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices: or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

This rule 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 E.O. 12612, it is determined that this rule, if finalized, will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA [21 U.S.C. 811(a)], and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—(AMENDED)

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.14 is proposed to be amended by redesignating the existing paragraph (c)(48) to (c)(49) and by adding a new paragraph (c)(48) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(48) Zaleplon 2781

* * * * *

Dated: April 26, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–11289 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208156–91]

RIN 1545–AQ30

Accounting for Long-Term Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations describing how income from a long-term contract must be accounted for under section 460 of the Internal Revenue Code, which was enacted by the Tax Reform Act of 1986. A taxpayer manufacturing or constructing property under a long-term contract will be affected by these proposed regulations. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written comments and outlines of oral comments to be presented at the public hearing scheduled for September 14, 1999, at 10 a.m. must be received by August 3, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–208156–91), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–208156–91), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax__regs/regslist.html. The public hearing will be held in the IRS Auditorium, 7th Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John M. Aramburu or Leo F. Nolan II at (202) 622-4960; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Michael L. Slaughter of the Regulations Unit at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by July 6, 1999. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.460–1(e)(4). The information collected in § 1.460–1(e)(4) is required to notify the Commissioner of the taxpayer's decision to sever or aggregate one or more contracts under the regulations. This collection of information is mandatory. The likely respondents are for-profit entities.

Estimated total reporting burden: 50,000 hours.

Estimated average burden per respondent: 1 hour.

Estimated number of respondents: 50,000.

Estimated annual frequency of responses: On occasion.

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.

Background

Section 460, which was enacted by section 804 of the Tax Reform Act of 1986 (1986 Act), Public Law 99–514 (100 Stat. 2085, 2358–2361), generally requires a taxpayer to determine the taxable income from a long-term contract using the percentage-of-completion method. Section 460 was amended by section 10203 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203 (101 Stat. 1330, 1330–394); by sections 1008(c) and 5041 of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647 (102 Stat. 3342, 3438–3439 and 3673–3676); by sections 7621 and 7811(e) of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239 (103 Stat. 2106, 2375–2377 and 2408–2409); by section 11812 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 (104 Stat. 1388, 1388–534 to 1388–536); by sections 1702(h)(15) and 1704(t)(28) of the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755, 1874, 1888); and by section 1211 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788, 998–1000).

Section 460(h) directs the Secretary to prescribe regulations to the extent necessary or appropriate to carry out the purpose of section 460, including regulations to prevent a taxpayer from avoiding section 460 by using related parties, pass-through entities, intermediaries, options, and other similar arrangements.

Explanation of Provisions

1. Overview

Before the enactment of section 460, § 1.451–3 of the Income Tax Regulations permitted a taxpayer to determine the income from a long-term contract using either the completed-contract method (CCM) or the percentage-of-completion method, in addition to the cash receipts and disbursements method, if otherwise permissible, or an accrual method. Under the CCM, a taxpayer does not report income until a contract is complete, even though payments are received in years prior to completion. The percentage-of-completion method, on the other hand, requires a taxpayer to recognize income according to the percentage of the contract that is completed during each taxable year.

Section 460 generally requires the income from a long-term contract to be determined using the percentage-of-completion method based on a cost-to-

cost comparison (PCM). However, the income from certain exempt construction contracts still may be determined using the CCM, the exempt-contract percentage-of-completion method (EPCM), or any other permissible method. Contracts that are not long-term contracts must be accounted for using a permissible method of accounting other than a long-term contract method (i.e., a method other than the PCM, the CCM, or the EPCM). See section 446 and the regulations thereunder.

The IRS and Treasury Department provided guidance on section 460 in Notice 89–15 (1989–1 C.B. 634) and in Notice 87–61 (1987–2 C.B. 370). These proposed regulations generally incorporate the relevant provisions of § 1.451–3 and the notices under section 460. However, these proposed regulations also modify and amplify certain rules provided in § 1.451–3 and notices under section 460. Specifically, for example, these regulations provide an exception for de minimis construction activities, modify the contract completion rules, clarify the treatment of non-long-term contract activities, modify the severing and aggregating rules to emphasize pricing and to prevent severance by taxpayers of contracts accounted for using the PCM, clarify the consistency rule provided in Notice 89–15, provide an inventory exception to the related party rules, provide safe harbors for determining whether a manufactured item is unique, and modify the normal time to complete an item to conform to the production period in section 263A.

These proposed regulations will apply to any contract entered into on or after final regulations are published in the **Federal Register**.

2. Definition of Long-Term Contract

Under section 460(f), *long-term contract* generally means any contract for the manufacture, building, installation, or construction of property if the contract is not completed within the taxable year the taxpayer enters into the contract (contracting year). For this purpose, *manufacturing* concerns only personal property, and *building, installation,* and *construction* (construction) concern only real property.

Section 460 continues the policy established in § 1.451–3(b)(1) of excluding a manufacturing contract from the definition of long-term contract unless the contract involves the manufacture of (1) a unique item of a type that is not normally included in the finished goods inventory of the taxpayer or (2) an item normally requiring more than 12 calendar months to complete, regardless of the duration of the contract.

A contract is a contract for the manufacture or construction of property if such activities are necessary for the taxpayer's contractual obligations to be fulfilled and are not complete when the parties enter into the contract. However, a contract is not a construction contract if it requires the provision of land by the taxpayer and the estimated total allocable contract costs attributable to the taxpayer's construction activities are less than 10 percent of the total contract price. This de minimis construction rule may affect the result of facts similar to those in *Foothill Ranch Company Partnership* v. *Commissioner,* 110 T.C. No. 8 (1998), in which the Tax Court concluded that the sale of land could be accounted for using the PCM since construction of buildings and improvements was necessary to fulfill the taxpayer's obligations under the sales agreements and those obligations were not completed in the tax year of the sale.

3. Date Taxpayer Enters Into a Long-Term Contract

The proposed regulations provide that a taxpayer enters into a long-term contract in the taxable year that the contract binds both the taxpayer and the customer under applicable law. If a taxpayer delays entering into a contract to avoid section 460, however, the taxpayer will be treated as having entered into the contract on the date the taxpayer or a related party incurs any allocable contract costs, other than bidding or negotiating costs. If a taxpayer must sever an accepted change order or exercised option from a long-term contract, the taxpayer enters into another contract with the customer when the change order is accepted by the taxpayer or when the option is exercised by the customer, whichever is applicable.

4. Date Taxpayer Completes a Long-Term Contract

The proposed regulations provide that a long-term contract is completed in the earlier taxable year (completion year) that: (1) the customer uses the subject matter for any purpose (other than testing) and 5 percent or less of the total allocable contract costs attributable to the subject matter remain to be incurred by the taxpayer; or (2) the subject matter of the contract is finally completed and accepted. A taxpayer must determine whether a contract has been finally completed and accepted during the taxable year based upon an analysis of all relevant facts and circumstances. To the extent that the ''use'' rule requires a taxpayer to treat a contract as completed before final completion and acceptance have occurred, the proposed regulations explicitly adopt a rule different from that considered in *Ball, Ball and Brosamer, Inc.* v. *Commissioner,* 964 F.2d 890 (9th Cir. 1992), *aff'g* T.C. Memo. 1990–454. In *Ball,* the Ninth Circuit held that the contract for construction of a space shuttle complex was not completed in 1983, notwithstanding that the performance report indicated the contract was 100 percent complete and the customer was using the subject matter for its intended purpose, since the remaining work to be done in 1984 (such as installing runway extensions, airfield lighting, drainage and a laser tracking system) was an integral part of the contract and the contract specifically provided that use was not deemed acceptance.

The regulations also provide that if a contract accounted for using the CCM requires the construction of a primary subject matter and a secondary subject matter, the contract is completed when the primary subject matter is completed. A taxpayer must separate the gross receipts and costs related to the incomplete secondary item(s) from the long-term contract and account for them using a permissible method of accounting.

5. Non-Long-Term Contract Activities

The performance of any activity other than manufacturing or construction is a non-long-term contract activity. If the performance of a non-long-term contract activity, such as engineering and designing, is incident to or necessary for the manufacture or construction of the subject matter of one or more of the taxpayer's long-term contracts, the taxpayer must allocate the gross receipts and costs attributable to that activity to the long-term contract(s) benefitted. Otherwise, the proposed regulations require the taxpayer to account for such gross receipts and costs using a permissible method of accounting other than a long-term contract method of accounting. See Rev. Rul. 82–134 (1982–2 C.B. 88) (engineering and construction management services); Rev. Rul. 80–18 (1980–1 C.B. 103) (engineering and construction management services); and Rev. Rul. 70–67 (1970–1 C.B. 117) (architectural services).

6. Severing and Aggregating Contracts

Section 460(f)(3) provides that the Secretary may prescribe regulations to treat two or more contracts which are interdependent as one contract and to respect a contract which is properly

treated as an aggregation of separate contracts. The proposed regulations allow the Commissioner, and generally require a taxpayer, to sever and aggregate contracts when necessary to clearly reflect income.

The proposed rules provide three criteria for determining whether severance or aggregation is required. First, independent pricing of items is necessary for an agreement to be severed into two or more contracts. On the other hand, interdependent pricing of items in separate agreements is necessary for two or more agreements to be aggregated into one contract. Second, an agreement may not be severed into two or more contracts, unless it provides for separate delivery or separate acceptance of portions of the subject matter of the agreement. However, separate delivery or separate acceptance of portions of the subject matter of the agreement by itself does not necessarily require severance of the agreement. Third, an agreement may not be severed into two or more contracts if a reasonable businessperson would not have entered into separate agreements containing the terms allocable to each severed contract. Similarly, two or more agreements may not be aggregated into one contract, unless a reasonable businessperson would not have entered into one of the agreements for the terms agreed upon without also entering into the other agreement. The criteria adopted in the proposed regulations generally are consistent with the Tax Court's conclusions in *Sierracin Corporation* v. *Commissioner,* 90 T.C. 341 (1988), *acq.* 1990–2 C.B. 1, and *General Dynamics Corporation* v. *Commissioner,* T.C. Memo 1997–420.

Under the proposed regulations, a taxpayer may not apply the severance rule described in the preceding paragraph if the entire contract would be accounted for using the PCM. However, the Commissioner may sever a contract accounted for using the PCM as necessary to clearly reflect income. In addition, a taxpayer must sever a long-term contract (not accounted for using the PCM) that increases the number of units to be supplied to the customer, such as through the exercise of an option or the acceptance of a ''change order,'' if the contract provides for separate delivery or separate acceptance of the additional units.

7. Classifying Long-Term Contracts

The proposed regulations provide that a taxpayer's method of classifying contracts is a method of accounting. Thus, a taxpayer must request the consent of the Commissioner to change its method of classifying contracts. However, if the classification of a particular type of contract is no longer appropriate for subsequent contracts of that type as a result of a change in underlying facts, such as when a manufactured item no longer is unique due to a reduction in the extent of design or no longer requires 12 months to produce, a change in the classification of such subsequent contracts is not a change in method of accounting. To the extent that the consistency rule in Notice 89–15 (Q&A–7) was interpreted to prevent taxpayers from changing the classification of a particular type of subsequent contracts when the underlying facts have changed, the proposed regulations clarify the consistency rule.

Under the proposed regulations, a taxpayer must classify a contract that requires the taxpayer to manufacture personal property and to construct real property separately as a manufacturing and a construction contract, unless 95 percent or more of the estimated total allocable contract costs are reasonably allocable to the manufacturing activities or to the construction activities (in which case the taxpayer may chose to classify as either a manufacturing or a construction contract, as appropriate).

8. Long-Term Contracts of Related Parties

The proposed regulations contain rules similar to those in Notice 89–15 (Q&A–8) for an activity of a taxpayer that is incident to or necessary for a related party's long-term contract subject to PCM. The taxpayer must account for the gross receipts and costs from such an activity using the PCM, even if this activity is not otherwise subject to section 460. The proposed regulations contain an inventory exception for subassemblies and components sold to a related party, however, when the taxpayer regularly carries these items in its finished goods inventories and 80 percent or more of the gross receipts from the sale of these items typically comes from unrelated parties.

To determine the percentage of the contract that has been completed by the end of the taxable year (completion factor), the taxpayer with the long-term contract must take into account the related party's activity that is incident to or necessary for its long-term contract at the time it incurs the liability to the related party, rather than when the related party incurs costs to perform the activity.

9. Unique Items

Section 460 applies if a taxpayer manufactures a unique item of a type that is not normally included in the finished goods inventory of the taxpayer and if the contract is not completed by the close of the contracting year. As in § 1.451–3(b)(1)(ii), the proposed regulations provide that *unique* means specifically designed for the needs of a customer. Thus, a contract may require the taxpayer to manufacture more than one unit of a unique item.

The proposed regulations contain three safe harbors concerning contracts to manufacture unique items. First, an item is not unique if the taxpayer normally completes the item within 90 days. Second, an item customized from a taxpayer's existing design is not unique if the total allocable contract costs attributable to customizing activities that are incident to or necessary for the production of the item does not exceed 5 percent of the estimated total costs allocable to the item. Thus, contracts to manufacture items that do not require either significant design or lengthy production periods ordinarily will not be subject to section 460. Third, a unique item ceases to be unique no later than when the taxpayer normally carries similar items in its finished goods inventory.

The proposed regulations adopt criteria different from those in *Sierracin, supra,* which was decided two years after the enactment of section 460, but concerned the taxpayer's use of the CCM for taxable years ending before the enactment of section 460. In *Sierracin,* the Tax Court developed a two-prong test for determining whether an item is unique. That test provided that an item is unique if (1) it is designed for the needs of a specific customer and (2) the taxpayer's contracts are subject to unpredictable manufacturing risks that make it difficult for the taxpayer to determine the ultimate profit or loss on an interim basis.

The regulations incorporate the *Sierracin* criterion regarding design, but exclude the criterion regarding unpredictable manufacturing risk because that criterion was developed primarily to justify the taxpayer's use of the CCM. See, e.g., GCM 7998 (IX–2 C.B. 206, 208); Rev. Rul. 70–67 (1970–1 C.B. 117); Staff of Joint Comm. on Taxation, 99th Cong., 1st Sess., Tax Reform Proposals: Accounting Issues (JCS–39–86) 46 (Comm. Print 1985). Manufacturing risk is not relevant under the PCM because the taxpayer is required to use reasonable estimates, adjusted annually, while the contract is being performed and because the taxpayer is required to use the look-back method to correct for estimation errors when the contract is completed. Thus, the rationale supporting the

consideration of manufacturing risk as a prerequisite to the use of the CCM, that the taxpayer is unable to determine its total contract costs, is not applicable to contracts subject to the PCM.

10. 12-Month Completion Period

The proposed regulations provide that a manufactured item normally requires more than 12 months to complete if its *production period,* as defined in § 1.263A–12, is reasonably expected to exceed 12 months, determined at the end of the contracting year. In general, the production period for an item or unit begins when the taxpayer's incurs at least 5 percent of the estimated total allocable contract costs, including planning and design expenditures, allocable to the item or unit, and the production period ends when the item or unit is ready for shipment to the taxpayer's customer. In the case of components that have to be assembled or reassembled into an item or unit at the customer's facility by the taxpayer's employees or agents, the production period ends when the components are assembled or reassembled into an operable item or unit.

For this purpose, the proposed regulations contain rules requiring a taxpayer to treat the activities of a related party as the activities of the taxpayer to prevent the taxpayer from avoiding section 460. However, if the inventory exception discussed in paragraph 8 above is satisfied, a taxpayer considers the activities of a related party as it incurs the liability to the related party rather than as the related party performs the activity.

11. Definition of Construction Contract

Section 460(e)(4) and the proposed regulations provide that a *construction contract* is any contract for the building, construction, reconstruction, or rehabilitation of, or the installation of any integral component to, or improvements of, real property. Thus, a contract to install an integral component to real property can be subject to section 460 even if the installation activity is not accompanied by any other construction activity.

12. Exempt Construction Contracts

Section 460(e)(1) exempts two types of construction contracts from the general scope of section 460. These exempt construction contracts are: (1) home construction contracts and (2) 2-year construction contracts of a small contractor. A small contractor is a taxpayer that satisfies the $10,000,000 gross receipts test discussed below. The 2-year construction requirement is satisfied if the taxpayer reasonably estimates, when entering into the contract, that the contract will be completed within 2 years from the contract commencement date.

13. Home Construction Contracts

Section 460(e)(6) provides that a construction contract is a home construction contract if the taxpayer (including a subcontractor working for a general contractor) reasonably expects to attribute 80 percent or more of the estimated total contract costs, determined at the close of the contracting year, to the construction of (1) a dwelling unit or a building containing four or fewer dwelling units and (2) improvements to real property directly related to the dwelling units and located on the site of the dwelling units. For this purpose, a *dwelling unit* means a house or an apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, or other establishment more than one-half of the units in which are used on a transient basis. In addition, a taxpayer must treat each townhouse or rowhouse as a separate building. The proposed regulations provide that a taxpayer includes in the cost of the dwelling units their allocable share of the cost of any common improvements (e.g., sewers, roads, clubhouses) that benefit the dwelling unit and that the taxpayer is contractually obligated, or required by law, to construct within the tract or tracts of land containing the dwelling units.

14. $10,000,000 Gross Receipts Test

Section 460(e)(1)(B)(ii) provides that the $10,000,000 gross receipts test is satisfied if the taxpayer's average annual gross receipts for the three taxable years preceding the contracting year do not exceed $10,000,000. For this purpose, section 460(e)(2) mandates the aggregation of gross receipts of all trades or businesses under common control with the taxpayer. Section 460(e)(2) also provides that the Secretary shall prescribe regulations providing attribution rules that take into account taxpayers who engage in construction contracts through partnerships, joint ventures, and corporations.

The proposed regulations require the aggregation of gross receipts under the common control rules in § 1.263A–3(b)(3), other than the rules applicable to single employers under section 414(m) and the regulations thereunder. In addition, the regulations require the attribution of construction-related gross receipts of persons that own, or are owned by, the taxpayer, but that are not subject to § 1.263A–3(b)(3). These rules are similar to those that applied to the $25,000,000 gross receipts test under prior law.

15. Accounting for Long-Term Contracts—In General

The proposed regulations prescribe permissible methods of accounting for long-term contracts subject to section 460(a). A taxpayer must use the PCM and may elect to use the 10-percent method. In addition, the regulations prescribe permissible methods of accounting for exempt construction contracts (exempt contract methods). Permissible exempt contract methods of accounting include the PCM, the EPCM, the CCM, or any other permissible method.

Section 460(e)(5) allows a taxpayer to determine the income from a residential construction contract using the percentage-of-completion/capitalized-cost method (PCCM). A taxpayer also may determine the income from a qualified ship contract using the PCCM. Under this method, a taxpayer must determine the income from the long-term contract using the PCM for the applicable percentage and using its exempt contract method for the remaining percentage of the contract.

The proposed regulations reserve on the accounting for mid-contract change in taxpayers. The IRS and Treasury Department request comments regarding the treatment of transfers of long-term contracts prior to completion.

16. Percentage-of-Completion Method

The proposed regulations provide that under the PCM, a taxpayer generally includes a portion of the total contract price in income for each taxable year that the taxpayer incurs contract costs allocable to the long-term contract. To determine the income from a long-term contract, the taxpayer first computes the *completion factor* for the contract, which is the percentage of the estimated total allocable contract costs that the taxpayer has incurred (based on the all events test of section 461, including economic performance, regardless of the taxpayer's method of accounting) through the end of the taxable year. Second, the taxpayer computes the amount of *cumulative gross receipts* from the contract by multiplying the completion factor by the *total contract price,* which is the amount that the taxpayer reasonably expects to receive under the contract. Third, the taxpayer computes the amount of *current-year gross receipts,* which is the difference between the cumulative gross receipts for the current taxable year and the cumulative gross receipts for the immediately preceding taxable year.

This difference may be a loss (a negative number) if a taxpayer has overstated its completion factor for the immediately preceding taxable year. Fourth, the taxpayer takes into account both the current-year gross receipts and the amount of allocable contract costs actually incurred during the taxable year. To the extent any portion of the total contract price has not been included in taxable income by the completion year, section 460(b)(1) and the proposed regulations require the taxpayer to include that portion in income for the taxable year following the completion year.

Under the proposed regulations, total contract price includes all bonuses, awards, and incentive payments if it is reasonably estimated that they will be received, even if the all events test has not yet been met. If, by the end of the completion year, a taxpayer cannot reasonably estimate whether a contingency will be satisfied, the bonus, award, or incentive payment is not includable in total contract price. If it is determined after the taxable year following the completion year that an amount included in total contract price will not be earned, the taxpayer should deduct that amount in the year of the determination.

The proposed regulations provide that allocable contract costs under the PCM are determined using either of the following prescribed cost allocation methods—a method based on the extended period contract allocation rules in § 1.451–3(d)(6) or the simplified cost-to-cost method.

17. 10-Percent Method

Section 460 generally permits a taxpayer to elect to delay the application of the PCM to each long-term contract until the taxable year the taxpayer has incurred at least 10 percent of the estimated total allocable contract costs. Once elected, the 10-percent method applies to all of the taxpayer's long-term contracts entered into during and after the election year. Under section 460(b)(5), however, a taxpayer may not elect the 10-percent method if the taxpayer determines allocable direct and indirect costs using the simplified cost-to-cost method.

18. Cost Allocation Rules

Section 460(c) provides cost allocation rules for long-term contracts subject to the PCM. Section 460(c)(1) provides generally that all costs which directly benefit, or are incurred by reason of, the long-term contract activities of the taxpayer must be allocated to the long-term contract in the same manner as costs are allocated to extended-period long-term contracts under section 451 and the regulations thereunder (§ 1.451–3(d)(6) through (9)). Section 460(c)(2), however, also requires a taxpayer to allocate costs identified under a cost-plus long-term contract or a federal long-term contract even if these costs would not be allocable under the cost allocation rules for extended-period long-term contracts. In addition, section 460(c)(3) requires a taxpayer to allocate interest expense to a long-term contract (whether or not the contract is subject to the PCM) as if the rules of section 263A(f) (concerning the allocation of interest costs to property produced by the taxpayer) apply. Finally, sections 460(c)(4) and (5) describe costs that generally are not allocable to long-term contracts.

Because many taxpayers subject to the cost allocation rules of section 460 also are subject to the cost allocation rules of section 263A for non-long-term contracts, and because the cost allocation rules of section 263A generally follow the cost allocation rules applicable to extended-period long-term contracts, the proposed regulations provide that a taxpayer generally must allocate costs to a contract subject to section 460(a) in the same manner as direct and indirect costs are capitalized to property produced by a taxpayer under section 263A. The regulations provide exceptions, however, that reflect the differences in the cost allocation rules of sections 263A and 460.

19. Simplified Cost-To-Cost Method

The proposed regulations permit a taxpayer to elect to allocate contract costs using the simplified cost-to-cost method.

Under the simplified cost-to-cost method, a taxpayer must determine a contract's completion factor based upon only direct material costs; direct labor costs; and depreciation, amortization, and cost recovery allowances on equipment and facilities directly used to manufacture or construct property under the contract. A taxpayer may allocate costs using the simplified cost-to-cost method only if the taxpayer determines the taxable income from all long-term contracts using the PCM.

20. Cost Allocation Rules for Exempt Construction Contracts

The proposed regulations, which supersede § 1.451–3(d) (concerning the CCM), provide cost allocation rules for exempt construction contracts accounted for using the CCM. These rules provide that a taxpayer may allocate direct and indirect contract costs in the same way as currently required under § 1.451–3(d)(5) for long-term contracts that are not extended-period long-term contracts. The regulations also permit a taxpayer to allocate indirect costs as provided in section 263A. A homebuilder, however, is required to capitalize the costs of its home construction contracts under section 263A and the regulations thereunder, unless the contract will be completed within 2 years of the contract commencement date and the taxpayer satisfies the $10,000,000 gross receipts test previously discussed.

21. Alternative Minimum Taxable Income

Section 56 generally requires a taxpayer (not exempt under section 55(e)) to determine the amount of alternative minimum taxable income (AMTI) from a long-term contract using the PCM. Though section 56(a)(3) excludes all home construction contracts from this requirement, the Internal Revenue Code does not exclude the exempt construction contracts of a small contractor, residential construction contracts, or qualified ship contracts. Section 56(a)(3) requires a small contractor to use the simplified cost-to-cost method to determine the completion factor of an exempt construction contract when computing AMTI.

Because the Code sometimes requires a taxpayer to compute AMTI and taxable income using different rules, a taxpayer generally must determine a contract's completion factor using the AMTI-modified, cost-to-cost PCM. The proposed regulations adopt the provisions of section IX of Notice 87–61, which permit a taxpayer to elect to determine a contract's completion factor for AMTI purposes using the accounting and cost allocation methods used to compute regular taxable income. A taxpayer is required, however, to comply with section 55 when computing AMTI.

22. Changes in Method of Accounting

For the first taxable year that includes the date these regulations are published as final regulations in the Federal Register, the proposed regulations generally grant a taxpayer consent to change its method of accounting to comply with the provisions of these regulations for contracts entered into on or after the date these regulations are published as final regulations in the **Federal Register**. Because this change is made on a cutoff basis, a section 481(a) adjustment is not required.

23. Request for Comments

The IRS and Treasury Department invite comments regarding the application and effectiveness of the de minimis construction rule. The IRS and Treasury Department also welcome comments concerning the application of the unique-item rule, including the usefulness and terms of the safe harbors and approaches for determining when an item will cease being unique. Comments are requested concerning the 12-month production period rule, especially with respect to the application of § 1.263A–12 and consideration of related party activities.

Proposed Effective Date

These regulations are proposed to be effective for contracts entered into on or after the date they are published in the **Federal Register** as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. It is hereby certified that the collection of information in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The regulations require a taxpayer to attach a statement to its original Federal income tax return if the taxpayer severs or aggregates a long-term contract. The statement is needed so the Commissioner can determine whether the taxpayer properly severed or aggregated the contract. It is uncommon for a taxpayer that has a long-term contract to sever or aggregate that contract. In addition, if a contract is severed or aggregated and a statement is required, it is estimated that it will, on average, only take one hour to complete.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 14, 1999, at 10 a.m. in the IRS Auditorium, 7th Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenue, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies by August 3, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these proposed regulations is Leo F. Nolan II, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for § 1.460–4 and adding the following entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.460–1 also issued under 26 U.S.C. 460(h).

§ 1.460–2 also issued under 26 U.S.C. 460(h).

§ 1.460–3 also issued under 26 U.S.C. 460(h).

§ 1.460–4 also issued under 26 U.S.C. 460(h) and 1502.

§ 1.460–5 also issued under 26 U.S.C. 460(h). * * *

§ 1.446–1 [Amended]

Par. 2. Section 1.446–1 is amended as follows:

1. In the second sentence of paragraph (c)(1)(iii), the language ''451'' is removed and ''460'' is added in its place.

2. In the fourth sentence of paragraph (e)(2)(ii)(*a*), the language ''§ 1.451–3'' is removed and ''§ 1.460–4'' is added in its place.

§ 1.451–3 [Removed]

Par. 3. Section 1.451–3 is removed.

§ 1.451–5 [Amended]

Par. 4. Section 1.451–5 is amended, in the first sentence of paragraph (b)(3), by removing the language ''§ 1.451–3'' and adding ''§ 1.460–4'' in its place.

Par. 5. Section 1.460–0 is amended by:

1. Revising the introductory text.

2. Revising the entries for §§ 1.460–1 through 1.460–3, 1.460–4(a)-(i), and 1.460–5.

3. Revising the entry for § 1.460–6(c)(4)(iv).

4. Removing the entries for §§ 1.460–7 and 1.460–8.

The revisions read as follows:

§ 1.460–0 Outline of regulations under section 460.

This section lists the paragraphs contained in § 1.460–1 through § 1.460–6.

§ 1.460–1 Long-term contracts.

(a) Overview.
(1) In general.
(2) Exceptions to required use of PCM.
(i) Exempt construction contract.
(ii) Qualified ship or residential construction contract.
(b) Definitions.
(1) Long-term contract.
(2) Contract for the manufacture, building, installation, or construction of property.
(i) In general.
(ii) De minimis construction activities.
(3) Allocable contract costs.
(4) Related party.
(5) Contracting year.
(6) Completion year.
(7) Contract commencement date.
(8) Incurred.
(c) Entering into and completing long-term contracts.
(1) In general.
(2) Date contract entered into.
(i) In general.
(ii) Options and change orders.
(3) Date contract completed.
(i) In general.
(ii) Secondary items.
(iii) Subcontracts.
(iv) Final completion and acceptance.

(A) In general.
(B) Contingent compensation.
(C) Assembly or installation.
(D) Disputes.
(d) Allocation among activities.
(1) In general.
(2) Non-long-term contract activity.
(e) Severing and aggregating contracts.
(1) In general.
(2) Facts and circumstances.
(i) Independent pricing.
(ii) Interdependent pricing.
(iii) Separate delivery or acceptance.
(iv) Reasonable businessperson.
(3) Exceptions.
(i) No severance for PCM.
(ii) Options and change orders.
(4) Statement with return.
(f) Classifying contracts.
(1) In general.
(2) Hybrid contracts.
(3) Method of accounting.
(4) Use of estimates.
(i) Estimating length of contract.
(ii) Estimating allocable contract costs.
(g) Special rules for activities benefitting long-term contracts of a related party.
(1) Related party use of PCM.
(i) In general.
(ii) Inventory exception.
(2) Total contract price.
(3) Completion factor.
(h) Effective date.
(1) In general.
(2) Change in method of accounting.
(i) [Reserved]
(j) Examples.

§ 1.460–2 Long-term manufacturing contracts.

(a) In general.
(b) Unique.
(1) In general.
(2) Safe harbors.
(i) Short production period.
(ii) Customized item.
(iii) Inventoried item.
(c) Normal time to complete.
(1) In general.
(2) Production by related parties.
(d) Qualified ship contracts.
(e) Examples.

§ 1.460–3 Long-term construction contracts.

(a) In general.
(b) Exempt construction contracts.
(1) In general.
(2) Home construction contract.
(i) In general.
(ii) Townhouses and rowhouses.
(iii) Common improvements.
(iv) Mixed use costs.
(3) $10,000,000 gross receipts test.
(i) In general.
(ii) Single employer.
(iii) Attribution of gross receipts.
(c) Residential construction contracts.

§ 1.460–4 Methods of accounting for long-term contracts.

(a) Overview.
(b) Percentage-of-completion method.
(1) In general.
(2) Computations.
(3) Post-completion-year income.
(4) Total contract price.
(i) In general.
(A) Definition.
(B) Contingent compensation.
(C) Non-long-term contract activities.
(ii) Estimating total contract price.
(5) Completion factor.
(i) Allocable contract costs.
(ii) Cumulative allocable contract costs incurred.
(iii) Estimating total allocable contract costs.
(iv) Pre-contracting-year costs.
(v) Post-completion-year costs.
(6) 10-percent method.
(i) In general.
(ii) Election.
(c) Exempt contract methods.
(1) In general.
(2) Exempt-contract percentage-of-completion method.
(i) In general.
(ii) Determination of work performed.
(d) Completed-contract method.
(1) In general.
(2) Post-completion-year income and costs.
(3) Gross contract price.
(4) Contracts with disputed claims.
(i) In general.
(ii) Taxpayer assured of profit or loss.
(iii) Taxpayer unable to determine profit or loss.
(iv) Dispute resolved.
(e) Percentage-of-completion/capitalized-cost method.
(f) Alternative minimum taxable income.
(1) In general.
(2) Election to use regular completion factors.
(g) Method of accounting.
(h) Examples.
(i) Mid-contract change in taxpayer. [Reserved]

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§ 1.460–5 Cost allocation rules.

(a) Overview.
(b) Cost allocation method for contracts subject to PCM.
(1) In general.
(2) Special rules.
(i) Direct material costs.
(ii) Components and subassemblies.
(iii) Simplified production methods.
(iv) Costs identified under cost-plus long-term contracts and federal long-term contracts.
(v) Interest.
(A) In general.
(B) Production period.
(C) Application of section 263A(f).
(vi) Research and experimental expenses.
(vii) Service costs.
(A) Simplified service cost method.
(1) In general.
(2) Example.
(B) Jobsite costs.
(C) Limitation on other reasonable cost allocation methods.
(c) Simplified cost-to-cost method.
(1) In general.
(2) Election.
(d) Cost allocation rules for exempt construction contracts reported using CCM.
(1) In general.
(2) Indirect costs.
(i) Indirect costs allocable to exempt construction contracts.
(ii) Indirect costs not allocable to exempt construction contracts.
(3) Large homebuilders.
(e) Cost allocation rules for contracts subject to the PCCM.
(f) Special rules applicable to costs allocated under this section.
(1) Nondeductible costs.
(2) Costs incurred for non-long-term contract activities.
(g) Method of accounting.

§ 1.460–6 Look-back method.

* * * * *

(c) * * *
(4) * * *
(iv) Additional interest due on look-back interest only after tax liability due.

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Par. 6. Sections 1.460–1 through 1.460–3 are revised to read as follows:

§ 1.460–1 Long-term contracts.

(a) *Overview*—(1) *In general.* This section provides rules for determining whether a contract for the manufacture, building, installation, or construction of property is a long-term contract under section 460 and what activities must be accounted for as a single long-term contract. Specific rules for long-term manufacturing and construction contracts are provided in §§ 1.460–2 and 3, respectively. A taxpayer generally must determine the income from a long-term contract using the percentage-of-completion method described in § 1.460–4(b) (PCM) and the cost allocation rules described in § 1.460–5(b) or (c). In addition, after a contract subject to the PCM is completed, a taxpayer generally must apply the look-back method described in § 1.460–6 to determine the amount of interest owed on any hypothetical underpayment of tax, or earned on any hypothetical overpayment of tax, attributable to accounting for the long-term contract under the PCM.

(2) *Exceptions to required use of PCM*—(i) *Exempt construction contract.* The requirement to use the PCM does not apply to any exempt construction contract described in § 1.460–3(b). Thus, a taxpayer may determine the income from an exempt construction contract using any accounting method permitted by § 1.460–4(c) and, for contracts accounted for using the completed-contract method (CCM), any cost allocation method permitted by § 1.460–5(d).

(ii) *Qualified ship or residential construction contract.* The requirement to use the PCM applies only to a portion of a *qualified ship contract* described in § 1.460–2(d) or *residential construction contract* described in § 1.460–3(c). A taxpayer generally may determine the income from a qualified ship contract or residential construction contract using

the percentage-of-completion/capitalized-cost method (PCCM) described in § 1.460–4(e), but must use a cost allocation method described in § 1.460–5(b) for the entire contract.

(b) *Definitions*—(1) *Long-term contract.* A *long-term contract* generally is any contract for the manufacture, building, installation, or construction of property if the contract is not completed within the contracting year, as defined in paragraph (b)(5) of this section. However, a contract for the manufacture of property is a long-term contract only if it also satisfies either the unique item or 12-month requirements described in § 1.460–2. A contract for the manufacture of personal property is a *manufacturing contract.* In contrast, a contract for the building, installation, or construction of real property is a *construction contract.*

(2) *Contract for the manufacture, building, installation, or construction of property*—(i) *In general.* A contract is a *contract for the manufacture, building, installation, or construction of property* if the manufacture, building, installation, or construction of the subject matter of the contract is necessary for the taxpayer's contractual obligations to be fulfilled and if the manufacture, building, installation, or construction has not been completed when the parties enter into the contract. Whether the customer has title to, or control over, the property (or bears the risk of loss from the property) is not relevant. Furthermore, how the parties characterize their agreement (e.g., as a contract for the sale of property) is not relevant.

(ii) *De minimis construction activities.* Notwithstanding paragraph (b)(2)(i) of this section, a contract is not a construction contract for purposes of section 460 if the contract includes the provision of land by the taxpayer and the estimated total allocable contract costs, as defined in paragraph (b)(3) of this section, attributable to the taxpayer's construction activities are less than 10 percent of the contract's total contract price, as defined in § 1.460–4(b)(4)(i). For this purpose, a contract's estimated total allocable contract costs include a proportionate share of the estimated cost of any common improvement that benefits the subject matter of the contract if the taxpayer is contractually obligated, or required by law, to construct the common improvement.

(3) *Allocable contract costs. Allocable contract costs* are costs that are allocable to a long-term contract under § 1.460–5.

(4) *Related party.* A *related party* is a person whose relationship to a taxpayer is described in section 707(b) or 267(b), determined without regard to section 267(f)(1)(A) and determined by substituting ''at least 80 percent'' for ''more than 50 percent'' with regard to the ownership of the stock of a corporation in sections 267(b)(2), (8), (10)(A), and (12).

(5) *Contracting year.* The *contracting year* is the taxable year in which a taxpayer enters into a contract as described in paragraph (c)(2) of this section.

(6) *Completion year.* The *completion year* is the taxable year in which a taxpayer completes a contract as described in paragraph (c)(3) of this section.

(7) *Contract commencement date.* The *contract commencement date* is the date that a taxpayer or related party first incurs any allocable contract costs, such as design and engineering costs, other than expenses attributable to bidding and negotiating activities. Generally, the contract commencement date is relevant in applying § 1.460–6(b)(3) (concerning the de minimis exception to the look-back method under section 460(b)(3)(B)); § 1.460–5(b)(2)(v)(B)(*1*)(*i*) (concerning the production period subject to interest allocation); § 1.460–2(d) (concerning qualified ship contracts); and § 1.460–3(b)(1)(ii) (concerning the construction period for exempt construction contracts).

(8) *Incurred. Incurred* has the meaning given in § 1.461–1(a)(2) (concerning the taxable year of deduction under the accrual method of accounting), regardless of a taxpayer's overall method of accounting. See § 1.461–4(d)(2)(ii) for economic performance rules concerning the PCM.

(c) *Entering into and completing long-term contracts*—(1) *In general.* To determine when a contract is entered into under paragraph (c)(2) of this section, and when a contract is completed under paragraph (c)(3) of this section, a taxpayer must consider all relevant activities performed by itself, by related parties, and by the customer, that are incident to or necessary for the long-term contract. In addition, to determine whether a contract is completed in the contracting year, the taxpayer may not consider when it expects to complete the contract.

(2) *Date contract entered into*—(i) *In general.* A taxpayer enters into a contract on the date that the contract binds both the taxpayer and the customer under applicable law, even if the contract is subject to unsatisfied conditions not within the taxpayer's control (such as obtaining financing). If a taxpayer delays entering into a contract for a principal purpose of avoiding section 460, however, the taxpayer will be treated as having entered into a contract not later than the contract commencement date.

(ii) *Options and change orders.* A taxpayer enters into a new contract on the date that the customer exercises an option or similar provision in a contract if that option or similar provision must be severed from the contract under paragraph (e) of this section. Similarly, a taxpayer enters into a new contract on the date that it accepts a change order or other similar agreement if the change order or other similar agreement must be severed from the contract under paragraph (e) of this section.

(3) *Date contract completed*—(i) *In general.* A taxpayer's contract is completed upon the earlier of—

(A) Use of the subject matter of the contract by the customer (other than for testing) and at least 95 percent of the total allocable contract costs attributable to the subject matter have been incurred by the taxpayer; or

(B) Final completion and acceptance of the subject matter of the contract.

(ii) *Secondary items.* The date a contract accounted for using the CCM is completed is determined without regard to whether one or more secondary items have been used or finally completed and accepted. If any secondary items are incomplete at the end of the taxable year in which the primary subject matter of a contract is completed, the taxpayer must separate the portion of the gross contract price and the allocable contract costs attributable to the incomplete secondary item(s) from the completed contract and account for them using a permissible method of accounting. A permissible method of accounting includes a long-term contract method of accounting only if a separate contract for the secondary item(s) would be a long-term contract, as defined in paragraph (b)(1) of this section.

(iii) *Subcontracts.* In the case of a subcontract, the subject matter of the subcontract is the relevant subject matter under paragraph (c)(3)(i) of this section.

(iv) *Final completion and acceptance*—(A) *In general.* Except as otherwise provided in this paragraph (c)(3)(iv), to determine whether final completion and acceptance of the subject matter of a contract have occurred, a taxpayer must consider all relevant facts and circumstances. Nevertheless, a taxpayer may not delay the completion of a contract for the principal purpose of deferring federal income tax.

(B) *Contingent compensation.* Final completion and acceptance is determined without regard to any contractual term that provides for

additional compensation that is contingent on the successful performance of the subject matter of the contract. A taxpayer must account for all contingent compensation that is not includible in total contract price under § 1.460–4(b)(4)(i), or in gross contract price under § 1.460–4(d)(3), using a permissible method of accounting. For application of the look-back method for contracts accounted for using the PCM, see § 1.460–6(c)(1)(ii) and (2)(vi).

(C) *Assembly or installation.* Final completion and acceptance is determined without regard to whether the taxpayer has an obligation to assist or supervise assembly or installation of the subject matter of the contract where the assembly or installation is not performed by the taxpayer or a related party. A taxpayer must account for the gross receipts and costs attributable to such an obligation using a permissible method of accounting, other than a long-term contract method.

(D) *Disputes.* Final completion and acceptance is determined without regard to whether a dispute exists at the time the taxpayer tenders the subject matter of the contract to the customer. For contracts accounted for using the CCM, see § 1.460–4(d)(4). For application of the look-back method for contracts accounted for using the PCM, see § 1.460–6(c)(1)(ii) and (2)(vi).

(d) *Allocation among activities*—(1) *In general.* Long-term contract methods of accounting (the PCM, the CCM, the PCCM, and the exempt-contract percentage-of-completion method (EPCM)) apply only to the gross receipts and costs attributable to long-term contract activities. Gross receipts and costs attributable to long-term contract activities means amounts included in total contract price or gross contract price, whichever is applicable, as determined under § 1.460–4, and costs allocable to the contract, as determined under § 1.460–5. Gross receipts and costs attributable to non-long-term contract activities (as defined in paragraph (d)(2) of this section) generally must be taken into account using permissible methods of accounting other than a long-term contract method. See section 446(c) and § 1.446–1(c). However, if the performance of a non-long-term contract activity is incident to or necessary for the manufacture, building, installation, or construction of the subject matter of one or more of the taxpayer's long-term contracts, the gross receipts and costs attributable to that activity must be allocated to the long-term contract(s) benefitted as provided in §§ 1.460–4(b)(4)(i) and 1.460–5(f)(2), respectively. Similarly, if a single long-term contract requires a taxpayer to perform a non-long-term contract activity that is not incident to or necessary for the manufacture, building, installation, or construction of the subject matter of the long-term contract, the gross receipts and costs attributable to that non-long-term contract activity must be separated from the contract and accounted for using a permissible method of accounting other than a long-term contract method. But see paragraph (g) of this section for related party rules.

(2) *Non-long-term contract activity. Non-long-term contract activity* means the performance of an activity other than manufacturing, building, installation, or construction, such as the provision of architectural, design, engineering, and construction management services; the performance under a guarantee, warranty, and maintenance agreement; and the development of software.

(e) *Severing and aggregating contracts*—(1) *In general.* After application of the allocation rules of paragraph (d) of this section, the severing and aggregating rules of this paragraph (e) may be applied by the Commissioner or the taxpayer as necessary to clearly reflect income (such as, to prevent the unreasonable deferral of recognition of income or the premature recognition of loss). Under the severing and aggregating rules, one agreement may be treated as two or more contracts, and two or more agreements may be treated as one contract. Except as provided in paragraph (e)(3)(ii) of this section, a taxpayer must determine whether to sever an agreement or to aggregate two or more agreements based on all the facts and circumstances known at the end of the contracting year.

(2) *Facts and circumstances.* Whether an agreement should be severed, or two or more agreements should be aggregated, depends on the following factors:

(i) *Independent pricing.* Independent pricing of items in an agreement is necessary for the agreement to be severed into two or more contracts. In the case of an agreement for several similar items, if the price to be paid for the items is determined under different terms or formulas (for example, if some items are priced under a cost-plus incentive fee arrangement and later items are to be priced under a fixed-price arrangement), then the difference in the pricing terms or formulas indicates that the items are independently priced.

(ii) *Interdependent pricing.* Interdependent pricing of items in separate agreements is necessary for two or more agreements to be aggregated into one contract. A single price negotiation for similar items ordered under one or more agreements indicates that the items are interdependently priced.

(iii) *Separate delivery or acceptance.* An agreement may not be severed into two or more contracts unless it provides for separate delivery or separate acceptance of items that are the subject matter of the agreement. However, the separate delivery or separate acceptance of items by itself does not necessarily require an agreement to be severed.

(iv) *Reasonable businessperson.* Two or more agreements to perform manufacturing or construction activities may not be aggregated into one contract unless a reasonable businessperson would not have entered into one of the agreements for the terms agreed upon without also entering into the other agreement(s). Similarly, an agreement to perform manufacturing or construction activities may not be severed into two or more contracts if a reasonable businessperson would not have entered into separate agreements containing terms allocable to each severed contract. For example, a single agreement to manufacture a prototype of an item, which would result in a substantial loss, and ten additional units of the item, which would result in a substantial gain, may not be severed into one contract for the prototype and another contract for the ten additional units under this paragraph (e)(2)(iv) because a reasonable businessperson would not have entered into a separate contract to manufacture the prototype. For purposes of this paragraph (e)(2)(iv), a taxpayer's expectation that the parties would enter into another agreement, when agreeing to the terms contained in the first agreement, is irrelevant.

(3) *Exceptions*—(i) *No severance for PCM.* A taxpayer may not sever under this paragraph (e) a long-term contract that would be accounted for using the PCM.

(ii) *Options and change orders.* Except as provided in paragraph (e)(3)(i) of this section, a taxpayer must sever an agreement that increases the number of units to be supplied to the customer, such as through the exercise of an option or the acceptance of a change order, if the agreement provides for separate delivery or separate acceptance of the additional units.

(4) *Statement with return.* If a taxpayer severs an agreement or aggregates two or more agreements under this paragraph (e) during the taxable year, the taxpayer must attach a statement to its original Federal income tax return for that year. This statement

must contain the following information—

(i) The legend NOTIFICATION OF SEVERANCE OR AGGREGATION UNDER SEC. 1.460–1(e);

(ii) The taxpayer's name;

(iii) The taxpayer's employer identification number or social security number;

(iv) The identity of each agreement being severed or aggregated;

(v) The method of accounting used for each contract; and

(vi) A description of the reason(s) for severance or aggregation.

(f) *Classifying contracts*—(1) *In general.* A taxpayer must determine the classification of a contract (e.g., as a long-term manufacturing contract, long-term construction contract, non-long-term contract) based on all the facts and circumstances known no later than the end of the contracting year.

(2) *Hybrid contracts.* A long-term contract that requires a taxpayer to perform both manufacturing and construction activities (hybrid contract) generally must be classified as two contracts, a manufacturing contract and a construction contract. However, a hybrid contract may be classified as a manufacturing (or construction) contract if at least 95 percent of the estimated total allocable contract costs are reasonably allocable to the manufacturing (or construction) activities.

(3) *Method of accounting.* A taxpayer's method of classifying contracts is a method of accounting under section 446 and, thus, may not be changed without the Commissioner's consent. If a taxpayer's method of classifying contracts is unreasonable, that classification method is an impermissible accounting method.

(4) *Use of estimates*—(i) *Estimating length of contract.* A taxpayer must use a reasonable estimate of the time required to complete a contract when necessary to classify the contract (e.g., to determine whether the five-year completion rule for qualified ship contracts under § 1.460–2(d), or the two-year completion rule for exempt construction contracts under § 1.460–3(b), is satisfied; but, not to determine whether a contract is completed within the contracting year under paragraph (b)(1) of this section). To be considered reasonable, an estimate of the time required to complete the contract must include anticipated time for delay, rework, change orders, technology or design problems, or other problems that reasonably can be anticipated considering the nature of the contract and prior experience. A contract term that specifies an expected completion or delivery date may be considered evidence that the taxpayer reasonably expects to complete or deliver the subject matter of the contract on or about the date specified, especially if the contract provides bona fide penalties for failing to meet the specified date. If a taxpayer classifies a contract based on a reasonable estimate of completion time, the contract will not be reclassified based on the actual (or another reasonable estimate of) completion time. A taxpayer's estimate of completion time will not be considered unreasonable if a contract is not completed within the estimated time primarily because of unforeseeable factors not within the taxpayer's control, such as third-party litigation, extreme weather conditions, strikes, or delays in securing permits or licenses.

(ii) *Estimating allocable contract costs.* A taxpayer must use a reasonable estimate of total allocable contract costs when necessary to classify the contract (e.g., to determine whether a contract is a home construction contract under § 1.460–(3)(b)(2)). If a taxpayer classifies a contract based on a reasonable estimate of total allocable contract costs, the contract will not be reclassified based on the actual (or another reasonable estimate of) total allocable contract costs.

(g) *Special rules for activities benefitting long-term contracts of a related party*—(1) *Related party use of PCM*—(i) *In general.* Except as provided in paragraph (g)(1)(ii) of this section, if a related party and its customer enter into a long-term contract subject to the PCM, and a taxpayer performs any activity that is incident to or necessary for the related party's long-term contract, the taxpayer must account for the gross receipts and costs attributable to such activity using the PCM, even if this activity is not otherwise subject to section 460(a). This type of activity may include, for example, the performance of engineering and design services, and the production of components and subassemblies that are reasonably expected to be used in the production of the subject matter of the related party's contract.

(ii) *Inventory exception.* A taxpayer is not required to use the PCM under this paragraph (g) to account for components and subassemblies if the taxpayer regularly carries these items in its finished goods inventories and 80 percent or more of the gross receipts from the sale of these items typically comes from unrelated parties.

(2) *Total contract price.* If a taxpayer is required to use the PCM under paragraph (g)(1)(i) of this section, the total contract price (as defined in § 1.460–4(b)(4)(i)) is the fair market value of the taxpayer's activity that is incident to or necessary for the performance of the related party's long-term contract. The related party also must use the fair market value of the taxpayer's activity as the cost it incurs for the activity. The fair market value of the taxpayer's activity may or may not be the same as the amount the related party pays the taxpayer for that activity.

(3) *Completion factor.* To compute a contract's completion factor (as described in § 1.460–4(b)(5)), the related party must take into account the fair market value of the taxpayer's activity that is incident to or necessary for the performance of the related party's long-term contract when the related party incurs the liability to the taxpayer for the activity, rather than when the taxpayer incurs the costs to perform the activity.

(h) *Effective date*—(1) *In general.* Except as otherwise provided, this section and §§ 1.460–2 through 1.460–5 are applicable for contracts entered into on or after the date these regulations are published as final regulations in the **Federal Register.**

(2) *Change in method of accounting.* Any change in a taxpayer's method of accounting necessary to comply with this section and §§ 1.460–2 through 1.460–5 is a change in method of accounting to which the provisions of section 446 and the regulations thereunder apply. For the first taxable year that includes the date these regulations are published as final regulations in the **Federal Register**, a taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with the provisions of this section and §§ 1.460–2 through 1.460–5 for long-term contracts entered into on or after the date these regulations are published as final regulations in the **Federal Register**. A taxpayer that wants to change its method of accounting under this paragraph (h)(2) must follow the automatic consent procedures in Rev. Proc. 98–60 (1998–51 I.R.B. 16) (see § 601.601(d)(2) of this chapter, except that the scope limitations in section 4.02 of Rev. Proc. 98–60 do not apply. Because a change under this paragraph (h)(2) is made on a cutoff basis, a section 481(a) adjustment is not required. Moreover, the taxpayer does not receive audit protection under section 7 of Rev. Proc. 98–60 in connection with a change under this paragraph (h)(2). A taxpayer that wants to change its exempt-contract method of accounting is not granted the consent of the Commissioner under this paragraph (h)(2) and must file a Form 3115, Application for Change in

Accounting Method, to obtain consent. See Rev. Proc. 97–27 (1997–1 C.B. 680) (see § 601.601(d)(2) of this chapter).

(i) [Reserved]

(j) *Examples.* The following examples illustrate the rules of this section:

Example 1. Contract for manufacture of property. B notifies C, an aircraft manufacturer, that it wants to purchase an aircraft of a particular type. At the time C receives the order, C has on hand several partially completed aircraft of this type; however, C does not have any completed aircraft of this type on hand. C and B agree that B will purchase one of these aircraft after it has been completed. C retains title to and risk of loss with respect to the aircraft until the sale takes place. The agreement between C and B is a contract for the manufacture of property under paragraph (b)(2)(i) of this section, even if labeled as a contract for the sale of property, because the manufacture of the aircraft is necessary for C's obligations under the agreement to be fulfilled and the manufacturing was not complete when B and C entered into the agreement.

Example 2. De minimis construction activity. C, a master developer that uses a calendar taxable year, owns 5,000 acres of undeveloped land worth $50,000,000. To obtain permission from the local county government to improve this land, a service road must be constructed on this land to benefit all 5,000 acres. In 2001, C enters into a contract to sell a 1,000-acre parcel of undeveloped land to B, a residential developer, for its fair market value, $10,000,000. In this contract, C agrees to construct a service road running through the land that C is selling to B and through the 4,000 adjacent acres of undeveloped land that C has sold to several other residential developers for its fair market value, $40,000,000. C reasonably estimates that it will incur a liability of $50,000 to construct this service road, which will be owned and maintained by the county. C must reasonably allocate the cost of the service road among the benefitted parcels. The portion of the estimated total allocable contract costs that C allocates to the 1,000 acre parcel being sold to B (based upon its fair market value) is $10,000 ($50,000 × ($10,000,000/$50,000,000)). Construction of the service road is finished in 2002. Because the estimated total allocable contract costs attributable to C's construction activities, $10,000, are less than 10 percent of the contract's total contract price, $10,000,000, C's contract with B is not a construction contract under paragraph (b)(2)(ii) of this section. Thus, C's contract with B is not a long-term contract under paragraph (b)(2)(i) of this section, notwithstanding that construction of the service road is not completed in 2001.

Example 3. Completion—customer use. In 2002, C, a calendar year taxpayer, enters into a contract to construct a building for B. In November of 2003, the building is completed in every respect necessary for its intended use, and B occupies the building. In early December of 2003, B notifies C of some minor deficiencies that need to be corrected, and C agrees to correct them in January 2004. C reasonably estimates that the cost of correcting these deficiencies will be less than five percent of the total allocable contract costs. C's contract is complete under paragraph (c)(3)(i)(A) of this section in 2003 because in that year, B used the building and C had incurred at least 95 percent of the total allocable contract costs attributable to the building. C must use a permissible method of accounting for any deficiency-related costs incurred after 2003.

Example 4. Completion—customer use. In 1999, C, whose taxable year ends December 31, agrees to construct a shopping center, which includes an adjoining parking lot, for B. By October 2000, C has finished constructing the retail portion of the shopping center. By December 2000, C has graded the entire parking lot, but has paved only one-fourth of it because inclement weather conditions prevented C from laying asphalt on the remaining three-fourths. In December 2000, B opens the retail portion of the shopping center and the paved portion of the parking lot to the general public. C reasonably estimates that the cost of paving the remaining three-fourths of the parking lot when whether permits will exceed 5 percent of C's total allocable contract costs. Even though B is using the subject matter of the contract, C's contract is not completed in December 2000 under paragraph (c)(3)(i)(A) of this section because C has not incurred at least 95 percent of the total allocable contract costs attributable to the subject matter.

Example 5. Non-long-term contract activity. On January 1, 1999, C, whose taxable year ends December 31, enters into a single long-term contract to design and manufacture a satellite and to develop computer software enabling B to operate the satellite. At the end of 1999, C has not finished manufacturing the satellite. Designing the satellite and developing the computer software are non-long-term contract activities that are incident to and necessary for the taxpayer's manufacturing of the subject matter of a long-term contract because the satellite could not be manufactured without the design and would not operate without the software. Thus, under paragraph (d)(1) of this section, C must allocate these non-long-term contract activities to the long-term contract and account for the gross receipts and costs attributable to designing the satellite and developing computer software using the PCM.

Example 6. Non-long-term contract activity. C agrees to manufacture equipment for B under a long-term contract. In a separate contract, C agrees to design the equipment being manufactured for B under the long-term contract. Under paragraph (d)(1) of this section, C must allocate the gross receipts and costs related to the design to the long-term contract because designing the equipment is a non-long-term contract activity that is incident to and necessary for the manufacture of the subject matter of the long-term contract.

Example 7. Severance. On January 1, 1999, C, a construction contractor, and B, a real estate investor, enter into an agreement requiring C to build two office buildings in different areas of a large city. The agreement provides that the two office buildings will be completed by C and accepted by B in 1999 and 2000, respectively, and that C will be paid $1,000,000 and $1,500,000 for the two office buildings, respectively. The agreement will provide C with a reasonable profit from the construction of each building. Unless C is required to use the PCM to account for the contract, the taxpayer is required to sever this contract under paragraph (e)(2) of this section because the buildings are independently priced, the agreement provides for separate delivery and acceptance of the buildings, and, as each building will generate a reasonable profit, a reasonable businessperson would have entered into separate agreements for the terms agreed upon for each building.

Example 8. Severance. C, a large construction contractor with a calendar taxable year, accounts for its construction contracts using the PCM and has elected to use the 10-percent method described in § 1.460–4(b)(6). In September 1999, C enters into an agreement to construct 4 buildings in 4 different cities. The buildings are independently priced and the contract provides a reasonable profit for each of the buildings. In addition, the agreement requires C to deliver one building per year in 2000, 2001, 2002, and 2003. As of December 31, 1999, C has incurred 25 percent of the estimated total allocable contract costs attributable to one of the buildings, but only 5 percent of the estimated total allocable contract costs attributable to all 4 buildings included in the agreement. Under paragraph (e)(3)(i) of this section, C may not sever this contract because it is accounted for using the PCM. Using the 10-percent method, C does not take into account any portion of the total contract price or any incurred allocable contract costs attributable to this agreement in 1999. Upon examination of C's 1999 tax return, the Commissioner determines that C entered into one agreement for 4 buildings rather than 4 separate agreements each for one building solely to take advantage of the deferral obtained under the 10-percent method. Consequently, in order to clearly reflect the taxpayer's income, the Commissioner may require C to sever the agreement into 4 separate contracts under paragraph (e)(2) of this section because the buildings are independently priced, the agreement provides for separate delivery and acceptance of the buildings, and a reasonable businessperson would have entered into separate agreements for these buildings.

Example 9. Aggregation. In 1999, C, a shipbuilder, enters into two agreements with the Department of the Navy as the result of a single negotiation. Each agreement obligates C to manufacture a submarine. Because the submarines are of the same class, their specifications are similar. Because C has never manufactured submarines of this class, however, C anticipates that it will incur substantially higher costs to manufacture the first submarine, to be delivered in 2005, than to manufacture the second submarine, to be delivered in 2008. If the agreements are treated as separate contracts, the first contract probably will produce a substantial loss, while the second contract probably will produce substantial profit. Based upon these facts, aggregation is required under paragraph

(e)(2) of this section because the submarines are interdependently priced and a reasonable businessperson would not have entered the first agreement without also entering into the second.

Example 10. Aggregation. In 1999, C, a manufacturer of aircraft and related equipment, agrees to manufacture 10 military aircraft for foreign government B and to deliver the aircraft by the end of 2001. When entering into the agreement, C anticipates that it might receive production orders from B over the next 20 years for as many as 300 more of these aircraft. The negotiated contract price reflects C's and B's consideration of the expected total cost of manufacturing the 10 aircraft, the risks and opportunities associated with the agreement, and the additional factors the parties considered relevant. The negotiated price provides a profit on the sale of the 10 aircraft even if C does not expect to receive any additional production orders from B. It is unlikely, however, that C actually would have wanted to manufacture the 10 aircraft but for the expectation that it would receive additional production orders from B. In 2001, B accepts delivery of the 10 aircraft. At that time, B orders an additional 20 aircraft of the same type for delivery in 2005. When negotiating the price for the additional 20 aircraft, C and B consider the fact that the expected unit cost for this production run of 20 aircraft will be lower than the unit cost of the 10 aircraft completed and accepted in 2001, but substantially higher than the expected unit cost of future production runs. Based upon these facts, aggregation is not permitted under paragraph (e)(2) of this section. Because the parties negotiated the prices of both agreements considering only the expected production costs and risks for each agreement standing alone, the terms and conditions agreed upon for the first agreement are independent of the terms and conditions agreed upon for the second agreement. The fact that the agreement to manufacture 10 aircraft provides a profit for C indicates that a reasonable businessperson would have entered into that agreement without entering into the agreement to manufacture the additional 20 aircraft.

Example 11. Classification and completion. In 1999, C agrees to manufacture and install an industrial machine for B. The agreement requires C to deliver the machine in August 2001 and to install and test the machine in B's factory. At least 95 percent of the estimated total allocable contract costs are reasonably allocable to C's manufacturing activities. In addition, the agreement requires B to accept the machine when the tests prove that the machine's performance will satisfy the environmental standards set by the Environmental Protection Agency (EPA), even if B has not obtained the required operating permit. Because of technical difficulties, C cannot deliver the machine until December 2001, when B conditionally accepts delivery. C classifies the agreement as a manufacturing contract under paragraph (f) of this section because 95 percent of the total allocable contract costs are attributable to C's manufacturing activities. C, whose taxable year ends December 31, installs the machine in December 2001 and then tests it through February 2002. B accepts the machine in February 2002, but does not obtain the operating permit from the EPA until January 2003. Under paragraph (c)(3)(i)(B) of this section, C's contract is finally completed and accepted in February 2002, even though B does not obtain the operating permit until January 2003, because C completed all its obligations under the contract and B accepted the machine in 2002.

§ 1.460–2 Long-term manufacturing contracts.

(a) *In general.* Section 460 generally requires a taxpayer to determine the income from a long-term manufacturing contract using the percentage-of-completion method described in § 1.460–4(b) (PCM). A contract not completed in the contracting year is a long-term manufacturing contract if it involves the manufacture of personal property that is—

(1) A unique item of a type that is not normally carried in the finished goods inventory of the taxpayer; or

(2) An item that normally requires more than 12 calendar months to complete (regardless of the duration of the contract or the time to complete a deliverable quantity of the item).

(b) *Unique*—(1) *In general. Unique* means designed for the needs of a specific customer. A contract may require the taxpayer to manufacture more than one unit of a unique item. To determine whether an item is designed for the needs of a specific customer, a taxpayer must consider the extent to which research, development, design, engineering, retooling, and similar activities are required to produce the item. In addition, a taxpayer must consider whether the same item could be sold to other customers (with or without minor modifications).

(2) *Safe harbors.* Notwithstanding paragraph (b)(1) of this section, an item is not unique if it satisfies one or more of the following safe harbors—

(i) *Short production period.* An item is not unique if it normally requires 90 days or less to complete the item;

(ii) *Customized item.* An item is not unique if the total allocable contract costs attributable to customizing (such as research, development, design, engineering, retooling, and similar activities) that are incident to or necessary for the production of the item does not exceed 5 percent of the estimated total allocable contract costs allocable to the item; or

(iii) *Inventoried item.* A unique item ceases to be unique no later than when the taxpayer normally carries similar items in its finished goods inventory.

(c) *Normal time to complete*—(1) *In general.* The amount of time normally required to complete an item is the item's reasonably expected *production period*, as described in § 1.263A–12, determined at the end of the contracting year. Thus, the expected production period for an item generally would begin when a taxpayer incurs at least five percent of the costs allocable to the item and end when the item is ready to be held for sale and all reasonably expected production activities are complete. In the case of components that are assembled or reassembled into an item or unit at the customer's facility by the taxpayer's employees or agents, the production period ends when the components are assembled or reassembled into an operable item or unit. To the extent that several distinct activities related to the production of the item are expected to occur simultaneously, the period during which these distinct activities occur is not counted more than once.

(2) *Production by related parties.* To determine the time normally required to complete an item, a taxpayer must consider all relevant production activities performed by itself and by related parties, as defined in § 1.460–1(b)(4). For example, if a taxpayer's item requires a component or subassembly manufactured by a related party, the taxpayer must consider the time the related party takes to complete the component or subassembly and, for purposes of determining the beginning of an item's production period, the costs incurred by the related party that are allocable to the component or subassembly. However, if both requirements of the inventory exception under § 1.460–1(g)(1)(ii) are satisfied, a taxpayer does not consider the activities performed or the costs incurred by a related party when determining the normal time to complete an item.

(d) *Qualified ship contracts.* A taxpayer may determine the income from a long-term manufacturing contract that is a qualified ship contract using either the PCM or the percentage-of-completion/capitalized-cost method (PCCM) of accounting described in § 1.460–4(e). A *qualified ship contract* is any contract entered into after February 28, 1986, to manufacture in the United States not more than 5 seagoing vessels if the vessels will not be manufactured directly or indirectly for the United States Government and if the taxpayer reasonably expects to complete the contract within 5 years of the contract commencement date. Under § 1.460–1(e)(3)(i), a contract to produce more than 5 vessels for which the PCM would be required cannot be severed in order to be classified as a qualified ship contract.

(e) *Examples.* The following examples illustrate the rules of this section:

Example 1. Unique item and classification. In December 1999, C enters into a contract with B to design and manufacture a new type of industrial equipment. C reasonably expects the normal production period for this type of equipment to be 8 months. Because the new type of industrial equipment requires a substantial amount of research, design and engineering to produce, C determines that the equipment is a unique item and its contract with B is a long-term contract. After delivering the equipment to B in September 2000, C contracts with B to produce five additional units of industrial equipment using the same basic design as the previous unit of industrial equipment but changing certain specifications. These additional units, which also are expected to take 8 months to produce, will be delivered to B in 2001. C determines that the research, design, engineering, retooling and similar customizing costs necessary to produce the five additional units of equipment does not exceed 5% of the estimated total allocable contract costs. Consequently, the additional units of equipment satisfy the safe harbor in paragraph (b)(2)(ii) of this section and are not unique items. Although C's contract with B to produce the five additional units is not completed within the contracting year, the contract is not a long-term contract since the additional units of equipment are not unique items and do not normally require more than 12 months to produce. C must classify its second contract with B as a non-long term contract, notwithstanding that it classified the previous contract with B for a similar item as a long-term contract, because the determination of whether a contract is a long-term contract is made on a contract by contract basis. Such a change in classification is not a change in method of accounting because the change in classification results from a change in underlying facts.

Example 2. 12-month rule—related party. C manufactures cranes that it regularly carries in finished goods inventory. C purchases one of the crane's components from R, a related party under § 1.460–1(b)(4). R does not carry this crane component in finished goods inventory; therefore, C does not satisfy the inventory exception and must consider the activities of R as R incurs costs and performs the activities rather than as C incurs a liability to R. The normal time period between the time that both C and R incur 5% of the costs allocable to the crane and the time that R completes the component is 5 months. C normally requires an additional 8 months to complete production of the crane after receiving the integral component from R. C's crane is an item of a type that normally requires more than 12 months to complete under paragraph (c) of this section because the production period from the time that both C and R incur 5% of the costs allocable to the crane until the time that production of the crane is complete is normally 13 months.

Example 3. 12-month rule—duration of contract. The facts are the same as in *Example 2,* except that C enters into a sales contract with B on December 31, 1999 (the last day of C's taxable year), and delivers a completed crane to B on February 1, 2000. C's contract with B is a long-term contract under paragraph (a)(2) of this section because the contract is not completed in the contracting year, 1999, and the crane is an item that normally requires more than 12 calendar months to complete (regardless of the duration of the contract).

Example 4. 12-month rule—normal time to complete. The facts are the same as in *Example 3,* except that C (and R) actually complete B's crane in only 10 calendar months. The contract is a long-term contract because the normal time to complete a crane, not the actual time to complete a crane, is the relevant criterion for determining whether an item is subject to paragraph (a)(2) of this section.

§ 1.460–3 Long-term construction contracts.

(a) *In general.* Section 460 generally requires a taxpayer to determine the income from a long-term construction contract using the percentage-of-completion method described in § 1.460–4(b) (PCM). A contract not completed in the contracting year is a long-term construction contract if it involves the building, construction, reconstruction, or rehabilitation of real property; the installation of an integral component to real property; or the improvement of real property (collectively referred to as construction). *Real property* means land, buildings, and *inherently permanent structures,* as defined in § 1.263A–8(c)(3), such as roadways, dams, and bridges. Real property does not include vessels, offshore drilling platforms, or unsevered natural products of land. An *integral component to real property* includes property not produced at the site of the real property but intended to be permanently affixed to the real property, such as elevators and central heating and cooling systems. Thus, for example, a contract to install an elevator in a building is a construction contract because a building is real property, but a contract to install an elevator in a ship is not a construction contract because a ship is not real property.

(b) *Exempt construction contracts*—(1) *In general.* The general requirement to use the PCM and the cost allocation rules described in § 1.460–5(b) or (c) does not apply to any long-term construction contract described in this paragraph (b) (exempt construction contract). *Exempt construction contract* means any—

(i) Home construction contract; and

(ii) Other construction contract that a taxpayer estimates (when entering into the contract) will be completed within 2 years of the contract commencement date, provided the taxpayer satisfies the $10,000,000 gross receipts test described in paragraph (b)(3) of this section.

(2) *Home construction contract*—(i) *In general.* A long-term construction contract is a *home construction contract* if a taxpayer (including a subcontractor working for a general contractor) reasonably expects to attribute 80 percent or more of the estimated total allocable contract costs (including the cost of land, materials, and services), determined as of the close of the contracting year, to the construction of—

(A) Dwelling units, as defined in section 168(e)(2)(A)(ii)(I), contained in buildings containing 4 or fewer dwelling units (including buildings with 4 or fewer dwelling units that also have commercial units); and

(B) Improvements to real property directly related to, and located at the site of, the dwelling units.

(ii) *Townhouses and rowhouses.* Each townhouse or rowhouse is a separate building.

(iii) *Common improvements.* A taxpayer includes in the cost of the dwelling units their allocable share of the cost that the taxpayer reasonably expects to incur for any common improvements (e.g., sewers, roads, clubhouses) that benefit the dwelling units and that the taxpayer is contractually obligated, or required by law, to construct within the tract or tracts of land that contain the dwelling units.

(iv) *Mixed use costs.* If a contract involves the construction of both commercial units and dwelling units within the same building, a taxpayer must allocate the costs among the commercial units and dwelling units using a reasonable method or combination of reasonable methods, such as specific identification, square footage, or fair market value.

(3) *$10,000,000 gross receipts test*—(i) *In general.* The $10,000,000 gross receipts test is satisfied if a taxpayer's (or predecessor's) average annual gross receipts for the 3 taxable years preceding the contracting year do not exceed $10,000,000, as determined using the principles of the gross receipts test for small resellers under § 1.263A–3(b), except as otherwise provided in paragraphs (b)(3)(ii) and (iii) of this section.

(ii) *Single employer.* To apply the gross receipts test, a taxpayer is not required to aggregate the gross receipts of persons treated as a single employer solely under section 414(m) and any regulations prescribed under section 414.

(iii) *Attribution of gross receipts.* A taxpayer must aggregate a proportionate share of the construction-related gross receipts of any person that has a five

percent or greater interest in the taxpayer. In addition, a taxpayer must aggregate a proportionate share of the construction-related gross receipts of any person in which the taxpayer has a five percent or greater interest. For this purpose, a taxpayer must determine ownership interests as of the first day of the taxpayer's contracting year and must include indirect interests in any corporation, partnership, estate, trust, or sole proprietorship according to principles similar to the constructive ownership rules under sections 1563(e), (f)(2), and (f)(3)(A). However, a taxpayer is not required to aggregate under this paragraph (b)(3)(iii) any construction-related gross receipts required to be aggregated under paragraph (b)(3)(i) of this section.

(c) *Residential construction contracts.* A taxpayer may determine the income from a long-term construction contract that is a residential construction contract using either the PCM or the percentage-of-completion/capitalized-cost method (PCCM) of accounting described in § 1.460–4(e). A *residential construction contract* is a home construction contract, as defined in paragraph (b)(2) of this section, except that the building or buildings being constructed contain more than 4 dwelling units.

Par. 7. Section 1.460–4 is amended by adding paragraphs (a) through (i) to read as follows:

§ 1.460–4 Methods of accounting for long-term contracts.

(a) *Overview.* This section prescribes permissible methods of accounting for long-term contracts. Paragraph (b) of this section describes the percentage-of-completion method under section 460(b) (PCM) that a taxpayer generally must use to determine the income from a long-term contract. Paragraph (c) of this section lists permissible methods of accounting for exempt construction contracts described in § 1.460–3(b)(1) and describes the exempt-contract percentage-of-completion method (EPCM). Paragraph (d) of this section describes the completed-contract method (CCM), which is one of the permissible methods of accounting for exempt construction contracts. Paragraph (e) describes the percentage-of-completion/capitalized-cost method (PCCM), which is a permissible method of accounting for qualified ship contracts described in § 1.460–2(d) and residential construction contracts described in § 1.460–3(c). Paragraph (f) of this section provides rules for determining the alternative minimum taxable income (AMTI) from long-term contracts that are not exempted under section 56. Paragraph (g) of this section provides rules concerning consistency in methods of accounting for long-term contracts. Paragraph (h) of this section provides examples illustrating the principles of this section. Finally, paragraph (j) of this section provides rules for taxpayers that file consolidated tax returns.

(b) *Percentage-of-completion method*—(1) *In general.* Under the PCM, a taxpayer generally must include in income the portion of the *total contract price,* as defined in paragraph (b)(4)(i) of this section, that corresponds to the percentage of the entire contract that the taxpayer has completed during the taxable year. The percentage of completion must be determined by comparing allocable contract costs incurred with estimated total allocable contract costs. Thus, the taxpayer includes a portion of the total contract price in gross income as the taxpayer incurs allocable contract costs.

(2) *Computations.* To determine the income from a long-term contract, a taxpayer—

(i) Computes the *completion factor* for the contract, which is the ratio of the cumulative allocable contract costs that the taxpayer has incurred through the end of the taxable year to the estimated total allocable contract costs that the taxpayer reasonably expects to incur under the contract;

(ii) Computes the amount of *cumulative gross receipts* from the contract by multiplying the completion factor by the total contract price;

(iii) Computes the amount of *current-year gross receipts,* which is the difference between the amount of cumulative gross receipts for the current taxable year and the amount of cumulative gross receipts for the immediately preceding taxable year (the difference can be a positive or negative number); and

(iv) Takes both the current-year gross receipts and the allocable contract costs incurred during the current year into account in computing taxable income.

(3) *Post-completion-year income.* If a taxpayer has not included the total contract price in gross income by the completion year, as defined in § 1.460–1(b)(6), the taxpayer must include the remaining portion of the total contract price in gross income for the taxable year following the completion year. For the treatment of post-completion costs, see paragraph (b)(5)(v) of this section. See § 1.460–6(c)(1)(ii) for application of the look-back method as a result of adjustments to total contract price.

(4) *Total contract price*—(i) *In general*—(A) *Definition. Total contract price* means the amount that a taxpayer reasonably expects to receive under a long-term contract, including holdbacks, retainages, and cost reimbursements. See § 1.460–6(c)(1)(ii) and (2)(vi) for application of the look-back method as a result of changes in total contract price.

(B) *Contingent compensation.* Any amounts related to contingent rights or obligations, such as bonuses, awards, incentive payments, and amounts in dispute, are included in total contract price as soon as it is reasonably estimated that they will be received, even if the all events test has not yet been met. For example, if a bonus is payable to a taxpayer for meeting an early completion date, the bonus is includable in total contract price at the time (and to the extent) that the taxpayer can predict the achievement of the corresponding objective with reasonable certainty. Similarly, a portion of the contract price that is in dispute is included in total contract price at the time and to the extent that the taxpayer can reasonably expect the dispute will be resolved in the taxpayer's favor (without regard to when the taxpayer receives payment for the amount in dispute or when the dispute is finally resolved.) If a taxpayer has not included an amount of contingent compensation in total contract price under this paragraph (b)(4)(i) by the taxable year following the completion year, the taxpayer must account for that amount of contingent compensation using a permissible method of accounting. If it is determined after the taxable year following the completion year that an amount included in total contract price will not be earned, the taxpayer should deduct that amount in the year of the determination.

(C) *Non-long-term contract activities.* Total contract price includes an allocable share of the gross receipts attributable to a non-long-term contract activity, as defined in § 1.460–1(d)(2), if the activity is incident to or necessary for the manufacture, building, installation, or construction of the subject matter of the long-term contract. Total contract price also includes amounts reimbursed for independent research and development costs, or bidding and proposal costs, under a federal or cost-plus long-term contract (as defined in section 460(d)), regardless of whether the research and development, or bidding and proposal, activities are incident to or necessary for the performance of that long-term contract.

(ii) *Estimating total contract price.* A taxpayer must estimate the total contract price based upon all the facts and circumstances known as of the last day

of the taxable year. For this purpose, an event that occurs after the end of the taxable year must be taken into account if its occurrence was reasonably foreseeable and its income was subject to reasonable estimation as of the last day of that taxable year.

(5) *Completion factor*—(i) *Allocable contract costs.* A taxpayer must use a cost allocation method permitted under either § 1.460–5(b) or (c) to determine the amount of cumulative allocable contract costs and estimated total allocable contract costs that are used to determine a contract's completion factor. Allocable contract costs include a reimbursable cost that is allocable to the contract.

(ii) *Cumulative allocable contract costs incurred.* To determine a contract's completion factor for a taxable year, a taxpayer must take into account the cumulative allocable contract costs that have been incurred, as defined in § 1.460–1(b)(8), through the end of the taxable year.

(iii) *Estimating total allocable contract costs.* A taxpayer must estimate total allocable contract costs for each long-term contract based upon all the facts and circumstances known as of the last day of the taxable year. For this purpose, an event that occurs after the end of the taxable year must be taken into account if its occurrence was reasonably foreseeable and its cost was subject to reasonable estimation as of the last day of that taxable year. To be considered reasonable, an estimate of total allocable contract costs must include costs attributable to delay, rework, change orders, technology or design problems, or other problems that reasonably can be anticipated considering the nature of the contract and prior experience. However, estimated total allocable contract costs do not include any contingency allowance for costs that, as of the end of the taxable year, are not reasonably expected to be incurred in the performance of the contract. For example, estimated total allocable contract costs do not include any costs attributable to factors not reasonably foreseeable at the end of the taxable year, such as third-party litigation, extreme weather conditions, strikes, and delays in securing required permits and licenses. In addition, the estimated costs of performing other agreements that are not aggregated with the contract under § 1.460 –1(e) that the taxpayer expects to incur with the same customer (e.g., follow-on contracts) are not included in estimated total allocable contract costs for the initial contract.

(iv) *Pre-contracting-year costs.* If a taxpayer reasonably expects to enter into a long-term contract in a future taxable year, the taxpayer must capitalize all costs incurred prior to entering into the contract that will be allocable to that contract (e.g., bidding and proposal costs). A taxpayer is not required to compute a completion factor, or to include in gross income any amount, related to allocable contract costs for any taxable year ending before the contracting year or, if applicable, the 10-percent year defined in paragraph (b)(6)(i) of this section. In that year, the taxpayer is required to compute a completion factor that includes all allocable contract costs that have been incurred as of the end of that taxable year (whether previously capitalized or deducted) and to take into account in computing taxable income the related gross receipts and the previously capitalized allocable contract costs.

(v) *Post-completion-year costs.* If a taxpayer incurs an allocable contract cost after the completion year, the taxpayer must account for that cost using a permissible method of accounting. See § 1.460–6(c)(1)(ii)2) for application of the look-back method as a result of adjustments to allocable contract costs.

(6) *10-percent method*—(i) *In general.* Instead of determining the income from a long-term contract beginning with the contracting year, a taxpayer may elect to use the 10-percent method under section 460(b)(5). Under the 10-percent method, a taxpayer does not include in gross income any amount related to allocable contract costs until the taxable year in which the taxpayer has incurred at least 10 percent of the estimated total allocable contract costs (10-percent year). A taxpayer must treat costs incurred before the 10-percent year as pre-contracting-year costs described in paragraph (b)(5)(iv) of this section.

(ii) *Election.* A taxpayer makes an election under this paragraph (b)(6) by using the 10-percent method for all long-term contracts entered into during the taxable year of the election on its original federal income tax return for the election year. This election is a method of accounting and, thus, applies to all long-term contracts entered into during and after the taxable year of the election. An electing taxpayer must use the 10-percent method to apply the look-back method under § 1.460–6 and to determine alternative minimum taxable income under paragraph (f) of this section. This election is not available if a taxpayer uses the simplified cost-to-cost method described in § 1.460–5(c) to compute the completion factor of a long-term contract.

(c) *Exempt contract methods*—(1) *In general.* An *exempt contract method* means the method of accounting that a taxpayer must use to account for all its long-term contracts (and any portion of a long-term contract) that are exempt from the requirements of section 460(a). Thus, an exempt contract method applies to exempt construction contracts, as defined in § 1.460–3(b); the non-PCM portion of a qualified ship contract, as defined in § 1.460–2(d); and the non-PCM portion of a residential construction contract, as defined in § 1.460–3(c). Permissible exempt contract methods include the PCM, the EPCM described in paragraph (c)(2) of this section, the CCM described in paragraph (d) of this section, or any other permissible method. See section 446.

(2) *Exempt-contract percentage-of-completion method*—(i) *In general.* Similar to the PCM described in paragraph (b) of this section, a taxpayer using the EPCM generally must include in income the portion of the total contract price, as described in paragraph (b)(4) of this section, that corresponds to the percentage of the entire contract that the taxpayer has completed during the taxable year. However, under the EPCM, the percentage of completion may be determined as of the end of the taxable year by using any method of cost comparison (such as comparing direct labor costs incurred to date to estimated total direct labor costs) or by comparing the work performed on the contract with the estimated total work to be performed, rather than by using the cost-to-cost comparison required by paragraphs (b)(2)(i) and (5) of this section, provided such method is used consistently and clearly reflects income. In addition, paragraph (b)(3) of this section (regarding post-completion-year income), paragraph (b)(6) of this section (regarding the 10-percent method) and § 1.460–6 (regarding the look-back method) do not apply to the EPCM.

(ii) *Determination of work performed.* For purposes of the EPCM, the criteria used to compare the work performed on a contract as of the end of the taxable year with the estimated total work to be performed must clearly reflect the earning of income with respect to the contract. For example, in the case of a roadbuilder, a standard of completion solely based on miles of roadway completed in a case where the terrain is substantially different may not clearly reflect the earning of income with respect to the contract.

(d) *Completed-contract method*—(1) *In general.* Except as otherwise provided in paragraph (d)(4) of this section, a taxpayer using the CCM to

account for a long-term contract must take into account in the contract's completion year, as defined in § 1.460–1(b)(6), the gross contract price and all allocable contract costs incurred by the completion year. A taxpayer may not treat the cost of any materials and supplies that were allocated to a contract, but actually remain on hand when the contract is completed, as an allocable contract cost.

(2) *Post-completion-year income and costs.* If a taxpayer has not included an item of contingent compensation (i.e. amounts for which the all events test has not been satisfied) in gross contract price under paragraph (d)(3) of this section by the completion year, the taxpayer must account for this item of contingent compensation using a permissible method of accounting. If a taxpayer incurs an allocable contract cost after the completion year, the taxpayer must account for that cost using a permissible method of accounting.

(3) *Gross contract price.* Gross contract price includes all amounts (including holdbacks, retainages, and reimbursements) that a taxpayer is entitled by law or contract to receive, whether or not the amounts are due or have been paid. In addition, gross contract price includes all bonuses, awards, and incentive payments, such as a bonus for meeting an early completion date, to the extent the all events test is satisfied. If a taxpayer performs a non-long-term contract activity, as defined in § 1.460–1(d)(2), that is incident to or necessary for the manufacture, building, installation, or construction of the subject matter of one or more of the taxpayer's long-term contracts, the taxpayer must include an allocable share of the gross receipts attributable to that activity in the gross contract price of the contract(s) benefited by that activity. Gross contract price also includes amounts reimbursed for independent research and development costs, or bidding and proposal costs, under a federal or cost-plus long-term contract (as defined in section 460(d)), regardless of whether the research and development, or bidding and proposal, activities are incident to or necessary for the performance of that long-term contract.

(4) *Contracts with disputed claims*—(i) *In general.* The special rules in this paragraph (d)(4) apply to a long-term contract accounted for using the CCM with a dispute caused by a customer requesting a reduction of the gross contract price or the performance of additional work under the contract or by a taxpayer requesting an increase in gross contract price, or both, on or after the date a taxpayer has tendered the subject matter of the contract to the customer.

(ii) *Taxpayer assured of profit or loss.* If the disputed amount relates to a customer's claim for either a reduction in price or additional work and the taxpayer is assured of either a profit or a loss on a long-term contract regardless of the outcome of the dispute, the gross contract price, reduced (but not below zero) by the amount reasonably in dispute, must be taken into account in the completion year. If the disputed amount relates to a taxpayer's claim for an increase in price and the taxpayer is assured of either a profit or a loss on a long-term contract regardless of the outcome of the dispute, the gross contract price must be taken into account in the completion year. If the taxpayer is assured a profit on the contract, all allocable contract costs incurred by the end of the completion year are taken into account in that year. If the taxpayer is assured a loss on the contract, all allocable contract costs incurred by the end of the completion year, reduced by the amount reasonably in dispute, are taken into account in the completion year.

(iii) *Taxpayer unable to determine profit or loss.* If the amount reasonably in dispute affects so much of the gross contract price or allocable contract costs that a taxpayer cannot determine whether a profit or loss ultimately will be realized from a long-term contract, the taxpayer may not take any of the gross contract price or allocable contract costs into account in the completion year.

(iv) *Dispute resolved.* Any part of the gross contract price and any allocable contract costs that have not been taken into account because of the principles described in paragraph (d)(4) (i), (ii) or (iii) of this section must be taken into account in the taxable year in which the dispute is resolved. If a taxpayer performs additional work under the contract because of the dispute, the term *taxable year in which the dispute is resolved* means the taxable year the additional work is completed, rather than the taxable year in which the outcome of the dispute is determined by agreement, decision, or otherwise.

(e) *Percentage-of-completion/capitalized-cost method.* Under the PCCM, a taxpayer must determine the income from a long-term contract using the PCM for the applicable percentage of the contract and its exempt contract method, as defined in paragraph (c) of this section, for the remaining percentage of the contract. For residential construction contracts described in § 1.460–3(c), the applicable percentage is 70 percent, and the remaining percentage is 30 percent. For qualified ship contracts described in § 1.460–2(d), the applicable percentage is 40 percent, and the remaining percentage is 60 percent.

(f) *Alternative minimum taxable income*—(1) *In general.* Under section 56(a)(3), a taxpayer (not exempt from the AMT under section 55(e)) must use the PCM to determine its AMTI from any long-term contract entered into on or after March 1, 1986, that is not a home construction contract, as defined in § 1.460–3(b)(2). For AMTI purposes, the PCM must include any election under paragraph (b)(6) of this section (concerning the 10-percent method) or under § 1.460–5(c) (concerning the simplified cost-to-cost method) that the taxpayer has made for regular tax purposes. For exempt construction contracts described in § 1.460–3(b)(1)(ii), a taxpayer must use the simplified cost-to-cost method to determine the completion factor for AMTI purposes. Except as provided in paragraph (f)(2) of this section, a taxpayer must use AMTI costs and AMTI methods, such as the depreciation method described in section 56(a)(1), to determine the completion factor of a long-term contract (except a home construction contract) for AMTI purposes.

(2) *Election to use regular completion factors.* Under this paragraph (f)(2), a taxpayer may elect for AMTI purposes to determine the completion factors of all of its long-term contracts using the methods of accounting and allocable contract costs used for regular federal income tax purposes. A taxpayer makes this election by using regular methods and regular costs to compute the completion factors of all long-term contracts entered into during the taxable year of the election for AMTI purposes on its original federal income tax return for the election year. This election is a method of accounting and, thus, applies to all long-term contracts entered into during and after the taxable year of the election. Although a taxpayer may elect to compute the completion factor of its long-term contracts using regular methods and regular costs, an election under this paragraph (f)(2) does not eliminate a taxpayer's obligation to comply with the requirements of section 55 when computing AMTI. For example, although a taxpayer may elect to use the depreciation methods used for regular tax purposes to compute the completion factor of its long-term contracts for AMTI purposes, the taxpayer must use the depreciation methods permitted by section 56 to compute AMTI.

(g) *Method of accounting.* A taxpayer that uses the PCM, EPCM, CCM, PCCM, or elects the 10-percent method or special AMTI method (or changes to another method of accounting with the Commissioner's consent) must apply the method(s) consistently for all similarly classified long-term contracts, until the taxpayer obtains the Commissioner's consent under section 446(e) to change to another method of accounting.

(h) *Examples.* The following examples illustrate the rules of this section:

Example 1. PCM—estimating total contract price. On January 1, 1999, C, who uses a calendar taxable year, enters into a contract to design and manufacture a satellite (a unique item). The contract provides that C will be paid $10,000,000 for delivering the completed satellite by December 1, 2000. The contract also provides that C will receive a $3,000,000 bonus for delivering the satellite by July 1, 2000, and an additional $4,000,000 bonus if the satellite successfully performs its mission for five years. C is unable to reasonably predict if the satellite will successfully perform its mission for five years. If on December 31, 1999, C should reasonably expect to deliver the satellite by July 1, 2000, the estimated total contract price is $13,000,000 ($10,000,000 unit price + $3,000,000 production-related bonus). Otherwise, the estimated total contract price is $10,000,000. In either event, the $4,000,000 bonus is not includable in the estimated total contract price as of December 31, 1999, because C is unable to reasonably predict that the satellite will successfully perform its mission for five years.

Example 2. PCM—computing income. (i) C, who uses a calendar taxable year, determines the income from long-term contracts using the PCM. During 1999, C agrees to manufacture for the customer, B, a unique item for a total contract price of $1,000,000. Under C's contract, B is entitled to retain 10 percent of the total contract price until it accepts the item. By the end of 1999, C has incurred $200,000 of allocable contract costs and estimates that the total allocable contract costs will be $800,000. By the end of 2000, C has incurred $600,000 of allocable contract costs and estimates that the total allocable contract costs will be $900,000. In 2001, after completing the contract, C determines that the actual cost to manufacture the item was $750,000.

(ii) For each of the taxable years, C's income from the contract is computed as follows:

	Taxable year		
	1999	2000	2001
(A) Cumulative incurred costs	$200,000	$600,000	$750,000
(B) Estimated total costs	$800,000	$900,000	$750,000
(C) Completion factor (in percent): (A)÷(B)	25.00	66.67	100.00
(D) Total contract price	$1,000,000	$1,000,000	$1,000,000
(E) Cumulative gross receipts: (C)×(D)	$250,000	$666,667	$1,000,000
(F) Cumulative gross receipts: (prior year)	(0)	($250,000)	($666,667)
(G) Current-year gross receipts	$250,000	$416,667	$333,333
(H) Cumulative incurred costs	$200,000	$600,000	$750,000
(I) Cumulative incurred costs: (prior year)	(0)	($200,000)	($600,000)
(J) Current-year costs	$200,000	$400,000	$150,000
(K) Gross income (G) − (J)	$50,000	$16,667	$183,333

Example 3. PCM—computing income with cost sharing. (i) C, who uses a calendar taxable year, determines the income from long-term contracts using the PCM. During 1999, C enters into a contract to manufacture a unique item. The contract specifies a target price of $1,000,000, a target cost of $600,000, and a target profit of $400,000. C and B will share the savings of any cost under run (actual total incurred cost is less than target cost) and the additional cost of any cost overrun (actual total incurred cost is greater than target cost) as follows: 30 percent to C and 70 percent to B. By the end of 1999, C has incurred $200,000 of allocable contract costs and estimates that the total allocable contract costs will be $600,000. By the end of 2000, C has incurred $300,000 of allocable contract costs and estimates that the total allocable contract costs will be $400,000. In 2001, after completing the contract, C determines that the actual cost to manufacture the item was $700,000.

(ii) For each of the taxable years, C's income from the contract is computed as follows (Note that the sharing of any cost under run or cost overrun is reflected as an adjustment to C's target price under paragraph (b)(4)(i) of this section):

	Taxable year		
	1999	2000	2001
(A) Cumulative incurred costs	$200,000	$300,000	$700,000
(B) Estimated total costs	$600,000	$400,000	$700,000
(C) Completion factor (in percent): (A) ÷ (B)	33.33	75.00	100.00
(D) Target price	$1,000,000	$1,000,000	$1,000,000
(E) Estimated total costs	$600,000	$400,000	$700,000
(F) Target costs	$600,000	$600,000	$600,000
(G) Cost (under run)/overrun: (E) − (F)	0	($200,000)	$100,000
(H) Adjustment rate (in percent)	70	70	70
(I) Target price adjustment	0	($140,000)	$70,000

	Taxable year		
	1999	2000	2001
(J) Total contract price: (D) + (I)	$1,000,000	$860,000	$1,070,000
(K) Cumulative gross receipts: (C) × (J)	$333,333	$645,000	$1,070,000
(L) Cumulative gross receipts: (prior year)	(0)	($333,333)	($645,000)
(M) Current-year gross receipts	$333,333	$311,667	$425,000
(N) Cumulative incurred costs	$200,000	$300,000	$700,000
(O) Cumulative incurred costs: (prior year)	(0)	($200,000)	($300,000)
(P) Current-year costs	$200,000	$100,000	$400,000
(Q) Gross income: (M) − (P)	$133,333	$211,667	$25,000

Example 4. PCM—10 percent method. (i) In November 1999, C, who determines income using the PCM and who uses a calendar taxable year, agrees to manufacture a unique item for $1,000,000. C reasonably estimates that the total allocable contract costs will be $600,000. By December 31, 1999, C has received $50,000 in progress payments and incurred $40,000 of costs. C elects to use the 10 percent method effective for 1999 and all subsequent taxable years. During 2000, C receives $500,000 in progress payments and incurs $260,000 of costs. In 2001, C incurs an additional $300,000 of costs, C finishes manufacturing the item, and receives the final $450,000 payment.

(ii) For each of the taxable years, C's income from the contract is computed as follows:

	Taxable year		
	1999	2000	2001
(A) Cumulative incurred costs	$40,000	$300,000	$600,000
(B) Estimated total costs	$600,000	$600,000	$600,000
(C) Completion factor (in percent) (A) ÷ (B)	6.67	50.00	100.00
(D) Total contract price	$1,000,000	$1,000,000	$1,000,000
(E) Cumulative gross receipts: (C) × (D)*	0	$500,000	$1,000,000
(F) Cumulative gross receipts: (prior year)	(0)	(0)	($500,000)
(G) Current-year gross receipts	0	$500,000	$500,000
(H) Cumulative incurred costs	0	$300,000	$600,000
(I) Cumulative incurred costs: (prior year)	(0)	(0)	($300,000)
(J) Current-year costs	0	$300,000	$300,000
(K) Gross income: (G) − (J)	0	$200,000	$200,000

*Unless (C) < 10 percent.

Example 5. CCM contracts with disputes from customer claims. In 2001, C, who uses the CCM to account for exempt construction contracts and uses a calendar taxable year, enters into a contract to construct a bridge for B. The terms of the contract provide for a $1,000,000 gross contract price. C finishes the bridge in 2002 at a cost of $950,000. When B examines the bridge, B insists that C either repaint several girders or reduce the contract price. The amount reasonably in dispute is $10,000. In 2003, C and B resolve their dispute, C repaints the girders at a cost of $6,000, and C and B agree that the contract price is not to be reduced. Because C is assured a profit of $40,000 ($1,000,000 − $10,000 − $950,000) in 2002 even if the dispute is resolved in B's favor, C must take this $40,000 into account in 2002. In 2003, C will earn an additional $4,000 profit ($1,000,000 − $956,000 − $40,000) from the contract with B. Thus, C must take into account an additional $10,000 of gross contract price and $6,000 of additional contract costs in 2003.

Example 6. CCM contracts with disputes from taxpayer claims. In 2003, C, who uses the CCM to account for exempt construction contracts and uses a calendar taxable year, enters into a contract to construct a building for B. The terms of the contract provide for a $1,000,000 gross contract price. C finishes the building in 2004 at a cost of $1,005,000. B examines the building in 2004 and agrees that it meets the contract's specifications; however, at the end of 2004, C and B are unable to agree on the merits of C's claim for an additional $10,000 for items that C alleges are changes in contract specifications and B alleges are within the scope of the contract's original specifications. In 2005, B agrees to pay C an additional $2,000 to satisfy C's claims under the contract. Because the amount in dispute affects so much of the gross contract price that C cannot determine in 2004 whether a profit or loss will ultimately be realized, C may not take any of the gross contract price or allocable contract costs into account in 2004. C must take into account $1,002,000 of gross contract price and $1,005,000 of allocable contract costs in 2005.

Example 7. CCM—contracts with disputes from taxpayer and customer claims. C, who uses the CCM to account for exempt construction contracts and uses a calendar taxable year, constructs a factory for B pursuant to a long-term contract. Under the terms of the contract, B agrees to pay C a total of $1,000,000 for construction of the factory. C finishes construction of the factory in 1999 at a cost of $1,020,000. When B takes possession of the factory and begins operations in December 1999, B is dissatisfied with the location and workmanship of certain heating ducts. As of the end of 1999, C contends that the heating ducts as constructed are in accordance with contract specifications. The amount of the gross contract price reasonably in dispute with respect to the heating ducts is $6,000. As of this time, C is claiming $14,000 in addition to the original contract price for certain changes in contract specifications which C alleges have increased his costs. B denies that such changes have increased C's

costs. In 2000 the disputes between C and B are resolved by performance of additional work by C at a cost of $1,000 and by an agreement that the contract price would be revised downward to $996,000. Under these circumstances, C must include in his gross income for 1999, $994,000 (the gross contract price less the amount reasonably in dispute because of B's claim, or $1,000,000 – $6,000). In 1999, C must also take into account $1,000,000 of allocable contract costs (costs incurred less the amounts in dispute attributable to both B and C's claims, or $1,020,000 – $6,000 – $14,000). In 2000, C must take into account an additional $2,000 of gross contract price ($996,000 – $994,000) and $21,000 of allocable contract costs ($1,021,000 – $1,000,000).

(i) *Mid-contract change in taxpayer.* [Reserved]

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Par. 8. Section 1.460–5 is revised to read as follows:

§ 1.460–5 Cost allocation rules.

(a) *Overview.* This section prescribes methods of allocating costs to long-term contracts accounted for using the percentage-of-completion method described in § 1.460–4(b) (PCM), the completed-contract method described in § 1.460–4(d) (CCM), or the percentage-of-completion/capitalized-cost method described in § 1.460–4(e) (PCCM). Exempt construction contracts described in § 1.460–3(b) accounted for using a method other than the PCM, CCM, or PCCM are not subject to the cost allocation rules of this section (other than the requirement to allocate production period interest under paragraph (b)(2)(v) of this section). Paragraph (b) of this section describes the regular cost allocation methods for contracts subject to the PCM. Paragraph (c) of this section describes an elective simplified cost allocation method for contracts subject to the PCM. Paragraph (d) of this section describes the cost allocation methods for exempt construction contracts reported using the CCM. Paragraph (e) of this section describes the cost allocation rules for contracts subject to the PCCM. Paragraph (f) of this section describes additional rules applicable to the cost allocation methods described in this section. Paragraph (g) of this section provides rules concerning consistency in method of allocating costs to long-term contracts.

(b) *Cost allocation method for contracts subject to PCM*—(1) *In general.* A taxpayer must allocate costs to each long-term contract subject to the PCM in the same manner that direct and indirect costs are capitalized to property produced by a taxpayer under § 1.263A–1(e) through (h), except as otherwise provided in paragraph (b)(2) of this section. Thus, a taxpayer must allocate to each long-term contract subject to the PCM all direct costs and certain indirect costs properly allocable to the long-term contract (i.e., all costs that directly benefit or are incurred by reason of the performance of the long-term contract). However, see paragraph (c) of this section concerning an election to allocate contract costs using the simplified cost-to-cost method. As in section 263A, the use of the practical capacity concept is not permitted. See § 1.263A–2(a)(4).

(2) *Special rules*—(i) *Direct material costs.* The costs of direct materials must be allocated to a long-term contract as of the earlier of when a direct material is purchased specifically for that contract or when *dedicated,* as defined in § 1.263A—11(b)(2). For this purpose, a direct material is purchased specifically for a long-term contract if, when incurring the liability for the direct material, a taxpayer reasonably expects to incorporate the direct material in the subject matter of the contract. A taxpayer maintaining inventories under § 1.471–1 must determine allocable contract costs attributable to direct materials using its method of accounting for such inventories (e.g., FIFO, LIFO, specific identification).

(ii) *Components and subassemblies.* The costs of a component or subassembly (component) produced by the taxpayer must be allocated to a long-term contract as the taxpayer incurs costs to produce the component if the taxpayer reasonably expects to incorporate the component into the subject matter of the contract. Similarly, the cost of a purchased component (including a component purchased from a related party) must be allocated to a long-term contract as the taxpayer incurs the cost to purchase the component if the taxpayer reasonably expects to incorporate the component into the subject matter of the contract. In all other cases, the cost of a component must be allocated to a long-term contract when the component is dedicated, as defined in § 1.263A–11(b)(2). A taxpayer maintaining inventories under § 1.471–1 must determine allocable contract costs attributable to components using its method of accounting for such inventories (e.g., FIFO, LIFO, specific identification).

(iii) Simplified production methods. A taxpayer may not determine allocable contract costs using the simplified production methods described in § 1.263A–2(b) and (c).

(iv) *Costs identified under cost-plus long-term contracts and federal long-term contracts.* To the extent not otherwise allocated to the contract under this paragraph (b), a taxpayer must allocate any identified costs to a cost-plus long-term contract or federal long-term contract (as defined in section 460(d)). *Identified cost* means any cost, including a charge representing the time-value of money, identified by the taxpayer or related person as being attributable to the taxpayer's cost-plus long-term contract or federal long-term contract under the terms of the contract itself or under federal, state, or local law or regulation.

(v) *Interest*—(A) *In general.* If property produced under a long-term contract is *designated property,* as defined in § 1.263A–8(b) (without regard to the exclusion for long-term contracts under § 1.263A–8(d)(2)(v)), a taxpayer must allocate interest incurred during the production period to the long-term contract in the same manner as interest is allocated to property produced by a taxpayer under section 263A(f). See §§ 1.263A–8 to 1.263A–12 generally.

(B) *Production period.* Notwithstanding § 1.263A–12(c) and (d), for purposes of this paragraph (b)(2)(v), the production period of a long-term contract—

(*1*) Begins on the later of—

(*i*) The contract commencement date, as defined in § 1.460–1(b)(7); or

(*ii*) For a taxpayer using the accrual method of accounting for long-term contracts, the date by which 5 percent or more of the total estimated costs, including design and planning costs, under the contract have been incurred; and

(*2*) Ends on the date that the contract is completed, as defined in § 1.460–1(c)(3).

(C) *Application of section 263A(f).* For purposes of this paragraph (b)(2)(v), section 263A(f)(1)(B)(iii) (regarding an estimated production period exceeding 1 year and a cost exceeding $1,000,000) must be applied on a contract-by-contract basis; except that, in the case of a taxpayer using an accrual method of accounting, that section must be applied on a property-by-property basis.

(vi) *Research and experimental expenses.* Notwithstanding § 1.263A–1(e)(3)(ii)(P) and (iii)(B), a taxpayer must allocate research and experimental expenses, other than independent research and experimental expenses (as defined in section 460(c)(5)), to its long-term contracts.

(vii) *Service costs*—(A) *Simplified service cost method*—(*1*) *In general.* To use the simplified service cost method under § 1.263A–1(h), a taxpayer must allocate the otherwise capitalizable

mixed service costs among its long-term contracts using a reasonable method. For example, otherwise capitalizable mixed service costs may be allocated to each long-term contract based on labor hours or contract costs allocable to the contract. To be considered reasonable, an allocation method must be applied consistently and must not disproportionately allocate service costs to contracts expected to be completed in the near future.

(*2*) Example. The following example illustrates the rule of this paragraph (b)(2)(vii)(A):

Example. Simplified service cost method. During 1999, C, which uses a calendar taxable year, produces electronic equipment for inventory and enters into long-term contracts to manufacture specialized electronic equipment. C's method of allocating mixed service costs to the property it produces is the labor-based, simplified service cost method described in § 1.263A–1(h)(4). For 1999, C's total mixed service costs are $100,000, C's section 263A labor costs are $500,000, C's section 460 labor costs (i.e. labor costs allocable to C's long-term contracts) are $250,000, and C's total labor costs are $1,000,000. To determine the amount of mixed service costs capitalizable under section 263A for 1999, C multiplies the ''total mixed service costs'' incurred during 1999 by its 1999 ''section 263A allocation ratio'' (section 263A labor costs/total labor costs). Thus, C's capitalizable mixed service costs for 1999 are $50,000 ($100,000 x $500,000/$1,000,000). Thereafter, C allocates its capitalizable mixed service costs to property produced remaining in ending inventory using its 263A allocation method (e.g., burden rate, simplified production). Similarly, to determine the amount of mixed service costs that are allocable to C's long-term contracts for 1999, C multiplies the ''total mixed service costs'' incurred during 1999 by its 1999 ''section 460 allocation ratio'' (section 460 labor/total labor costs). Thus, C's allocable mixed service contract costs for 1999 are $25,000 ($100,000 x $250,000/ 1,000,000). Thereafter, C allocates its allocable mixed service contract costs to each of its long-term contracts proportionately based on the 1999 section 460 labor costs allocable to each long-term contract.

(B) *Jobsite costs.* If an administrative, service, or support function is performed solely at the jobsite for a specific long-term contract, the taxpayer may allocate all the direct and indirect costs of that administrative, service, or support function to that long-term contract. Similarly, if an administrative, service, or support function is performed at the jobsite solely for the taxpayer's long-term contract activities, the taxpayer may allocate all the direct and indirect costs of that administrative, service, or support function among all the long-term contracts performed at that jobsite. For this purpose, *jobsite* means a production plant or a construction site.

(C) *Limitation on other reasonable cost allocation methods.* A taxpayer may use any other reasonable method of allocating service costs, as provided in § 1.263A–1(f)(4), if, for the taxpayer's long-term contracts considered as a whole, the—

(*1*) Total amount of service costs allocated to the contracts does not differ significantly from the total amount of service costs that would have been allocated to the contracts under § 1.263A–1(f)(2) or (3);

(*2*) Service costs are not allocated disproportionately to contracts expected to be completed in the near future because of the taxpayer's cost allocation method; and

(*3*) Taxpayer's cost allocation method is applied consistently.

(c) *Simplified cost-to-cost method*—(1) *In general.* Instead of using the cost allocation method prescribed in paragraph (b) of this section, a taxpayer may elect to use the simplified cost-to-cost method, which is authorized under section 460(b)(3)(A). Under the simplified cost-to-cost method, a taxpayer determines a contract's completion factor based upon only direct material costs; direct labor costs; and depreciation, amortization, and cost recovery allowances on equipment and facilities directly used to manufacture or construct the subject matter of the contract. An electing taxpayer must use the simplified cost-to-cost method to apply the look-back method under § 1.460–6 and to determine alternative minimum taxable income under § 1.460–4(f).

(2) *Election.* A taxpayer makes an election under this paragraph (c) by using the simplified cost-to-cost method for all long-term contracts entered into during the taxable year of the election on its original federal income tax return for the election year. This election is a method of accounting and, thus, applies to all long-term contracts entered into during and after the taxable year of the election. This election is not available if a taxpayer does not use the PCM to account for all long-term contracts or if a taxpayer elects to use the 10-percent method described in § 1.460–4(b)(6).

(d) *Cost allocation rules for exempt construction contracts reported using the CCM*—(1) *In general.* For exempt construction contracts reported using the CCM, other than contracts described in paragraph (d)(3) of this section, a taxpayer must annually allocate the cost of any activity that is incident to or necessary for the taxpayer's performance under a long-term contract. A taxpayer must allocate to each such exempt construction contract all direct costs as defined in § 1.263A–1(e)(2)(i) and all indirect costs either as provided in § 1.263A–1(e)(3) or as provided in paragraph (d)(2) of this section.

(2) *Indirect costs*—(i) *Indirect costs allocable to exempt construction contracts.* A taxpayer allocating costs under this paragraph (d)(2) must allocate the following costs to an exempt construction contract, other than a contract described in paragraph (d)(3) of this section, to the extent incurred in the performance of that contract—

(A) Repair of equipment or facilities;

(B) Maintenance of equipment or facilities;

(C) Utilities, such as heat, light, and power, allocable to equipment or facilities;

(D) Rent of equipment or facilities;

(E) Indirect labor and contract supervisory wages, including basic compensation, overtime pay, vacation and holiday pay, sick leave pay (other than payments pursuant to a wage continuation plan under section 105(d) as it existed prior to its repeal in 1983), shift differential, payroll taxes, and contributions to a supplemental unemployment benefits plan;

(F) Indirect materials and supplies;

(G) Noncapitalized tools and equipment;

(H) Quality control and inspection;

(I) Taxes otherwise allowable as a deduction under section 164, other than state, local, and foreign income taxes, to the extent attributable to labor, materials, supplies, equipment, or facilities;

(J) Depreciation, amortization, and cost-recovery allowances reported for the taxable year for financial purposes on equipment and facilities to the extent allowable as deductions under chapter 1 of the Internal Revenue Code (Code);

(K) Cost depletion;

(L) Administrative costs other than the cost of selling or any return on capital;

(M) Compensation paid to officers other than for incidental or occasional services;

(N) Insurance, such as liability insurance on machinery and equipment; and

(O) Interest, as required under paragraph (b)(2)(v) of this section.

(ii) *Indirect costs not allocable to exempt construction contracts.* A taxpayer allocating costs under this paragraph (d)(2) is not required to allocate the following costs to an exempt construction contract reported using the CCM—

(A) Marketing and selling expenses, including bidding expenses;

(B) Advertising expenses;

(C) Other distribution expenses;

(D) General and administrative expenses attributable to the performance of services that benefit the taxpayer's activities as a whole (e.g., payroll expenses, legal and accounting expenses);

(E) Research and experimental expenses (described in section 174 and the regulations thereunder);

(F) Losses under section 165 and the regulations thereunder;

(G) Percentage of depletion in excess of cost depletion;

(H) Depreciation, amortization, and cost recovery allowances on equipment and facilities that have been placed in service but are temporarily idle (for this purpose, an asset is not considered to be temporarily idle on non-working days, and an asset used in construction is considered to be idle when it is neither en route to nor located at a job-site), and depreciation, amortization and cost recovery allowances under chapter 1 of the Code in excess of depreciation, amortization, and cost recovery allowances reported by the taxpayer in the taxpayer's financial reports;

(I) Income taxes attributable to income received from long-term contracts;

(J) Contributions paid to or under a stock bonus, pension, profit-sharing, or annuity plan or other plan deferring the receipt of compensation whether or not the plan qualifies under section 401(a), and other employee benefit expenses paid or accrued on behalf of labor, to the extent the contributions or expenses are otherwise allowable as deductions under chapter 1 of the Code. Other employee benefit expenses include (but are not limited to): worker's compensation; amounts deductible or for whose payment reduction in earnings and profits is allowed under section 404A and the regulations thereunder; payments pursuant to a wage continuation plan under section 105(d) as it existed prior to its repeal in 1983; amounts includible in the gross income of employees under a method or arrangement of employer contributions or compensation which has the effect of a stock bonus, pension, profit-sharing, or annuity plan, or other plan deferring the receipt of compensation or providing deferred benefits; premiums on life and health insurance; and miscellaneous benefits provided for employees such as safety, medical treatment, recreational and eating facilities, membership dues, etc.;

(K) Cost attributable to strikes, rework labor, scrap and spoilage; and

(L) Compensation paid to officers attributable to the performance of services that benefit the taxpayer's activities as a whole.

(3) *Large homebuilders.* A taxpayer must capitalize the costs of home construction contracts under section 263A and the regulations thereunder, unless the contract will be completed within two years of the contract commencement date and the taxpayer satisfies the $10,000,000 gross receipts test described in § 1.460–3(b)(3).

(e) *Cost allocation rules for contracts subject to the PCCM.* A taxpayer must use the cost allocation rules described in paragraph (b) of this section to determine the costs allocable to the entire qualified ship contract or residential construction contract accounted for using the PCCM and may not use the simplified cost-to-cost method described in paragraph (c) of this section.

(f) *Special rules applicable to costs allocated under this section*—(1) *Nondeductible costs.* A taxpayer may not allocate any otherwise allocable contract cost to a long-term contract if any section of the Code disallows a deduction for that type of payment or expenditure (e.g., an illegal bribe described in section 162(c)).

(2) *Costs incurred for non-long-term contract activities.* If a taxpayer performs a non-long-term contract activity, as defined in § 1.460–1(d)(2), that is incident to or necessary for the manufacture, building, installation, or construction of the subject matter of one or more of the taxpayer's long-term contracts, the taxpayer must allocate the costs attributable to that activity to such contract(s).

(g) *Method of accounting.* A taxpayer that adopts or elects a cost allocation method of accounting (or changes to another cost allocation method of accounting with the Commissioner's consent) must apply that method consistently for all similarly classified contracts, until the taxpayer obtains the Commissioner's consent under section 446(e) to change to another cost allocation method.

Par. 9. Section 1.460–6 is amended as follows:

1. A sentence is added to the end of paragraph (a)(2).

2. In the third sentence of paragraph (b)(1), the language ''by substituting '80 percent' for '50 percent' with'' is removed and ''by substituting 'at least 80 percent' for 'more than 50 percent' with'' is added in its place.

3. The first sentence of paragraph (c)(1)(ii)(A) is revised.

4. The last two sentences of paragraph (c)(1)(ii)(B) are removed.

5. In the last sentence of paragraph (c)(1)(ii)(C)(*2*), the language ''§ 5h.6'' is removed and ''§ 301.9100–8 of this chapter'' is added in its place.

6. In the fourth sentence of paragraph (c)(2)(v)(A), the language ''similarly'' is removed.

7. The first, second, fifth, and sixth sentences of paragraph (c)(2)(v)(A) are removed.

8. In the first sentence of paragraph (c)(2)(vi)(B), the language ''§ 1.451–3(b)(2)(ii), (iii), (iv), and § 1.451–3(d)(2), (3), and (4)'' is removed and ''§ 1.460–4(b)(4)(i)'' is added in its place.

9. In the second sentence of paragraph (c)(2)(vi)(B), the language ''the percentage of completion method and'' is removed.

10. In the third sentence of paragraph (c)(2)(vi)(B), the language '', for purposes of both the percentage of completion method and the look-back method'' is removed.

11. In the fourth sentence of paragraph (c)(2)(vi)(B), the language ''Similarly, a'' is removed and ''A'' is added in its place.

12. In the first sentence of paragraph (c)(2)(vi)(C), the language ''§ 1.451–3(e)'' is removed and ''§ 1.460–1(e)'' is added in its place.

13. The heading of paragraph (c)(4)(iv) is revised and the last two sentences are revised.

14. In the first sentence of paragraph (d)(4)(ii)(C), the language '' within the meaning of section 1504(a)'' is removed and '', as defined in § 1.1502–1(h)'' is added in its place.

15. In the fourth sentence of paragraph (e)(2), the language '' within the meaning of section 1504(a)'' is removed and '', as defined in § 1.1502–1(h)'' is added in its place.

The revisions and addition read as follows:

§ 1.460–6 Look-back method.

(a) * * *

(2) * * * Paragraph (j) of this section provides guidance concerning the election not to apply the look-back method in de minimis cases.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(A) *In general.* Except as otherwise provided in section 460(b)(6) or § 1.460–6(e), a taxpayer must apply the look-back method to a long-term contract in the completion year and in any post-completion year for which the taxpayer must adjust total contract price or total allocable contract costs, or both, under the PCM. * * *

* * * * *

(4) * * *

(iv) *Additional interest due on look-back interest only after tax liability due.*

* * * Unless a taxpayer is entitled to a tax refund that fully offsets the amount of look-back interest due the government, the look-back interest owed by the taxpayer compounds under section 6622 from the initial due date of the return (without regard to extensions) through the date the return, not the Form 8697, is filed. Similarly, if a taxpayer is entitled to receive look-back interest, the look-back interest compounds under section 6622 from the initial due date of the return (without regard to extensions) through the date the return, not the Form 8697, is filed.

* * * * *

§§ 1.460–7 and 1.460–8 [Removed]

Par. 10. Sections 1.460–7 and 1.460–8 are removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–10948 Filed 4–30–99; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 105–3–0123; FRL–6336–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP). The revision concerns Rule 232, which regulates oxides of nitrogen (NO_X) emissions from Biomass Boilers.

The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the federally approved SIP. EPA has evaluated the rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before June 4, 1999.

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

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102) 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

El Dorado County Environmental Management Department, Air Pollution Control District, 2850 Fairlane Court, Placerville, CA 95667

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 Telephone: (415) 744–1160.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for limited approval and limited disapproval into the California SIP is El Dorado County Air Pollution Control District (EDCAPCD) Rule 232, Biomass Boilers. Rule 232 was submitted by the State of California to EPA on October 20, 1994.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the Clean Air Act.

On November 25, 1992, EPA published a proposed rule entitled, ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. EDCAPCD is classified as severe;[1] therefore this area is subject to the RACT requirements of section 182(b)(2) and the November 15, 1992 deadline cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for El Dorado County Air Pollution Control District (EDCAPCD) Rule 232, Biomass Boilers. EDCAPCD adopted Rule 232 on October 18, 1994. The State of California submitted this Rule 232 to EPA on October 20, 1994. The rule was found to be complete on October 21, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V[2].

NO_X emissions contribute to the production of ground level ozone and smog. EDCAPCD Rule 232 specifies exhaust emission standards for NO_X, carbon monoxide (CO), and VOCs, and was originally adopted as part of EDCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA

[1] EDCAPCD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents[3]. Among those provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

The California Air Resources Board (CARB) developed a guidance document entitled Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Institutional, Industrial and Commercial Boilers, Steam Generators and Process Heaters (July 1991). EPA has found this guidance document to be consistent with the CAA's RACT requirements and has used it in evaluating EDCAPCD Rule 232.

There is currently no version of El Dorado County Air Pollution Control District (EDCAPCD) Rule 232, Biomass Boilers, in the SIP. The submitted rule includes the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emissions standards for oxides of nitrogen (NO_X), volatile organic compounds (VOCs) and carbon monoxide (CO).
- Administrative and monitoring requirements including compliance schedule, reporting requirements, monitoring and record keeping, and test methods.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, record keeping, and compliance testing in addition to RACT guidance regarding emission limits.

Rule 232 strengthens the SIP through the addition of enforceable measures such as record keeping, test methods, definitions, and more stringent compliance testing. Because there is no existing SIP rule, the incorporation of Rule 232 into the SIP would decrease the NO_X emissions allowed by the SIP.

EPA has evaluated EDCAPCD Rule 232 for consistency with the CAA, EPA regulations, and EPA policy and has found that, although EDCAPCD Rule 232 will strengthen the SIP, this rule contains the following deficiency which must be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA.

- Section 232.4 (A) regarding the compliance schedule of the Rule, must be modified to include a compliance schedule for facilities requiring emissions control equipment to achieve emissions limits, as defined in the Clean Air Act. The compliance schedule for facilities requiring emissions control equipment should specify a final compliance schedule to be achieved no later than two years after the determination is made that emissions control equipment is required.

A detailed discussion of this rule deficiency can be found in the Technical Support Document for Rule 232, dated December 2, 1998, which is available from the U.S. EPA, Region IX office. Because of this deficiency, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3), in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of EDCAPCD's submitted Rule 232 under sections 110(k)(3) and 301(a) of the CAA. At the same time, EPA is also proposing a limited disapproval of this rule because it contains a deficiency which must be corrected in order to fully meet the requirements of sections 182(a)(2), 182(b)(2), 182(f), of part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this document has been adopted by the El Dorado County Air Pollution Control District and is currently in effect in the El Dorado County Air Pollution Control District. EPA's final limited disapproval action will not prevent the El Dorado County Air Pollution Control District or EPA from enforcing this rule.

IV. Administrative Requirements

A. Executive Order 12866

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

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

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 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 private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen Ozone, Reporting and record keeping requirements, Volatile organic compounds.

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

Dated: April 21, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 99–11275 Filed 5–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 083–4–0122a; FRL –6336–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; El Dorado County Air Pollution Control District (EDCAPCD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP). The El Dorado County Air Pollution Control District (EDCAPCD), Rule 229 concerns control of emissions of oxides of nitrogen (NO_X) from industrial, institutional, and commercial boilers, steam generators, and process heaters.

The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of Oxides of Nitrogen in accordance with the requirements of the Clean Air Act, as amended in 1990

(CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the federally approved SIP. EPA has evaluated the rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before June 4, 1999.

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

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102) 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 'L' Street, Sacramento, CA 95812

El Dorado County Environmental Management Department, Air Pollution Control District, 2850 Fairlane Court, Placerville, CA 95667

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1160.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for limited approval and limited disapproval into the California SIP is EDCAPCD's Rule 229, Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters. Rule 229 was submitted by the State of California to EPA on October 20, 1994.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182 (f) of the Clean Air Act.

On November 25, 1992, EPA published a proposed rule entitled, ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. EDCAPCD is classified as severe;[1] therefore this area is subject to the RACT requirements of section 182(b)(2) and the November 15, 1992 deadline cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for El Dorado County Air Pollution Control District (EDCAPCD) Rule 229, Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters. EDCAPCD adopted Rule 229 on September 27, 1994. The State of California submitted this Rule 229 to EPA on October 20, 1994. The rule was found to be complete on October 21, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V[2].

NO_X emissions contribute to the production of ground level ozone and smog. EDCAPCD Rule 229 specifies exhaust emission standards for NO_X, carbon monoxide (CO), and VOCs, and was originally adopted as part of EDCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents[3]. Among those provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to

[1] EDCAPCD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

The California Air Resources Board (CARB), developed a guidance document entitled Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Institutional, Industrial and Commercial Boilers, Steam Generators and Process Heaters (July 1991). EPA has found the guidance consistent with the CAA and used the CARB guidance document in evaluating Rule 229 for consistency with the CAA's RACT requirements.

There is currently no version of El Dorado County Air Pollution Control District (EDCAPCD) Rule 229, Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, in the SIP. The submitted rule includes the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emissions standards for oxides of nitrogen (NO_X), volatile organic compounds (VOCs) and carbon monoxide (CO).
- Administrative and monitoring requirements including compliance schedule, reporting requirements, monitoring and record keeping, and test methods.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, record keeping, and compliance testing in addition to RACT guidance regarding emission limits. Rule 229 strengthens the SIP through the addition of enforceable measures such as record keeping, test methods, definitions, and more stringent compliance testing. Because there is no existing SIP rule, the incorporation of Rule 229 into the SIP would decrease the NO_X emissions allowed by the SIP.

EPA has evaluated EDCAPCD Rule 229 for consistency with the CAA, EPA regulations, and EPA policy and has found that, although EDCAPCD Rule 229 will strengthen the SIP, this rule contains the following deficiencies which must be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA.

- Section 229.3 (D): Alternate Emission Control Plan (AECP): Provisions must be consistent with the EPA Emissions Trading Policy Statement (ETPS) published on December 4, 1986 (51 FR 43814), the Economic Incentive Program Rules (EIP) promulgated April 7, 1994 (59 FR 16690), and EPA policies regarding equivalency provisions, AECPs, cross-line averaging, and other bubbles as described in the document entitled, ''Issues Relating to VOC Regulation Cutpoints, deficiencies, and deviations: Clarification to Appendix D of November 24, 1987 **Federal Register**.'' The EIP and EPA policies required AECP provisions to meet, among other things, a 10 percent (%) or greater reduction in emissions beyond the established baseline.
- The nomenclature regarding ''emissions factors'' is unclear: The words ''daily NO_X emission factor'' should be defined relative to the NO_X emissions level as stated in Section 229.3 (A).
- Section 229.3 (D) (1) (c): The ''overall average emission factor'' should be defined and the method of calculating described in the rule.
- Section 229.3 (D) (4) (b) (2): The ''Permitted emissions factors'' should be defined.
- Section 229.3 (D) (4) (b): Provisions 3), 4), and 5) should be defined and the method of determining emissions/emission factors should be included in the rule.
- Section 229.3 (D) (5) (c) and (d): ''The daily overall average pounds of NO_X/MMBTU'' should be defined.
- Section 229.3 (D) and Section 229.3 (D) (6):
- Reduction of the daily NO_X emissions in the AECP should be to less than 90 percent of the NO_X emissions that would result if each unit in operation were individually in compliance with Section 229.3 (A).
- Section 229.3 (D) (6): Language should be modified to: ''* * * the emission factor calculated in Section 229.3 D.5.d. exceeds 90 % of the emission factor calculated in section 229.3 D.5.c., the excess emissions shall be considered a violation of the rule.''
- Section 229.3 (D) and Section 229.5 (B) (2): Executive Officer's discretion language should be expanded to include ''as approved by the Air Pollution Control Officer utilizing methods approved by the California Air Resources Board and the U.S. EPA.''
- Provisions should include notification language for exceedances.

Regarding other sections of the Rule:

- Section 229.3 (A): Annual Heat Inputs: To be consistent with the CARB Determination the language should be modified to: ''greater than or equal to 90,000 therms for any of the three previous calender years,''.
- Section 229.3 (C): Equipment requirements: Flow rate meters should be specified as ''non-resettable, totalizing meters'' for both mass flow and volumetric flow meters.
- Section 229.4 (A): Compliance schedule: A date for facilities to achieve full compliance should be specified.

A more detailed discussion of these rule deficiencies can be found in the Technical Support Document for Rule 229, dated January 29, 1999, which is available from the U.S. EPA, Region IX office.

Because of these deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3), in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval.

In order to strengthen the SIP, EPA is proposing a limited approval of EDCAPCD's submitted Rule 229 under sections 110(k)(3) and 301(a) of the CAA. At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies which must be corrected in order to fully meet the requirements of sections 182(a)(2), 182(b)(2), 182(f), of part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c).

It should be noted that the rule covered by this document has been adopted by the El Dorado County Air Pollution Control District and is currently in effect in the El Dorado County Air Pollution Control District. EPA's final limited disapproval action will not prevent the El Dorado County Air Pollution Control District or EPA from enforcing this rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, 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 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 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 private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen Ozone, Reporting and record keeping requirements, Volatile organic compounds.

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

Dated: April 16, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 99–11274 Filed 5–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–010–0001–ec, FRL–6336–2]

Classification of the San Francisco Bay Area Ozone Nonattainment Area for Congestion Mitigation and Air Quality (CMAQ) Improvement Program Purposes; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published March 18, 1999 (64 FR 13383). On March 18, 1999, EPA proposed to classify the San Francisco Bay Area pursuant to section 172(a) of the Clean Air Act as moderate for CMAQ purposes only, and the classification is intended only in relation to the area's treatment under CMAQ.

At the request of the Santa Barbara County Association of Governments, EPA is extending the comment period for 30 days.

DATES: Comments must be received in writing on or before May 19, 1999.

ADDRESSES: Comments should be submitted to: Celia Bloomfield, Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield, U.S. EPA Region IX, at (415) 744–1249.

Dated: April 27, 1999.

David P. Howekamp,

Acting, Regional Administrator, Region IX.

[FR Doc. 99–11272 Filed 5–4–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 360 and 387

[FHWA Docket No. FHWA–97–2923; MC–97–11]

RIN 2125–AE06

Qualifications of Motor Carriers to Self-Insure Their Operations and Fees to Support the Approval and Compliance Process

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This document proposes to identify circumstances in which the public is subjected to an unacceptable level of risk of uncompensated losses generated from bodily injury and property damage (BI&PD) claims arising from the actions of for-hire motor carriers conducting self-insured operations in interstate or foreign commerce. More specifically, the FHWA seeks public comment on a proposal to reevaluate the security and collateral requirements of any self-insured carrier that fails to generate from operations, after payment of all expenses except annual self-insurance claims expenses, twice the level of cash needed to pay the self-insurance claims. The FHWA also proposes to assess an additional application fee to cover carrier requests for modifications and alterations to self-insurance authorizations which require a reevaluation of the carrier's financial condition. The FHWA can now do the basic first-time self-insurance application for $3,000. This amount is $1,200 less than the $4,200 fee the FHWA currently charges. Thus, the agency is also proposing to reduce the fee for processing the initial application to $3,000 for an economic cost savings. The proposed actions will not apply to carriers authorized to self-insure cargo-only claims. The requirements for cargo-only self-insurance are not substantial because the required cargo coverage is relatively small. Consequently, the expenses for reviewing cargo-only applications are not significant. Further, the risk of an unacceptable level of uncompensated self-insurance cargo claims is low.

Finally, this NPRM would also propose implementing additional procedures necessary for motor carriers to establish billing accounts to pay all insurance-related fees required by the Federal Highway Administration. A schedule of filing fees and general instructions regarding payment are provided.

DATES: Comments must be received on or before July 6, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Grimm, (202) 366–4039, or Mr. Stanley M. Braverman, (202) 358–7035, Office of Motor Carriers, FHWA, 400 Virginia Avenue, SW., Suite 600, Washington, DC 20024; or Mr. Michael J. Falk, Office of the Chief Counsel, HCC–20, (202) 366–1384, FHWA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

I. Background

On September 23, 1997, the FHWA published an advance notice of proposed rulemaking (ANPRM) to examine the sufficiency of existing self-insurance requirements, the need for assessing additional fees for processing and monitoring functions, and the propriety of seeking congressional authorization to terminate the self-insurance program altogether (62 FR 49654, FHWA Docket No. MC–97–11). On September 29, 1997, the FHWA corrected the assigned FHWA docket number and address for submission of comments (62 FR 50892, FHWA Docket No. FHWA–97–2923; MC–97–11).

The ANPRM was published primarily to obtain comments from motor carriers, insurance companies, and other interested parties to determine whether the existing self-insurance requirements and conditions were sufficiently stringent to ensure that the public is protected against uncompensated losses. The FHWA requested public comment on the sufficiency of the back-up collateral required for the authorizations both in form and amount, the reporting requirements, and on proposed fees to cover application modification and monitoring functions. The former

Interstate Commerce Commission (ICC) always charged application fees; however, charges for monitoring carrier compliance with agency requirements were not assessed. A series of questions raising issues concerning the merits of retaining the self-insurance program were also proposed.

The Transportation Equity Act for the 21st Century (Pub. Law 105–178, 112 Stat. 107) (June 9, 1998) makes no changes in the authorization to provide a self-insurance program and does not impact on the recommendations contained herein.

II. Responses to Public Comments

Twenty-seven (27) comments were received from motor carriers and their associations, insurance associations, a single insurance company, and a law firm. No comments were received from parties with bankruptcy claims pending against carriers that were previously authorized to self-insure.

A. The Propriety of Retaining the Self-Insurance Program

The carriers, their associations, and the sole commenting insurance company argue that self-insurance should be retained. Apart from illustrating the carrier benefits derived from the program, several commenters contend that as long as the Federal requirement for mandatory insurance remains in place, the self-insurance option should remain available to qualified applicants. The National Association of Independent Insurers and the commenting law firm urge repeal of the self-insurance program, and the Advocates for Highway and Auto Safety call into question the entire mandatory insurance requirement for motor carriers. The issue concerning mandatory insurance is clearly beyond the scope of this proceeding and, accordingly, the FHWA makes no comment on the proposal offered by the Advocates for Highway and Auto Safety. Nevertheless, the mandatory insurance requirement is a relevant consideration in attempting to determine the propriety of retaining the self-insurance authorization. The FHWA is persuaded by the equity of the carriers' contention that the continued existence of the mandatory requirement justifies the self-insurance option for qualified applicants.

B. Proposed Changes in Security Requirements and Fee Proposals

For the most part, the carriers and carrier associations dispute that any problems with the self-insurance program exist and object to the alteration of security and reporting requirements, and the imposition of additional fees. In support of this proposition, commenters argue that the ICC Termination Act of 1995 (ICCTA) (Pub. L. No. 104–88, 109 Stat. 803) prohibits the imposition of additional requirements on carriers already granted authorization to self-insure. Several carriers also contend that the monitoring fees are discriminatory since the FHWA does not assess a fee for insurance filings. Some carriers indicated that reasonable charges reflecting the actual expenses incurred in dealing with special modifications should be recovered.

The provision of the ICCTA which applies to the issue raised by the complaining carriers, 49 U.S.C. 13906(d), provides: ''Motor carriers which have been granted authority to self-insure as of the effective date of this section shall retain that authority unless, for good cause shown and after notice and an opportunity for a hearing, the Secretary [of Transportation] finds that the authority must be revoked.'' This section merely provides that challenges to a self-insurance grant must be made on a case-by-case basis. Further, each self-insurance authorization contains a condition which provides that the FHWA retains the authority to terminate the authorization when it appears that the carrier's financial arrangements fail to provide satisfactory protection to the public. Another condition authorizes the FHWA to require the carrier to submit any additional information the FHWA deems necessary. Clearly, the FHWA retains the authority to impose additional requirements where circumstances justify such action.

The FHWA does not agree with the contention that the imposition of monitoring fees on carriers holding self-insurance authorizations is prohibited. The carriers seek to equate the monitoring fees with a new qualification that would be imposed on all self-insured carriers. The imposition of a fee has nothing to do with a carrier's qualifications to self-insure. Certainly, the carriers could not seriously contend that the monitoring fee presents a barrier to self-insured operations, given the required showing of financial fitness.

Several commenters have questioned the ability of the FHWA to conduct the necessary oversight. The FHWA has hired an investment banking firm (the firm) to conduct the yearly monitoring and application analysis in an effort to upgrade the quality of the financial reviews. Decisions regarding authorizations and continued compliance will still be made by the FHWA staff based on the information provided by the contractor. The decision to employ a contractor was designed to accomplish two purposes: (1) to upgrade the quality of the financial analysis and oversight; and (2) to provide the resources to ensure that the necessary tasks were accomplished in a timely manner.3

The firm's charges for the quarterly and annual compliance review amount to $2,600 per carrier. The charges can be broken down as follows:

Fees To Monitor Existing Self-Insured Carrier

Annual monitoring fee-existing carrier	Hours	Hourly rate	Total
Clerical	2.5	$34.40	$86.00
Financial and claims analysis	10.0	91.40	914.00
Report preparation	12.0	91.40	1,096.80
Principal consultant	1.0	177.39	177.39
Director	1.0	249.47	249.47
Total	26.5		2,523.66

The contractor conducts a complete carrier review regardless of the number of carriers conducting operations under a parent. Each carrier retains its own authorization and must comply with various conditions. Currently, the self-insurance monitoring costs are subsidized by the fees generated from new carrier applicants. Despite carrier claims to the contrary, the FHWA assesses a fee to cover the cost of each insurance filing made on behalf of carriers operating with commercial insurance to ensure accuracy. The FHWA finds nothing in the ICCTA that would bar the imposition of reasonable fees to recover costs associated with monitoring the self-insurance conditions. Failure to recover the annual monitoring costs would continue the unfair cross subsidization of the self-insurance program by carriers that do not enjoy its benefits. The proposed monitoring fee would be due on the filing date of the carrier's annual report [90 days after the end of the reporting year].

The recent financial failures of three self-insured carriers have caused the FHWA to reevaluate its ability to properly monitor the financial condition of carriers and insure that continued operations will generate sufficient funds to pay self-insurance claims. Since proration and disbursement of trust funds is still pending in two cases, the FHWA deems comment on the impact

of the proceedings to be inappropriate at this time, especially since none of the affected parties have filed comments in this proceeding. The FHWA considers any self-insured carrier's financial failure to be a breach of the integrity of the program, as well as imposing an unanticipated and unjustifiable risk on the public. In this regard, the FHWA considers carrier comments that all business activities generate risks to be unpersuasive. Since the FHWA is charged with administering the self-insurance program, it must insure that the public is adequately protected from uncompensated losses generated by carriers authorized by the FHWA to continue to conduct self-insured operations.

C. The Proposal To Extend the Automatic Revocation Provision to 45 Days for Carriers That Lose Their Satisfactory Safety Rating

No commenters objected to extending the 30-day automatic expiration provision for carriers with less than satisfactory safety ratings to 45 days. Two carriers suggested that the FHWA regional staff be authorized to waive the automatic expiration provision if no connection is found between the safety rating and self-insured operations. The FHWA believes that the 45 day period will provide the field staff with sufficient opportunity to upgrade a carrier's rating if necessary corrective action has been undertaken. Accordingly, further discretion to waive the expiration provision would not be necessary.

III. The FHWA Proposals

The FHWA does not propose in this proceeding any additional requirements which self-insured carriers must meet regardless of their current financial condition. Instead, the FHWA seeks public comment on a ''minimum financial fitness standard'' that should be satisfied by all carriers authorized to self-insure their motor carrier operations. Failure to meet this measure of financial fitness would establish that the carrier does not have in place sufficient financial arrangements to protect the public against uncompensated losses as required in each self-insurance authorization. The standard would require each carrier to generate from operations, after payment of all expenses except annual self-insurance claims expenses, sufficient cash flow to pay twice the amount of the self-insured claims. Carriers that failed to meet this standard would be required to provide adequate collateral to cover their outstanding claims liability. Unfunded letters of credit would no longer be accepted. At the very least, the FHWA would require the execution of a letter of credit with a ''hard draw'' (mandatory drawdown) provision which would automatically fund a standby trust if self-insured operations ceased, or if bankruptcy proceedings were initiated. The time provided for the funding of such collateral would be determined on a case-by-case basis.

In addition, such carriers would be required to submit an independent annual certified claims reports. The FHWA plans to issue an order at a later date that would require carriers authorized to self-insure to file the independent annual certified claims report. That order would also contain the filing date and any related conditions that must be met. The FHWA believes that failure to retain sufficient cash to comfortably cover current claims payments is sufficient justification for concluding that the carrier's financial arrangements fail to provide satisfactory protection to the public as required by each self-insurance authorization. This is especially true since virtually none of the carriers authorized to self-insure maintain sufficient collateral to cover existing reserves for outstanding self-insurance claims. While the FHWA has the authority to reconsider any self-insurance authorization on a case-by-case basis, public comment on the proposed financial fitness standard is nevertheless solicited.

With respect to fees for modification of self-insurance authorizations, the FHWA proposes to assess a fee of $2,500 based upon the following contractor's cost analysis:

Fees To Modify Existing Carrier's Authorization

Changes/modifications-existing carrier	Hours	Hourly rate	Total
Clerical	2	$34.40	$68.80
Financial and claims analysis	10	91.40	914.00
Report preparation	10	91.40	914.00
Principal consultant	2	177.39	354.78
Director	1	249.47	249.47
Total	25		2,501.05

In addition, the FHWA proposes to reduce the application fee for BI&PD self-insurance to $3,000 based upon the following cost analysis:

FEES FOR NEW SELF-INSURED CARRIER APPLICATION

New carrier application	Hours	Hourly rate	Total
Clerical	1.5	$34.40	$51.60
Financial and claims analysis	15	91.40	1,371.00
Report preparation	10	91.40	914.00
Principal consultant	2	177.39	354.78
Director	1	249.47	249.47
Total	29		2,940.85

All proposed fees are based on recovery of contractor costs. The FHWA does not propose to recover its own labor costs because the amount will likely vary depending on the amount of time needed for review and decisionmaking.

Section 387.309 of title 49, CFR, provides that ''any self-insurance authority granted by the Commission [now the FHWA] will automatically expire 30 days after a carrier receives a less than satisfactory rating from DOT.'' No objections to FHWA's proposal to extend the period to 45 days were lodged by the commenters. Accordingly, the FHWA reiterates this proposal.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date shown above will be considered and will be available for examination in the FHWA Docket at the above address. Comments received after the comment closing date will be filed in the FHWA Docket identified above and will be considered to the extent practicable, but the FHWA may issue a final rule any time after the close of the comment closing period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has initially determined that this document contains a significant regulatory action under Executive Order 12866 and under the Department of Transportation's policies and procedures because this NPRM may raise novel legal or policy issues arising out of legal mandates. The NPRM is also significant because it has substantial public interest. The public has no reasonable means of challenging a self-

insured authorization and is not likely to know which motor carriers are self-insured. As discussed above, this NPRM would adopt a financial fitness standard for carriers authorized to self insure their operations and would enable the FHWA to take timely remedial action to prevent carrier defaults on self-insurance claims. In addition, this rule would institute additional nominal fees to recoup expenses associated with the contractor's participation in the self-insurance program.

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations, and propose regulations on the basis that the benefits justify the costs. The proposed regulation is designed to provide notice and guidance to a group of approximately 55 motor carriers authorized to self-insure their operations, 9 of which have authorizations which cover cargo-only liability. This proposed rule merely codifies the authority the FHWA already possesses to administer the self-insurance program. The recommended ''yearly'' monitoring fee of $2,600 is simply designed to recoup costs associated with the analysis performed by a contractor. The FHWA estimates the annual cost for the contractor to monitor existing self-insured carriers at $143,000 (55 carriers × $2,600). While we do not expect all 55 carriers that self-insure to request modifications or alterations to their existing authorizations, the FHWA estimates the costs for such analyses at $137,500 if all carriers were to do so. Thus, for purposes of Executive Order 12866, this rulemaking does not impose an economic burden greater than $100 million on motor carriers that self-insure.

It is also important to note that carriers authorized to self-insure obtain a substantial economic benefit by not having to maintain commercial insurance coverage in the federally mandated amounts. The vast majority of these carriers self-insure at the $1,000,000 level which corresponds to the required level of coverage. These carriers, as well as the public, benefit from the existence of a comprehensive monitoring program designed to insure that all carriers authorized to self-insure comply with the terms of their authorizations. Only carriers maintaining an outstanding financial condition should be authorized to self-insure their operations. The gross revenues generated by carriers holding the BI&PD authorizations range from $8,396,000 to $1,207,601,000, or an average of $174,345,468. These carriers are exposed to an average claims balance of $3,412,882. The proposed yearly monitoring fee, therefore, would have little impact on these carriers given their financial strength. Thirteen entities include from two to seven self-insured carriers and each carrier would be required to pay the yearly monitoring fee. Nevertheless, the payment of multiple fees by these carrier groups would have little or no impact on their financial conditions. To argue otherwise would call into question their qualifications to self-insure. Requests for modifications of self-insurance authorizations are infrequent and the proposed fees should add little or no burden to the carriers since the requested modification would likely create a new financial benefit. For example, the benefits created by a reduction in the back-up collateral amount, the increase of the authorization amount, and the addition of additional carriers to the authorization, would all provide financial benefits far in excess of the one-time modification fee. Lastly, the reduced application fee from $4,200 to $3,000 would provide a modest benefit and cost savings to all future applicants. Overall, the FHWA has designed the thrust of its recommended proposals to provide the general public with greater protection from the likelihood of sustaining uncompensated losses resulting from an accident involving a self-insured carrier.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. The proposed regulatory changes would have little or no effect on small entities since they do not participate in the bodily injury and property damage self-insurance program. The small entities that self-insure their operations only seek cargo coverage and would not be affected by any of the proposals, because the financial requirements for obtaining a cargo-only authorization are far less stringent than for BI&PD applicants. Further, the FHWA is unaware of any default by a cargo-only self-insurer. Accordingly, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

The FHWA has initially determined that this proposed rule does not impose any unfunded mandates on State, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year, as required by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532).

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This proposal amends an existing collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. The proposed rule would add additional requirements to the Office of Management and Budget's (OMB) approved budget for OMB Control Number FHWA 2125–0570, in the form of a certified claims report. The Form BMC–40, Application to Self-Insure under 49 U.S.C. 13906, is the application form used by carriers to apply for self-insurance authority. The proposed rule would not add additional requirements to the application.

The proposed independent certified annual claims report would amount to a limited additional collection of information requirement because it would only be imposed in remedial situations involving no more than four or five carriers at any one time. Further, it will only be imposed when circumstances warrant. The estimate of four or five carriers is based upon a maximum eight percent of carriers evidencing financial difficulties. The FHWA further estimates that 50 percent of these carriers authorized to self-insure would eventually leave the self-insurance program altogether. Carriers in the remedial program that failed to improve their financial condition would eventually lose the self-insurance authorization. Consequently, even if new carriers entered the remedial program, the total number of participants would remain fairly constant. The FHWA estimates that 40 hours would be required to complete the certified claims report. Thus, 40 hours multiplied by the anticipated 5 carriers would result in total burden hours of no more than 200.

Organizations and individuals desiring to submit comments on the information collection requirements concerning the additional certified claims report must direct them to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 360

Administrative practice and procedure, Fees, Insurance, Motor carriers.

49 CFR Part 387

Commercial motor vehicles, Freight forwarders, Hazardous materials transportation, Insurance, Motor carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

Issued on: April 27, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, Chapter III, part 360 and §387.309, as set forth below:

PART 360—[AMENDED]

1. Revise the authority citation for part 360 to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701; 49 U.S.C. 13908(c) and 14504(c)(2); and 49 CFR 1.48.

2. Amend §360.3(f) by revising item number (50) under part II, Insurance, to read as follows:

§ 360.3 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

* * * * *

Type of Proceeding:	Fee
* * * * *	
Part II: Insurance:	
* * * * *	
(50)	
(i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BI&PD)	3,000
(ii) An application for original qualification as self-insurer for cargo insurance	420
(iii) Modification of self-insurance authorization	2,500
(iv) Self-insurance compliance monitoring fee	2,600

* * * * *

3. Add §360.7 to read as follows:

§ 360.7 Insurance service fee account.

(a)(1) *Manner of payment.* The service fee for insurance, surety or self-insurer accepted certificate of insurance, surety bond or other instrument submitted in lieu of a broker surety bond must be charged to an insurance service account established by the Federal Highway Administration in accordance with paragraph (a)(2) of this section.

(2) *Billing account procedure.* A written request must be submitted to the Office of Motor Carrier Information Analysis, Licensing and Insurance Division, to establish an insurance service fee account.

(i) Each account will have a specific billing date within each month and a billing cycle. The billing date is the date that the bill is prepared and printed. The billing cycle is the period between the billing date in one month and the billing date in the next month. A bill for each account which has activity or an unpaid balance during the billing cycle will be sent on the billing date each month. Payment will be due 20 days from the billing date. Payments received before the next billing date are applied to the account. Interest will accrue in accordance with 4 CFR 102.13.

(ii) The Debt Collection Act of 1982, including disclosure to the consumer reporting agencies and the use of collection agencies, as set forth in 4 CFR 102.5–102.6 will be utilized to encourage payment where appropriate.

(iii) An account holder who files a petition in bankruptcy or who is the subject of a bankruptcy proceeding must provide the following information to the Office of Motor Carrier Information Analysis, Licensing and Insurance Division:

(A) The filing date of the bankruptcy petition;

(B) The court in which the bankruptcy petition was filed;

(C) The type of bankruptcy proceeding;

(D) The name, address, and telephone number of its representative in the bankruptcy proceeding; and

(E) The name, address, and telephone number of the bankruptcy trustee, if one has been appointed.

(3) *Payment of fees by check, money order, or credit card.* Fees will by payable to the Federal Highway Administration by a check payable in United States currency drawn upon funds deposited in a United States or foreign bank or other financial institution, money order payable in United States currency, or credit card (VISA or MASTERCARD).

(b) *Deferred payment of filing fee.* Any filing that is not accompanied by the appropriate filing fee is deficient except for filings that satisfy the deferred payment procedures in paragraph (a) of this section.

(c) *Fees not refundable.* Fees will be assessed for every filing in the type of proceeding listed in the schedule of fees contained in part II of the table in § 360.3(b). Fees are generally not refundable.

PART 387—[AMENDED]

4. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, and 49 U. S.C. 31139; and 49 CFR 1.48.

5. Amend paragraphs (a) and (b) of §387.309 by revising the word ''Commission'' to read ''Federal Highway Administration'; amend paragraph (a)(3) by revising the words ''30 days'' to read ''45 days'; and add paragraph (c) to read as follows:

§ 387.309 Qualification as a self-insurer and other securities or agreements.

* * * * *

(c) *Continued financial fitness.* Carriers authorized to self-insure their bodily injury and property damage liability that fail to generate from operations at least twice the cash flow of the amount of self-insured claims paid in the most recent 12 month period as reported to the FHWA, will be required to increase the collateral required by the self-insurance authorization to a level equaling the outstanding self-insured claims liability in order to provide the necessary financial arrangements to protect the public from exposure to uncompensated losses. Unfunded letters of credit will not be accepted from carriers in this financial condition. The time provided for the increased collateral funding will be established on a case-by-case basis. These carriers will be required to submit annual certified reports confirming the

accuracy of the outstanding self-insurance claims liability.

[FR Doc. 99–11212 Filed 5–4–99; 8:45 pm]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 396

[FHWA Docket No. FHWA–98–3656]

RIN 2125–AE40

General Requirements; Inspection, Repair, and Maintenance; Intermodal Container Chassis and Trailers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA is extending the comment period for its February 17, 1999, advance notice of proposed rulemaking (ANPRM) in which the agency announced that it was considering revisions to the requirements in parts 390 and 396 of the Federal Motor Carrier Safety Regulations (FMCSRs) that place upon motor carriers the responsibility for maintaining intermodal container chassis and trailers. The rulemaking was initiated in response to a petition filed by the American Trucking Associations, Inc. (ATA) and the ATA Intermodal Conference (the petitioners). In the petition, the petitioners contend that motor carriers have no opportunity to maintain this equipment and parties who do have the opportunity often fail to do so. The petitioners now request that the FHWA extend the comment period to allow them additional time to collect and analyze certain data needed to respond to the specific questions asked in the ANPRM. In response to the petitioners' request for an extended comment period, the National Association of Waterfront Employers (NAWE) and the National Maritime Safety Association (NMSA) also requested an extension of time to file their comments, but 30 days beyond anytime the FHWA may grant to the petitioners. The FHWA has determined that granting an extension is appropriate given the types of questions asked in the ANPRM and the need for informed responses from potential commenters. The FHWA also has determined that granting the NAWE and the NMSA a further 30-day extension beyond that afforded to petitioners is not appropriate.

DATES: Comments must be received on or before August 30, 1999.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Singer, Office of Motor Carrier Research and Standards, HMCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. [TDD number for the hearing impaired: 1–800–699–7828] Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara*.

Background

The American Trucking Associations, Inc. and the ATA Intermodal Conference filed a petition for rulemaking on March 17, 1997, to amend 49 CFR parts 390 and 396 of the FMCSRs. The petitioners asked the FHWA to require parties that tender intermodal equipment to motor carriers to ensure the ''roadworthiness'' of that equipment. The petitioners argue that poor maintenance of intermodal equipment is a serious safety problem and request the FHWA to make the owner or operator of such equipment responsible for the roadworthiness of the vehicles it tenders to motor carriers.

On February 17, 1999, the FHWA published an ANPRM (64 FR 7849) seeking information on the extent of the problem identified by the petitioners, and public comments on the solution proposed by the petitioners, i.e., to mandate joint responsibility between the equipment provider and the motor carrier for maintaining this type of intermodal equipment. The closing date for comments was April 19, 1999.

On April 2, 1999, the FHWA received a request from the petitioners to extend the comment period. The petitioners indicated that they have been trying to develop current and accurate information to respond to the specific questions the FHWA asked in the ANPRM. The petitioners have submitted a request for roadside inspection data from the FHWA's Office of Data Analysis and Information Systems. The petitioners will analyze inspection data for 100 motor carriers that operate exclusively in the intermodal segment of the trucking industry. The petitioners believe that because of the nature of these motor carrier operations, and the diversity of their geographic locations, the information could be useful in responding to certain questions in the ANPRM. A copy of the petitioners' request for an extension of the comment period is included in Docket No. FHWA–98–3656.

On April 13, 1999, the FHWA received a request on behalf of the NAWE and the NMSA for an extension of time for ''opponents'' of the rulemaking requested by ATA to file comments. The NAWE and the NMSA believe that the Carriers Container Council, Inc. and the United States Maritime Alliance, Ltd. will also submit a similar request, but it has not yet been received by the FHWA. Furthermore, the NAWE and the NMSA would like ''an extension to 30 days beyond any enlarged date which the Agency may grant to the Petitioners.'' They believe ''only under this procedure will opponents of Petitioners'' proposed rule be able to examine Petitioners' evidence in any meaningful manner, and be in a position to respond.'' The NAWE and the NMSA further state ''We recognize that the Agency bears the ultimate burden of persuasion should the Agency decide to further pursue a rulemaking. However, under the circumstances, we submit that only an adversarial type proceeding strictly adhering to APA [Administrative Procedures Act] requirements will produce a reliable and factual record.'' A copy of the NAWE and NMSA request for an extension of the comment period is also included in Docket No. FHWA–98–3656.

FHWA Decision

The FHWA has determined that the comment period should be extended for approximately 120 days, given the difficulty that interested parties are, or may be experiencing, in gathering and analyzing roadside inspection and maintenance data necessary to provide meaningful responses to the questions asked in the ANPRM. The FHWA is mindful of the need for all interested parties to have enough time to prepare relevant and useful comments. Therefore, the FHWA is extending the comment period on Docket No. FHWA–98–3656 to August 30, 1999.

All comments received before the close of business on August 30, 1999, will be considered and will be available for examination in the docket at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will continue to file relevant information in the docket as it becomes available after August 30, 1999, and interested parties should continue to examine the docket for new materials.

The FHWA will not grant the NAWE and the NMSA an extension of time to file comments that is not afforded to other commenters. This is an ANPRM in which the FHWA notified the public that they were considering an area for rulemaking and requested written comments by April 19, 1999, on the appropriate scope of the rulemaking and on specific topics. The agency believes that the ANPRM rulemaking can be extremely helpful in narrowing the issues during the public comment period on the proposed rule. We have determined that granting an extension of the comment period to petitioners is appropriate, but we cannot extend the comment period for one group beyond a period that is not afforded to others. Informal rulemakings under the APA are not adversarial proceedings, though parties often disagree on the need for, or content of, rules. If the agency decides to publish a notice of proposed rulemaking in the future, interested parties (including the NAWE and the NMSA) will be given an opportunity to respond to comments submitted by the ATA and others in the ANPRM, and they can submit written data, views, or arguments on the proposal. Accordingly, the FHWA will not grant the NAWE and the NMSA's 30-day extension request to file comments beyond the date granted to petitioners.

List of Subjects

49 CFR Part 390

Highway safety, Highways and roads, Motor carriers, Motor vehicle identification and marking, Reporting and recordkeeping requirements.

49 CFR Part 396

Highway safety, Highways and roads, Motor carriers, Motor vehicle maintenance, Motor vehicle safety, Reporting and recordkeeping requirements.

Authority: 49 U.S.C. 504, 31133, 31136, and 31502; and 49 CFR 1.48.

Issued on: April 27, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–11213 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–22–P

Notices

Federal Register
Vol. 64, No. 86
Wednesday, May 5, 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

Proposed Brownlee Timber Sale and Other Activities Within the Sheep Gulch Roadless Area, Payette National Forest, Washington County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service is proposing these activities for the Brownlee Subwatershed: harvest and regeneration of timber, changing the timing of grazing and combining the West Pine/Brownlee and Limestone Allotments, and prescribed fire to reduce fuels and enhance plant growth and mountain quail habitat.

The agency gives notice of the environment analysis and decision-making process so that interested and affected people know how they may anticipate and contribute to the final decision. The agency invites written comments and suggestions on the scope of the analysis and the issues to address.

DATES: Comments must be received by June 18, 1999.

ADDRESSES: Send written comments to David Alexander, Forest Supervisor, Payette National Forest, P.O. Box 1026, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Dautis Pearson, NEPA Coordinator, phone (208) 253–0134; or John Baglien, District Ranger, phone (208) 549–4201.

SUPPLEMENTARY INFORMATION: The USDA Forest Service is proposing projects within the 45,011 acre Brownlee Subwatershed. About 4–6 MMBF of timber from 600–800 acres will be harvested by thinning and regeneration methods, using tractor, skyline, and helicopter logging systems. About 300–400 acres will be regenerated. No road construction is planned for the timber sale, which lies partially within the Sheep Gulch Roadless Area, Washington County, Idaho.

This proposal follows direction in the Payette National Forest Land and Resource Management Plan.

Proposals for the range allotments include changes in timing of grazing and combining the West Pine/Brownlee and Limestone Allotments. The number of days for grazing and the number of AUMs would remain the same for these allotments.

Fire management activities would focus on reduction of fuels following timber harvest and reintroduction of fire into the ecosystem. Piling with burning and underburning of logged areas would reduce existing and created fuels, preparing some of these areas for planting. Fire would be reintroduced into vegetation communities that burn frequently (every 10 to 50 years) under natural disturbance regimes. Prescribed fire activities would occur on a total of about 4,000 acres of open ponderosa pine stands, aspen communities, and grass/shrublands to enhance plant growth and diversity.

Preliminary issues identified are roadless area quality, forest health in stringer habitat, and the economic and resource effects of longer return intervals into the subwatershed.

Initial scoping began in October, 1997. The Forest Service is conducting preliminary analysis and will be seeking additional information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested or affected by the proposed projects. Additional input will help identify key issues and develop alternatives in preparation of the draft EIS.

The scoping process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental process.
4. Exploration of additional alternatives based on the issues identified during scoping.
5. Identification of potential environmental effects of the proposed action and alternatives.

The Forest Service expects to file the draft EIS with the Environmental Protection Agency and have it available for public review by July 1, 1999. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's positions and contentions. *Vermont Yankee Power Corp.* v. *NRDC 435* U.S. 519, 553 (1978). Also, courts may waive or dismiss environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the final environmental impact statement (FEIS). *City of Angoon* v. *Hodel,* 803 F.2d 1016 1022 (9th Cir. 1986), and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues raised by the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Responsible Official is David F. Alexander, Forest Supervisor, Payette National Forest.

Dated: April 28, 1999.

Carol Feider,

Operations Branch Chief.

[FR Doc. 99–11239 Filed 5–4–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection, the New EBT (Electronic Benefit Transfer) User Survey, to analyze the demographic characteristics and experiences of new entrants to USDA's Food Stamp Program (FSP). These data will be used in the Evaluation of the Impact of EBT Customer Service Waivers on Recipients to determine the nature and frequency of any problems which may be caused when USDA grants to States waivers to regulations governing customer service in EBT systems for the FSP.

DATES: Written comments on this notice must be received by July 9, 1999, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Requests for additional information should be directed to William Levedahl, Food Assistance, Poverty, and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M St., NW, Washington, DC 20036–5801, 202–694–5431.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of the Impact of EBT Customer Waivers on Recipients: New EBT User Survey.

Type of Request: Approval to collect information on new Food Stamp Program (FSP) entrants in EBT states.

Abstract: The Economic Research Service (ERS) of the U.S. Department of Agriculture is responsible for conducting studies and evaluations of the Nation's food assistance programs that are administered by the Food and Nutrition Service (FNS), U.S. Department of Agriculture. The Food Stamp Program (FSP) is the largest domestic food-assistance program in the United States. Traditionally, food stamp recipients have received their monthly benefits as paper coupons to be redeemed for food at authorized retail food stores. The Personal Responsibility and Work Opportunity Act of 1996 requires that, by October 1, 2002, all States deliver food stamp benefits using an electronic benefits transfer (EBT) system. Approximately 37 States now have some type of operational EBT system.

An EBT system provides an alternative to paper food stamp coupons for issuing and redeeming FSP benefits. EBT is a point-of-sale (POS) terminal network system that uses plastic magnetic encoded cards much like bank debit cards. Recipients are trained in the use of the card and utilize a personal identification number (PIN) for each transaction. To access their food stamp benefits, recipients run their EBT cards through an electronic reader at the checkout counter and enter their PIN on a keypad. The amount of the purchase is deducted from the recipient's account.

EBT systems routinely provide client services through customer service centers supported by EBT vendors. The centers maintain toll-free telephone hotlines for clients to call for various reasons, e.g., to determine account balances, to report lost or stolen cards, or to activate EBT cards they receive through the mail. Clients having problems with the system in general are instructed to call the service centers for assistance.

The regulations governing the implementation and operation of EBT systems include several customer service standards (7 CFR 274.12). As EBT has developed and expanded, FNS has allowed States to try alternative service policies via waivers. The principal waivers employed by States include: training recipients by mail rather than through in-person training with hands-on practice with EBT equipment; assignment of the initial PIN by the EBT vendor rather than PIN selection by the recipient; and permitting up to five days for card replacement rather than two days. Twenty-four States have been granted one or more of the above three EBT customer service waivers.

To promote and support the efficient and cost-effective operation of EBT systems, ERS is conducting a study with the following objectives: (1) to characterize client service problems associated with EBT customer service waivers and identify how clients respond to these problems; and (2) to estimate the occurrence of client service problems associated with EBT customer service waivers. Special attention will be paid to the nature and frequency of problems encountered by vulnerable recipients, especially the elderly and the disabled, as defined by FSP regulations.

ERS, working with Abt Associates Inc., who will collect information about the nature and frequency of client service problems from three main sources in each of five States, including three States that have implemented all three customer service waivers and two States that have not implemented any of the three waivers. The first information source is vendor- or system-generated monthly reports which summarize activity levels within the system, including the number of EBT card replacements and calls to customer service hotlines. The second source is EBT system transaction logs, which record all system activity including benefit postings to recipient accounts, purchases, attempted purchases rejected due to incorrect PIN entry, and EBT card PIN locks (when multiple entries of an incorrect PIN temporarily disable the card). The third source, for which OMB clearance will be needed, is the New EBT User Survey, a telephone survey of food stamp recipients in each of the five participating States. The survey will be administered to a random sample of recipients who are new to the FSP and EBT system use because new clients are likely to be most affected by waivers to hands-on training and PIN-selection regulations. The survey sample will be stratified by State and by whether the head of the FSP assistance unit is considered vulnerable (i.e., elderly or disabled). The participating States with waivers are Alabama, Florida and Minnesota; the participating non-waiver States are Louisiana and Pennsylvania. These States were purposively selected and recruited to participate because their approaches to customer service and experiences with EBT implementation were expected by FNS to be especially informative. This selection method is appropriate because of the need for State cooperation and because the study is intended to explore the possibility that the waivers have significant impacts on recipients, not to provide definitive, nationally-representative impact estimates.

The survey will collect information about: client demographics; respondent use of an authorized representative or others to shop with the EBT card, and why; how each respondent received his or her EBT card, including time and other resources spent obtaining the card; how the respondent learned to use his or her EBT card; whether the respondent encountered any problems remembering the PIN or using the card to shop; whether the respondent ever requested a replacement EBT card and, if so, the process and time involved in obtaining the new card; and the respondent's general satisfaction with the EBT system and customer service. Responses of food stamp recipients from the three waiver States will be compared to responses of food stamp recipients from the two non-waiver States to determine whether there are any systematic differences in the problems encountered and EBT experiences of recipients in waiver and

non-waiver states. Similarly, responses of vulnerable respondents will be compared to those of non-vulnerable respondents to see the extent to which the elderly and/or disabled may have greater problems with use of EBT, and whether the introduction of customer service waivers imposes any special hardships on the elderly and disabled.

This information is needed to assist FNS as it makes decisions in the future regarding the granting of customer service waivers. No existing data source can provide all of the information needed to complete the evaluation. Computer-assisted telephone interviewing (CATI) will be used to minimize respondent burden and interviewer error in the New EBT User Survey. Existing FSP databases from the five States will be used to construct the survey sample frame and to obtain demographic data on recipients affected by the waivers. The survey questionnaire will be kept as simple and respondent-friendly as possible. Responses are voluntary and confidential. Survey data will be combined with other data for statistical purposes and reported only in aggregate or statistical form.

Estimate of Burden: Public reporting burden for this data collection is estimated to average 20 minutes per response, including time for listening to instructions and responding to questionnaire items. There is no need for respondents to gather data to respond to the questionnaire items.

Respondents: Persons in five selected EBT States who apply for food stamp benefits for the first time in November 1999, and who use their EBT card for shopping.

Estimated Number of Respondents: 1,400.

Estimated Total Annual Burden on Respondents: 467 hours.

Copies of the information to be collected can be obtained from William Levedahl, Food Assistance, Poverty and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M St., NW, Washington, DC 20036–5801, 202–694–5431.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to William Levedahl, Food Assistance, Poverty and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M St., NW, Washington, DC 20036–5801, 202–694–5431. All responses to this notice will be considered and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 21, 1999.

Betsey Kuhn,

Director, Food and Rural Economic Division.

[FR Doc. 99–11231 Filed 5–4–99; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Eligibility Criteria for Preferred Lenders

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of Eligibility Criteria.

SUMMARY: This notice revises the volume requirements necessary for lenders to be eligible for the Farm Service Agency's Preferred Lender Program (PLP).

EFFECTIVE DATE: May 5, 1999.

FOR FURTHER INFORMATION CONTACT: Galen VanVleet, Senior Loan Officer, Farm Service Agency, Farm Loan Programs Loan Making Division, 1400 Independence Avenue, SW, STOP 0522, Washington, DC 20250–0522, telephone (202)720–1638; email GalenVanVleet@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Programs Affected

10.406 Farm Operating Loans

10.407 Farm Ownership Loans

Background

The PLP provides qualifying lenders additional authorities and streamlined procedures under the Agency's guaranteed farm loan program. To qualify for PLP status, lenders must meet the eligibility criteria of 7 CFR 762.106(b) and (c). Paragraph (c)(3) of this section requires lenders to have closed a minimum number of Agency guaranteed farm loans. With this notice, the Agency is setting the minimum number of loans a lender must have closed in the past 5 years to qualify for PLP status at 20. This is a reduction from the current 30 loans in the past 3 years established by the Notice of Eligibility Criteria published in the **Federal Register** on February 12, 1999 (64 FR 7404).

Signed at Washington, DC, on April 28, 1999.

Keith Kelly,

Administrator,

Farm Service Agency.

[FR Doc. 99–11228 Filed 5–4–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region; Authorization of Livestock Grazing Activities on the Sacramento Grazing Allotment, Sacramento Ranger District, Lincoln National Forest, Otero County, NM

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to authorize livestock grazing activities on the Sacramento Grazing Allotment. The project area encompasses over 111,000 acres of National Forest lands on the Sacramento Ranger District of the Lincoln National Forest. The Sacramento Grazing Allotment comprises approximately 25% of the range district. The project has generated controversy on three main points; effects to threatened and endangered animal and plant species, concern for degraded riparian areas, and forage competition between wildlife and livestock.

DATES: The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency will give notice for the full environmental analysis once it nears completion so that interested and affected people may participate and contribute to a final decision.

Comments concerning the scope of the analysis should be received in writing by June 15, 1999.

A Draft Enviromental Impact Statement should be available for public comment in July, 1999. After considering the comments received on the proposed action, the analysis document will be modified to include any changes that result. Once updated, the Final Environmental Impact Statement should be available to the public in September 1999.

ADDRESSES: Comments concerning the proposal and scope of the analysis should be received in writing by June 15, 1999. Send written comments and suggestions concerning the management of this area to Rick Newmon or Mark Cadwallader, Sacramento Ranger District, P.O. Box 288, Cloudcroft, New Mexico, 88317.

Responsible Offical

The District Ranger will decide whether or not to authorize domestic livestock grazing on the Sacramento Allotment which will include adding appropriate forest plan standards and guidelines to Part 3 of the Term Grazing Permit. If grazing is authorized, the District Ranger will decide on the permitted number of animals and season of use, range facilities to be constructed, allowable utilization standards, required monitoring and mitigation measures (best management practices, BMPs). In addition, the District Ranger will establish a forage allocation for livestock and wildlife for the Sacramento Allotment. This allocation will prescribe a percentage of the total available forage that wil be reserved for wildlife species.

FOR ADDITIONAL INFORMATION CONTACT: Questions about the proposed project and scope of analysis should be directed to Rick Newmon or Mark Cadwallader at (505–682–2551).

SUPPLEMENTARY INFORMATION: The Forest Service is planning to authorize livestock grazing activities on the Sacramento Grazing Allotment.

Background

The current Sacramento Allotment is the result of the combination of 10 historical allotments. In the late 1970's, the High Nogal Ranch Inc. acquired the grazing permits on the allotments mentioned above. The control of livestock management on these small allotments by one business interest offered an opportunity to combine them into one large allotment. Combining the allotments provided an opportunity to improve resource management as well as administrative and economic efficiency. The allotments were combined and the current Sacramento Grazing Allotment was formed. And environmental analysis and an allotment management plan (AMP) were approved in 1979 for the newly consolidated allotment. The AMP prescribed an intensive rotation grazing system be implemented along with a very extensive range improvement development program. Full livestock numbers were run on the allotment, under direction of the new AMP, for about two years. In 1983, the permittee filed for bankruptcy. The bankruptcy left the implementation of the AMP only partially completed. Between 1983 and 1989, the allotment saw periods of very light use to total non-use by livestock.

In 1989, the current permittees acquired the grazing permit for the Sacramento Allotment. The new permittees acquired only the grazing permit and did not acquire the private lands which were an integral part of the livestock operation when the original combination took place. In addition, the long period of non-use on the allotment resulted in deterioration of many of the existing range improvements. With many of the range improvements no longer functional and changes in private land base available to the current permittees, the existing AMP had become essentially unmanageable.

After acquisition of the grazing permit, the current permittees gradually began to stock the allotment to full permitted numbers. When full numbers were run on the permit in 1991, forage utilization began to exceed acceptable levels. Excessive forage utilization has been a concern since 1991.

Existing Condition

The Sacramento Allotment contains over 36 miles of perennial streams. Riparian inventory data indicates that less than 10% of the riparian zones associated with these perennial waters are in satisfactory condition, based on the Region 3 standards and guidelines for riparian areas. The Sacramento Allotment contains about half of all the riparian resources on the Sacramento Ranger District. The livestock management decisions made on this allotment will be an important factor in determining the potential for riparian improvement on the entire district.

The Sacramento Allotment is home to several threatened and endangered plant and animal species. They include the Sacramento Mountain thistle, Sacramento prickly poppy, Mexican spotted owl, peregrine falcon, and the bald eagle. The current forage utilization levels are not conducive to moving range condition rating towards good to excellent range condition as specified in various specie recovery plans.

Forgage competition between elk and livestock has developed into a resource concern. The excessive forage use currently occurring on the allotment is the combined result of forage use by the current elk population and currently permitted livestock numbers.

Objectives

Implement a maximum forage use level or minimum stubble height requirement that will lead to long-term improvement in rangeland ecosystems and riparian habitats.

Bring permitted livestock numbers in line with estimated carrying capacity.

Develop a grazing management strategy which identifies the structural and range improvements required to implement that strategy.

Establish an allocation of available forage between livestock and wildlife.

Permit livestock grazing as a tool to meet vegetative management objectives as set forth in the Lincoln National Forest's Land and Resource Management Plan (pp. 34–36 and pp. 86–101).

Continue to permit commercial livestock use on the Sacramento Allotment to a level that contributes to the local custom and culture and the local economy while sustaining healthy ecosystems.

Desired Future Condition

Forest plan standards and guidelines for riparian areas are being met.

Threatened, endangered, and sensitive species habitat is improving and recovery objectives are being met.

Areas of unsatisfactory Range condition are on an upward trend toward satisfactory or better range condition.

The allocation of forage between livestock and wildlife species has been implemented. This allocation is continually monitored and actions are taken to maintain a viable elk population that is in balance maintain with the available forage produced on the allotment.

Recreational uses and esthetic values have been enhanced through the improved management of rangeland ecosystems.

Authorization is needed on this allotment because:

—Where consistent with other multiple use goals and objectives there is Congressional intent to allow grazing on suitable lands. (Multiple Use Sustained Yield Act of 1960, Wilderness Act of 1964, Forest and Rangeland Renewable Resources Planning Act of 1974, Federal Land Policy and Management Act of 1976, National Forest Management Act of 1976).

—The Sacramento Allotment contain lands identified as suitable for domestic livestock grazing in the Lincoln National Forest Plan and continued domestic livestock grazing is consistent with the goals, objectives, standards, and guidelines of the forest plan.

—It is Forest Service policy to make forage available to qualified livestock operators from lands suitable for grazing

consistent with land management plans (FSM 2203.1).

—It is Forest Service policy to continue contributions to the economic and social well being of people by providing opportunities for economic diversity and by promoting stability for communities that depend on range resources for their livelihood (FSM 2202.1).

—By regulation, forage producing lands will be managed for livestock grazing where consistent with land management plans (36 CFR 222.2(c)).

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NYDC, 435 U.S. 519.553 (1973).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: April 23, 1999.

Jose M. Martinez,

Forest Supervisor.

[FR Doc. 99–11198 Filed 5–4–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 29, 1999.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Economic Research Service

Title: Emergency Food Assistance System Study.

OMB Control Number: 0536–NEW.

Summary of Collection: Many emergency food providers are reporting increased demand for their services as a result of changes in the nation's welfare and food assistance safety net under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and decreasing ability to meet the additional demands. USDA is coordinating public and private efforts intended to increase the amount of surplus food channeled through Emergency Food Assistance System (EFAS) providers by 33 percent by the year 2000. On November 23, 1996 President Clinton signed an executive memorandum directing all Federal agencies to join the USDA effort to recover excess food and established a Federal interagency task force on gleaning and food recovery. USDA, through the Food and Nutrition Service, administers several food assistance programs that help low-income households obtain adequate and nutritious diets. The largest USDA food assistance program, the Food Stamp Program, is designed to provide food assistance through normal channels of trade. The EFAS interacts closely with USDA food assistance programs by serving as a distribution outlet for Emergency Food Assistance Program (TEFAP) commodities and by providing temporary or supplemental food assistance to many of the same needy population served by USDA programs. A study of the Emergency Food Assistance System is going to be conducted. The study will be conducted in two phases. Currently, there is no sample frame from which to identify food banks, food pantries, and emergency kitchens for the study. Information collected during the first phase of the study will be used to compile frames of providers to be sampled and contacted for data collection. Economic Research Service (ERS) will collect information using questionnaires and telephone interviews to compile frames of providers to be sampled and contacted for second phased-data collection.

Need And Use Of The Information: ERS will collect information on providers' operating characteristics, service areas, resource base, quantity and type of food flowing into the system, number of people served, and providers' capacity to manage current and future changes in food demand and resources. Once the information is compiled, the frames of food banks, food pantries, and emergency kitchens will be used by the sampling statisticians for the study to select providers for the interviews. The contact information will be used by the data collection staff to facilitate advance

mailings and support the actual study data collection.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 5,479.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,374.

Economic Research Service

Title: Report on State Use of Funds to Increase Work Slots for Food Stamp Recipients.

OMB Control Number: 0536-NEW.

Summary of Collection: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) dramatically changed the system that had provided welfare cash assistance and food stamp benefits to low-income households since the early 1970s. One of the consequences of the change in the law has been the strengthening of work requirements, both for the Temporary Assistance to Needy Families (TANF) Program and the Food Stamp Program. The largest change made by PRWORA in the Food Stamp Program was the imposition of a time limit on receipt of food stamp benefits for Able Bodies Adults Without Dependents (ABAWD) who are between the ages of 18 and 50. In order to take advantage of the expanded funding and comply with the new Food Stamp Employment and Training (E&T) Program requirements most States have initiated new approaches to serving ABAWDS in their Food Stamp E&T programs. This study will provide detailed and comparable information on State changes to their programs. In addition, despite the availability of additional funds, many States may still face considerable challenges in meeting the program requirements and making the modifications to their programs necessary to best serve food stamp clients, particularly ABAWDs. The Economic Research Service (ERS) will use a telephone survey and mail out questionnaire to collect information from States on the specific successes and challenges they have faced in utilizing the expanded Balanced Budget Act (BBA) Food Stamp E&T funds.

Need and Use of the Information: ERS will collect information on how the States' expenditures, activities, program design, and E&T participants have changed in response to the availability of new funds for Food Stamp E&T and the Federal emphasis on serving the unemployed ABAWD population. The information gathered in the study will have four primary uses. First, the study will provide and analyze a database of consistent and comparable information across States both before and after the enactment of the BBA. Second, FNS will be utilizing the data from the telephone interviews in the study for another study on the impact of the time limits on ABAWDs. Third, the database created for the study may also be used by ERS as a baseline for any future research regarding the Food Stamp E&T Program, including research that may focus on the impact of various E&T approaches for Food Stamp Program participants. One final and important use of the study is that after release to Congress, the research report will be shared by USDA with all State food stamp directors so that they may learn from the varying approaches taken in implementing E&T activities or food stamp participants.

Description of Respondents: Federal Government; State, Local or Tribal Government.

Number of Respondents: 51.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 472

Food and Nutrition Service

Title: Food Stamp mail issuance Report

OMB Control Number: 0584–0015.

Summary of Collection: Sections 7 (a) and (b) of the Food Stamp Act of 1977 require that coupons be issued only to households which have been duly certified as eligible to participate in the Food Stamp Program (FSP), and that coupons shall be used by eligible housheds households only to purchase food in retail food stores which have been approved for participation in the FSP at prices prevailing in such stores. Section 7(d) of the Act authorizes the Secretary to develop procedures for determining and monitoring the level of coupon inventories held by issuance agents to ensure that these inventories are at proper levels. The Food and Nutrition Service (FNS), on behalf of the Secretary, requires each coupon issuer to submit quarterly a written report of the issuer's operations during the periods. The FNS will collect information using FNS Form–259, Food Stamp Mail Issuance Report.

Need and use of the Information: FNS will collect information to establish the issuance and accountability systems which ensures that only certified eligible households receive benefits; that coupons are accepted, stored, and protected after delivery to receiving points within the state; that program benefits are timely distributed in the correct amount; and that coupon issuance and reconciliation activities are properly conducted and accurately reported to FNS. The State agency is responsible, regardless of any agreements to the contrary, for ensuring that assigned duties are carried out in accordance with FSP regulations. In addition, the State agency is strictly liable to FNS for all losses of coupons, even if those issuance, security, or accountability duties are the responsibility of another party.

Description of Respondents: Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,026.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 342.

Agricultural Marketing Service

Title: Recordkeeping requirements for Certified Application of Federally Restricted Use Pesticides (7 CFR Part 110).

OMB Control Number: 0581–0164.

Summary of Collection: The Food, Agriculture, Conservation, and Trade (FACT) Act of 1990 (Subtitle H, Sec. 1491) mandates the Secretary of Agriculture, in consultation with the Administrator of the Environmental Protection Agency (EPA), ''shall require certified applicators of (federally) restricted use pesticides to maintain records comparable to records maintained by commercial applicators in each State.'' In addition, the Secretary of Agriculture and the Administrator of EPA are required under Section 1491(f) of the FACT Act to survey the records and develop and maintain a data base so the Secretary and the Administrator of EPA can prepare and publish annual pesticide use reports, copies of which must be transmitted to Congress. Agricultural Marketing Service (AMS) is charged with administering the Federal Pesticide Recordkeeping Program. AMS requires certified private applicators of federally restrict house pesticides to maintain records of all restricted use pesticide applications for a period of two years. AMS will collect information using form STD–8 Pesticide for Recordkeeping Inspection.

Need and Use of the Information: AMS will collect information on the brand or product name and the EPA registration number of the federally restricted use pesticide that was applied; the total amount of the federally restricted use pesticide applied; the location, the size of the area treated, and the crop, commodity, stored product or site to which a restricted use pesticide was applied; the month, day, and year on which the restricted use pesticide application occurred; and the name and certification number of the certified applicator who applied or who supervised the application of the

restricted use pesticide. In order to properly administer the pesticide recordkeeping program, AMS needs to monitor and determine to what extent private applicators are complying with the program's requirements and identify the reasons for non or partial compliance. AMS has the responsibility to assure records are being kept to provide information to be utilized by licensed health care professionals for possible medical treatment. In addition, the statute requires USDA to submit annual reports to Congress pertaining to the use of restricted use pesticides in agricultural production.

Description of Respondents: Farm; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,018,651.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 1,782,614.

Forest Service

Title: Stewardship Incentive Program.

OMB Control Number: 0596–0120.

Summary of Collection: The Forest Service (FS) in cooperation with the Farm Service Agency, State forestry agencies, and other agencies and organizations, provides eligible landowners cost-share incentives and technical assistance through the Stewardship Incentive Program. This assistance helps owners of non-industrial private forest land to provide sound, multidisciplinary stewardship to their lands. The program encourages landowners to consider the best, long-term use of the Nation's land and water resources. The Stewardship Incentive Program is authorized in the Cooperative Forestry Assistance Act of 1978 (Pub. L. 95–313, 92 Stat. 365 as amended; 16 U.S.C. 2101 (note), 2101–2114, 16 U.S.C. 1606 (note), 16 U.S.C. 1606). FSA, on behalf of FS, will collect information using forms SIP–36, Assignment of Payment, SIP–211, Power of Attorney, SIP211–1, Power of Attorney for Husband and Wife, and SIP–502, Payment Limitation Review.

Need and Use of the Information: FSA, in conjunction with the FS, will collect information to identify (1) the Stewardship Incentive Program assignment of payment; (2) IRS income reporting requirements for participants; and (3) the participants' delegated Power of Attorney. State forestry agencies and FSA work cooperatively with the FS to administer the Stewardship Incentive Program.

Description of Respondents: Individuals or households; farms; business or other for-profit; not-for-profit institutions.

Number of Respondents: 32,500.

Frequency of Responses: Reporting: On occasion; annually.

Total Burden Hours: 74,250.

Food and Nutrition Service

Title: Consumer Research for Dietary Guidelines 2000.

OMB Control Number: 0584–NEW.

Summary of Collection: Under Subtitle D of the National Agriculture Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3171–3175), the Secretary of Agriculture is required to develop and implement a national food and human nutrition research and extension program, including the development of techniques to assist consumers in selecting food that supplies a nutritionally adequate diet. Pursuant to 7 CFR 2.19(a)(3), the Secretary of Agriculture has delegated authority to the Center for Nutrition Policy and Promotion (CNPP) for, among other things, developing materials to aid the public in selecting food for good nutrition; co-ordinating nutrition education promotion and professional education projects with the Department; and consulting with the Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding food consumption and dietary adequacy. CNPP is interested in conducting a consumer research study with focus groups of adults to gauge the use and effectiveness of the Dietary Guidelines for Americans and to test the communication effectiveness and usefulness of prototype Dietary Guidelines-based nutrition promotion materials. CNPP will collect information using a study of focus groups and prototype testing sessions.

Need and Use of the Information: CNPP will collect information to expand the knowledge base concerning how to translate the Dietary Guidelines for Americans 2000 recommendations and message and delivery of the information through nutrition promotion products and materials to improve the diets of all Americans age 2 and older. Also, to better understand consumers' wants and needs, and to discover potential motivations for dietary change. The information will be used by the CNPP to develop a communications plan outline that addresses how best to utilize products developed to effectively reach the target audience.

Description of Respondents: Individuals or households.

Number of Respondents: 225.

Frequency of Responses: Reporting: On occasion; other (one time).

Total Burden Hours: 900.

Animal and Plant Health Inspection Service

Title: Application for Inspection and Certification of Animal Byproducts.

OMB Control Number: 0579–0008.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS) on behalf of the Secretary of Agriculture has been delegated the authority (7 U.S.C. 1622, 1624) to establish and implement a system for verifying that the importation and commercial distribution of certain animal byproducts have been processed according to the conditions and requirements of the importing country. The laws and regulations that govern the importation and commercial distribution of certain animal byproducts in some foreign countries may require the U.S. exporter to furnish certificates that have been issued or endorsed by APHIS Veterinary Services. These certificates attest to the class and quality of these products, and also attest to the procedures used to process these products for exportation to the receiving country. APHIS will collect information using VS Form 16–24, ''Application for Inspection & Certification of Animal Byproducts.''

Need And Use of The Information: APHIS collects information from applicants requesting that APHIS monitor the processing of the product. After monitoring the processing technique, APHIS certifies that the product was processed according to the conditions and requirements of the importing country. A copy of the form then accompanies the shipment. Without this certification, the importing country would not accept the product, and the applicant would be unable to conduct business with that country.

Description of Respondents: Business or other for-profit.

Number of Respondents: 20.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 10.

Rural Housing Service

Title: 7 CFR Part 3565, ''Guaranteed Rural Rental Housing Program'' and Supporting Handbook.

OMB Control Number: 0575–0174.

Summary of Collection: On March 28, 1996, President Clinton signed the ''Housing Opportunity Program Extension Act of 1996.'' One of the provisions of the Act was the authorization of the section 538 Guaranteed Rural Rental Housing Program (GRRHP), adding the program to the Housing Act of 1949. The purpose of the GRRHP is to increase the supply of affordable rural rental housing

through the use of loan guarantees that encourage partnerships between the Rural Housing Service (RHS), private lenders and public agencies. RUS will approve qualified lenders to participate and will monitor lender performance to ensure program requirements are met. RHS will collect information from lenders on the eligibility cost, benefits, feasibility, and financial performance of the proposed project.

Need And Use of The Information: RHS will collect information from lenders to manage, plan, evaluate, and account for Government resources. The GRRHP regulation and handbook will provide lenders and Agency staff with guidance on the origination and servicing of GRRHP loans and the approval of qualified lenders. The information is collected by RHS so that it may evaluate the lender's request and make the determination that the interests of the government are protected.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 50.

Frequency of Responses: Reporting Quarterly; monthly; annually.

Total Burden Hours: 2,466.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 99–11232 Filed 5–4–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

March 1999 Sunset Reviews: Final Results and Revocations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of sunset reviews and revocations of antidumping duty orders: Solid urea from Azerbaijan (A–832–801), solid urea from Georgia (A–833–801), solid urea from Kazakstan (A–834–801), Solid Urea from Kyrgyzstan (A–835–801), solid urea from Moldova (A–841–801), and industrial phosphoric acid from Israel (A–508–604).

SUMMARY: On March 1, 1999, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on solid urea from Azerbaijan, solid urea from Georgia, solid urea from Kazakstan, solid urea from Kyrgyzstan, solid urea from Moldova, and industrial phosphoric acid from Israel. Because no domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking these orders.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230; telephone: (202) 482–1560.

SUPPLEMENTARY INFORMATION:

Background

The Department issued an antidumping duty order on solid urea from the Union of Soviet Socialist Republics (USSR) on July 14, 1987 (52 FR 26367). On June 29, 1992, following the dissolution of the USSR, the Department transferred the order to the Commonwealth of Independent States (CIS) and the Baltic States, including Azerbaijan, Georgia, Kazakstan, Kyrgyzstan, and Moldova (57 FR 28828, June 29, 1992). The substance of the order remained the same. The Department also issued an antidumping duty order on industrial phosphoric acid from Israel (52 FR 31057, August 19, 1987). Pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department initiated sunset reviews of these orders by publishing notice of the initiation in the **Federal Register** (64 FR 9970, March 1, 1999). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for these proceedings to inform them of the automatic initiation of a sunset review on these orders.

No domestic interested parties in the sunset reviews on these orders responded to the notice of initiation by the March 16, 1999, deadline (*see* section 351.218(d)(1)(i) of the *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13520 (March 20, 1998) (''*Sunset Regulations*'')).

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(*3*) of the *Sunset Regulations,* if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because no domestic interested party responded to the notice of initiation by the applicable deadline, March 16, 1999, we are revoking these antidumping duty orders.

Effective Date of Revocation

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to these orders entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews on these orders and will conduct administrative reviews of all entries prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: April 27, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11287 Filed 5–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–802]

Antidumping Investigation on Uranium from the Republic of Kazakhstan: Notice of Extension of Time for Briefs and Hearing

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Extension of time for submission of briefs and for hearing date.

EFFECTIVE DATE: April 29, 1999.

FOR FURTHER INFORMATION CONTACT: James C. Doyle or Juanita H. Chen, Enforcement Group III, Office VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230, telephone: (202) 482–0159 or (202) 482–0409, respectively.

Extension of Time

Pursuant to 19 CFR 353.36, the Department has determined that it is necessary to conduct verification of certain information in Kazakhstan during the period May 3, 1999 through May 9, 1999. As a result of this verification, the Department is granting an extension of time for the briefs. Case briefs are now due May 17, 1999, and rebuttal briefs are now due May 21,

1999. As a result of the extension of time for submission of briefs, the hearing date has also been extended and is now set for May 25, 1999.

Dated: April 29, 1999.

Roland L. MacDonald,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–11288 Filed 5–4–99; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

April 29, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used in 1998 and the 5% adjustment for traditional folklore products made from handloomed fabrics.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 69055, published on December 15, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 29, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 8, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on May 6, 1999, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
200	862,798 kilograms.
225	7,024,970 square meters.
314–O [2]	60,723,731 square meters.
315–O [3]	27,591,733 square meters.
317–O [4]/326–O [5]/617	27,280,247 square meters of which not more than 4,167,829 square meters shall be in Category 326–O.
334/335	249,229 dozen.
336/636	659,560 dozen.
338/339	1,211,054 dozen.
340/640	1,491,444 dozen.
341	953,482 dozen.
342/642	414,377 dozen.
345	433,706 dozen.
347/348	1,727,412 dozen.
350/650	191,444 dozen.
351/651	538,690 dozen.
359–C/659–C [6]	1,446,191 kilograms.
369–S [7]	915,514 kilograms.
447	16,950 dozen.
625/626/627/628/629–O [8].	28,387,397 square meters.
634/635	331,502 dozen.
638/639	1,551,104 dozen.
641	2,527,207 dozen.
645/646	785,322 dozen.
647/648	3,423,833 dozen.
Group II	
201, 218, 220, 222–224, 226, 227, 237, 239pt. [9], 332, 333, 352, 359–O [10], 362, 363, 369–O [11], 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt. [12], 464, 469pt. [13], 603, 604–O [14], 606, 607, 621, 622, 624, 633, 649, 652, 659–O [15], 666, 669–O [16], 670–O [17], 831, 833–836, 838, 840, 842–846, 850–852, 858 and 859pt. [18], as a group.	98,095,555 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 369–S: only HTS number 6307.10.2005.

[8] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

[9] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[10] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010, 6211.12.8020 (Category 359–S); and 6406.99.1550 (Category 359pt.).

[11] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[12] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[13] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[14] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[15] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[16] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000, 6406.10.9040 (Category 669pt.).

[17] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[18] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–11253 Filed 5–4–99; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, May 12, 1999, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Mid-Year Review

The staff will brief the Commission on issues related to fiscal year 1999 mid-year review.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207. (301) 504–0800.

Dated: May 3, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–11432 Filed 5–3–99; 3:46 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 6, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat__*Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. 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.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 29, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Compact for Reading Evaluation.

Frequency: Semi-annually.

Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 26,624.

Burden Hours: 30,123.

Abstract: The Compact for Reading is a written agreement between families, teachers, and principals describing how each partner will work to improve the reading skills of students in kindergarten through third grade. At each grade level, a set of 100 home learning activities is offered to improve reading skills. These activities focus on family members as home learning partners. Research shows that even though the requirement for Title I compacts is several years old, many Title I schools still do not have compacts in place, or do not use them to full advantage. The Compact for Reading evaluation will attempt to show whether implementing this type of compact will enhance student learning and therefore should be considered for adoption by other Title I schools.

Office of Vocational and Adult Education

Type of Review: Reinstatement.

Title: Carl D. Perkins Vocational and Applied Technology Education Act (P.L. 101–392)—Financial Status Report—SF 260.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs and LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 53.
Burden Hours: 2,200.

Abstract: The Financial Status Report (SF–269) is collected by the Division of Vocational-Technical Education from State agencies to determine compliance with statutory and regulatory spending requirements of formula grants awarded under the Carl D. Perkins Vocational and Applied Technology Education Act of 1990.

[FR Doc. 99–11234 Filed 5–4–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 5, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. 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.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: May 3, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Campus Week of Dialogue Participation Feedback Form.

Abstract: To receive feedback from participants in ''Campus Week of Dialogue'' events.

Additional Information: Starting in June 1997, President Clinton has personally encouraged colleges and universities to set aside time to have a dialogue with their campus members on the serious issues and suggestions for better race relations.

Frequency: On occasion.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Burden:
Responses: 1000.
Burden Hours: 25,099.

[FR Doc. 99–11365 Filed 5–4–99; 8:45 am]

BILLING CODE 4000–1–M

DEPARTMENT OF EDUCATION

[CFDA No: 84.031]

Reopening the Process for Designation as an Eligible Institution for Fiscal Year 1999 for the Following Programs: Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian Serving Institutions, and Hispanic-Serving Institutions

SUMMARY: On February 8, 1999, the Department of Education published in the **Federal Register** (64 FR 6178) a closing date notice for applications from institutions that wish to be designated as eligible institutions under the following programs: Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian Serving Institutions, and Hispanic-Serving Institutions (HSI). The first three programs are authorized under Title III of the Higher Education Act of 1965, as amended (HEA). The HSI program is authorized under Title V of the HEA. The purpose of this notice is to provide additional time for institutions that wish to compete for new grants under these programs to obtain designation as eligible institutions.

The closing date for eligibility applications is now May 17, 1999 for institutions that wish to apply for new grant awards under these programs. The Department has announced a closing date of May 24, 1999 for applications for new grant awards under the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian Serving Institutions Programs, and plans to announce a closing date of June 25, 1999 for the HSI Program. Because of time constraints, the Department does not guarantee that it will be able to notify an applicant for designation as an eligible institution of its status before the May 24, 1999 and June 25, 1999 grant award closing dates.

However, the closing date of May 28, 1999 has not changed for applicant

institutions that only wish to receive a wavier of certain non-Federal share requirements under the Federal Work Study or Federal Supplemental Education Opportunity Grant programs authorized under Title IV of the HEA and the Undergraduate International Studies and Foreign Language Program authorized under Title VI of the HEA.

Deadline for Transmittal of Applications: May 17, 1999.

Applications Available: February 10, 1999.

For Applications or Information Contact: Ellen M. Sealey, Margaret A. Wheeler, or Anne. S. Young, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 400 Maryland Avenue, SW (Suite CY–80, Portals Building), Washington, DC 20202–5335. Telephones: (202) 708–8816, 708–8839 or 708–8866. 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 office listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application in an alternate format, also, by contacting that office. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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 Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news/html

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 any questions about using the PDF, call the U.S. Government Printing Office (GPO) at (202) 512–1530 or, toll free, at 1–888–293–6498.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

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

Program Authority: 20 U.S.C. 1057, 1059c and 1065a.

Dated: April 29, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–11237 Filed 5–04–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Environmental Management (EM) Site-Specific Advisory Board (SSAB)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Thursday, May 20, 1999—7:00 p.m.–9:00 p.m.
Friday, May 21, 1999—1:00 p.m.–6:00 p.m.
Saturday, May 22, 1999—8:00 a.m.–5:30 p.m.
Sunday, May 23, 1999—8:00 a.m.–1:00 p.m.

ADDRESSES: Vernon Manor Hotel, 400 Oak Street, Cincinnati, OH 45219, (513) 281–3300.

FOR FURTHER INFORMATION CONTACT: Fred Butterfield, DOE/EM–22, U.S. Department of Energy, Headquarters, Washington, DC. 20585, (202) 586–8809.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Purpose of the Meeting: The Fernald Citizens Advisory Board is hosting the EM SSAB Transportation Seminar in support of the following objectives: (1) to improve stakeholder understanding of complex-wide transportation-related issues and decision-making processes; (2) to foster dialogue among the local EM SSABs about national transportation issues, and create opportunities for continuing that dialogue; and (3) to identify joint or common EM SSAB areas of agreement and unresolved transportation-related issues, and draft joint ''statements of concern'' regarding these issues.

Tentative Agenda

Thursday, May 20, 1999:
- 7:00–9:00 p.m. Reception

Friday, May 21, 1999:
- 1:00–1:15 p.m. Welcome (Jim Bierer and Tom Wagner) Orientation (objectives, agenda, rules of engagement)
- 1:15–1:30 p.m. (Facilitation Team)
- 1:30–2:30 p.m. Site Introductions and Site Info
- 2:30–3:00 p.m. Introduction of Core Topics (Facilitation Team)
- 3:00–3:15 p.m. Break
- 3:15–5:30 p.m. Presentation on Core Topics
- 5:30–6:00 p.m. Site Specific Preparation for Discussion of Core Topics (optional)

Saturday, May 22, 1999:
- 8:00–9:30 a.m. Plenary: Discuss broad areas of shared concern in each core topic
- 9:30–9:45 a.m. Break and Convene Core Topic Breakouts
- 9:45 a.m.–12:00 p.m. Core Topic Breakouts
- 12:00–1:30 p.m. Lunch
- 1:30–2:30 p.m. Site Specific Breakout
- 2:30–3:45 p.m. Core Topic Breakout
- 3:45–4:00 p.m. Break and Reconvene Plenary
- 4:00–5:30 p.m. Plenary: Discuss first two core topics

Sunday, May 23, 1999:
- 8:00–9:30 a.m. Plenary: Discuss last two core topics
- 9:30–9:45 a.m. Break and Convene Core Topic Breakouts
- 9:45–10:30 a.m. Core Topic Breakouts
- 10:30–10:45 a.m. Break and Reconvene Plenary
- 10:45–12:00 p.m. Plenary: Discuss and agree on revised statements of concern
- 12:00–12:45 p.m. Plenary: Discuss next steps while final statements are prepared for signature
- 12:45–1:00 p.m. Plenary: Sign statements and adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, 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 five minutes to present their comments.

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 by writing to Jim Bierer, Chair, Fernald Citizens' Advisory Board, C/O Phoenix Environmental Corporation, P.O. Box 544, Ross, Ohio, 45061, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on April 29, 1999.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11297 Filed 5–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Monday, May 24, 1999: 5:00 p.m.–9:00 p.m.

Tuesday, May 25, 1999: 8:30 a.m.–4:00 p.m.

ADDRESSES: All meetings will be held at: Savannah DeSoto Hilton, 15 East Liberty Street, Savannah, GA 31412.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of Environmental Quality, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802 (803) 725–5374.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, May 24, 1999:

6:30 p.m.—Public Comment Session

7:00 p.m.—Subcommittee meetings

9 p.m.—Adjourn

Tuesday, May 25, 1999:

8:30 a.m.

Approval of Minutes, Agency Updates (approximately 15 minutes), Public Comment Session (5-minute rule) (approximately 10 minutes), Facilitator Update (approximately 15 minutes), Risk Management & Future Use Subcommittee (approximately 1 hour), Transportation Seminar Report (approximately 15 minutes), Environmental Restoration & Waste Management (ER&WM) Subcommittee Report (approximately 1 hour)

12:00 p.m. Lunch Break

ER&WM Subcommittee Report continued (approximately 1¼ hours), Nuclear Materials Management Subcommittee Report (approximately 1 hour), Outreach Subcommittee Report (approximately 10 minutes), Public Comments (approximately 10 minutes)

4:00 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting, Monday, May 24, 1999.

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 Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy 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.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling (803) 725–5374.

Issued at Washington, DC on April 29, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11298 Filed 5–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, May 26, 1999, 6:00–9:00 p.m.

ADDRESSES: Los Alamos Inn, 2201 Trinity Drive, Los Alamos, NM.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 528 35th Street, Los Alamos, NM 87544; Phone: 505–665–5048; FAX 505–665–4872.

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

1. Public Comment 6:30–7:00 p.m.

2. Special Report on the Canyons in Los Alamos County.

3. Committee Reports.

4. Other Board business will be conducted as necessary.

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 Ann DuBois 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 Deputy 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 at 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 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9:00 am and 4:00 pm on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on April 29, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11299 Filed 5–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–538–000]

Midwestern Gas Transmission; Notice of Site Visit

April 29, 1999.

On May 6, 1999, the staff of the Office of Pipeline Regulation (OPR) will be conducting an inspection of Midwestern Gas Transmission Company's (Midwestern) Grain Processing Corporation Sales Tap Project. This recently constructed 2.84-mile-long pipeline is in Knox and Daviess Counties, Indiana. Representatives of Midwestern will accompany the OPR staff.

All interested parties may attend, although those planning to attend must provide their own transportation.

For further information, please contact Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11216 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–294–000]

Panhandle Eastern Pipe Line Company; Supplemental Notice of Request Under Blanket Authorization

April 29, 1999.

Take notice that on April 27, 1999, Panhandle Eastern Pipe Line Company (Panhandle) P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP99–294–000 a supplement to its request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212), noticed on April 14, 1999. Panhandle has now filed for abandonment authorization under Section 157.216 to abandon the facilities to be replaced as part of the upgrade of the Mount Auburn M&R Station in Christian County, Illinois. Panhandle makes no further changes to its original request. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11217 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–334–000]

Tennessee Gas Pipeline Company; Notice of Application

April 29, 1999.

Take notice that on April 22, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252–2511, filed an application pursuant to Section 7(b) of the Natural Gas Act to abandon by sale to Tennessee's affiliate, El Paso Field Services Company (Field Services), facilities and appurtenances located in South Texas. In certain pipeline and measuring addition, Tennessee requests that the Commission find that the facilities, upon their transfer to Field Services, will constitute non-jurisdictional gathering facilities exempt from the Commission's jurisdiction pursuant to NGA Section 1(b), all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http:///www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Tennessee proposes to abandon by sale to Field Services its Chesterville Lateral, West Magnolia City Lateral, Bay City Lateral, Hungerford Lateral System and Village Mills Lateral and all laterals/feeder lines, meters and appurtenant facilities associated with these lines. Tennessee states that to the extent Filed Services is unable to negotiate contracts with existing shippers for gathering service on these facilities, Field Services will agree to provide gathering service pursuant to a default contract which will ensure that existing shippers receive gathering service under terms and conditions consistent with the terms and conditions under which they currently receive transportation service, for a two-year default term. Moreover, during the two-year default contract term, the total revenue requirement of existing shippers on these lines will remain unchanged from current levels. Tennessee states that these actions will assure continuity of service to existing shippers on the Chesterville Lateral, West Magnolia City Lateral, Bay City Lateral, Hungerford Lateral System and Village Mills Lateral.

Any person desiring to be heard or to make a protest with reference to said application should, on or before May 20, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11218 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Pacific Gas and Electric Company; Notice of Technical Workshop on Water Balance Modeling

[Project No. 77–110]

April 29, 1999.

In February, 1999, the Federal Energy Regulatory Commission (Commission) issued a Draft Environmental Impact Statement (DEIS) in support of the Commission's decision on a proposed

amendment to the license for the Potter Valley Project (PVP; FERC No. 77–110). The proposed amendment involves changes in the minimum flow requirements at the project, consisting of increased releases to the Eel River, which would result in overall decreased diversions to the Russian River. The PVP is licensed to Pacific Gas and Electric Company (PG&E) and is located in Lake and Mendocino counties, California.

Analysis of the impacts of the proposed alternative, as well as two additional action alternatives and the no-action alternatives relied heavily on a hydrological water balance model developed to provide a consistent analytical framework for predicting the impacts of the four alternatives. Comments received to date on the DEIS indicate disagreement among the parties on how the model should be parametrized to best represent the different alternatives.

The purpose of this notice is to advise all parties of a technical workshop that will focus on improving the assessment modeling approaches for impact assessment and attempting to reach consensus on areas of disagreement. This technical workshop will be held at the Flamingo Hotel and Conference Center, 2777 Fourth Street, Santa Rosa, California, on June 2–3, 1999, from 9 am to 4 pm. A block of rooms is being held at a special rate for workshop attendees until May 24, 1999. For reservations, call (800) 848–8300. While the workshop will be focused on obtaining technical information from the parties whose alternatives are considered in the DEIS, all interested parties are welcome to attend.

More specifically, the objectives of the workshop include: (1) reaching consensus on appropriate data inputs, outputs, and representation of alternatives for the water balance models and habitat evaluation models: (2) defining any new alternatives that may now be appropriate for consideration in this proceeding, including how these should be represented quantitatively in the water balance modeling; and (3) obtaining additional information applicable to the EIS assessment.

As a result of previous technical meetings and the DEIS, the parties to this proceeding already have access to the models and data needed for water balance assessment. Commission staff requests that the parties that have flow proposals in this proceeding (i.e., PG&E, Sonoma County Water Agency, and the Round Valley Indian Tribes), and their representatives, prepare for this workshop so that they can participate with substantial information on data inputs and modeling approaches. Furthermore, any parties that have additional information relevant to this proceeding, such as water temperature monitoring reports or data, are advised that they should bring such information to this workshop and make it available to Commission staff, so that it can be incorporated into the assessment.

The workshop will be conducted in an interactive format, whereby the water balance models can be run and re-run in an iterative manner to evaluate assessment results during the workshop. Our intent is to make the modeling results as accessible as possible so that future applications of the modeling are acceptable to as many parties as possible.

For additional information on this workshop, please contact the FERC Project Manager, Dr. John M. Mudre at (202) 219–1208.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11219 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. 2687–014 California]

Pacific Gas and Electric Company; Notice of Availability of Final Environmental Assessment

April 29, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for relicensing of the Pit 1 Project, located in the towns of Fall River Mills and McArthur, California.

On May 27, 1998, the Commission staff issued a draft environmental assessment (DEA) for the project, and requested that comments be filed with the Commission within 45 days. Comments were filed by eleven entities and are addressed in the final environmental assessment (FEA) for the project.

The FEA contains the staff's analysis of the potential environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA and FEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426. They may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11249 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 29, 1999.

a. Type of Application: Preliminary Permit.

b. Project No.: P–11695–000.

c. Date filed: March 5, 1999.

d. Applicant: Universal Electric Power Corp.

e. Name of Project: Nolin Lake Dam Project.

f. Location: At the Corps of Engineer's Nolin Lake Dam, on the Nolin River, near the Town of Brownsville, Grayson County, Kentucky.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. Ronald Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301 (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Michael Spencer, E-mail address at Spencer.Michael@FERC.fed.us, or telephone (202) 219–2846.

j. Deadline for filing motions to intervene and protest: 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 and 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. Description of Project: The proposed project would utilize the

Corps of Engineer's Nolin Lake dam and consist of the following: (1) a 42-inch-diameter, 50-foot-long steel penstock, constructed in the existing outlet works; (2) a powerhouse containing a generating unit with a total capacity of 1.0 MW and an estimated average annual generation of 6.0 Gwh; and (3) a 200-foot-long transmission line.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

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 4.32(a) and (b)(1).

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 (see 18 CFR 4.36). Submission of a timely notice of intent to file 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 4.32(a), (b), and (c).

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.

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.

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 and .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.

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 and an additional copy must be sent to Director, Division of Project Review, 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.

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. 99–11220 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 29, 1999.

a. Type of Application: Preliminary Permit.

b. Project No.: P–11696–000.

c. Date filed: March 5, 1999.

d. Applicant: Universal Electric Power Corp.

e. Name of Project: Kentucky L&D #14 Project.

f. Location: At the Corps of Engineer's Kentucky L&D #14, on the Kentucky River, near the Town of Heidelberg, Lee County Kentucky.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. Ronald Felterberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301 (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Michael Spencer, E-mail address at Spencer.Michael@FERC.fed.us, or telephone (202) 219–2846.

j. Deadline for filing motions to intervene and protest: 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 and 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. Description of Project: The proposed project would utilize the Corps of Engineer's Kentucky L&D #14 dam and consist of the following: (1) two 72-inch-diameter, 50-foot-long penstocks, constructed in the existing outlet works; (2) a powerhouse

containing two generating units with a combined total capacity of 2.0 MW and an estimated average annual generation of 12.3 Gwh; and (3) a 400-foot-long transmission line.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

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 4.32 (a) and (b)(1).

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 (see 18 CFR 4.36). 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 4.32 (a), (b), and (c).

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.

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.

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 or .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.

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 and an additional copy must be sent to Director, Division of Project Review, 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.

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 99–11221 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 29, 1999.

a. Type of Application: Preliminary Permit.

b. Project No.: P–11697–000.

c. Date filed: March 8, 1999.

d. Applicant: Universal Electric Power Corp.

e. Name of Project: Green River Lake Dam Project.

f. Location: At the Corps of Engineers Green River Lake Dam, on the Green River, near the Town of Campbellsville, Taylor County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Ronald Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301 (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Michael Spencer, E-mail address at Spencer.Michael@FERC.fed.us, or telephone (202) 219–2946.

j. Deadline for filing motions to intervene and protest: 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 and Practice and Procedure require all interveners 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. Description of Project: The proposed project would utilize the Corps of Engineers Green River Lake Dam and consist of the following: (1) two 48-inch-diameter, 50-foot-long steel penstocks, constructed in the existing outlet works; (2) a powerhouse containing two generating units with a total capacity of 5.5 MW and an estimated average annual generation of 34.0 Gwh; and (3) a 4-mile-long transmission line.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the

Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for perliminary 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 of 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 4.32 (a) and (b)(1).

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 (see 18 CFR 4.36). 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 4.32 (a), (b), and (c).

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(a) name in this public notice.

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.

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 and .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.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the time ''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 and an additional copy must be sent to Director, Division of Project Review, 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.

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. 99–11222 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Renotice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 29, 1999.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11694–000.

c. *Date filed:* March 5, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Kentucky L&D #4 Project.

f. *Location:* At the Corps of Engineer's Kentucky L&D #4, on the Kentucky River, near the Town of Frankfort, Franklin County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Ronald Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301 (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Michael Spencer, E-mail address at Spencer.Michael@FERC.fed.us, or telephone (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 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 and 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. *Description of Project:* The proposed project would utilize the Corps of Engineer's Kentucky L&D #4 dam and consist of the following: (1) two 72-inch-diameter, 50-foot-long penstocks, constructed in the existing outlet works; (2) a powerhouse containing two generating units with a combined total capacity of 2.5 MW and an estimated average annual generation of 15.0 Gwh; and (3) a 300-foot-long transmission line.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the

Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

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 4.32(a) and (b)(1).

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 (see 18 CFR 4.36). 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 4.32(a), (b), and (c).

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.

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.

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 and .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.

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 and an additional copy must be sent to Director, Division of Project Review, 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.

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. 99–11248 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6336–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Ambient Air Quality Surveillance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Ambient Air Quality Surveillance, OMB Number 2060–0084, EPA ICR 0940.16, expiration date June 30, 1999. 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 June 4, 1999.

FOR FURTHER INFORMATION: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0940.16.

SUPPLEMENTARY INFORMATION:

Title: Ambient Air Quality Surveillance, [OMB Number (2060–0084), EPA ICR # 0940.16] expiring June 30, 1999. This is a request for extension of a currently approved collection.

Abstract: The general authority for the collection of ambient air quality data is contained in sections 110 and 319 of the Clean Air Act (42 U.S.C. 1857). Section 110 makes it clear that State generated air quality data are central to the air quality management process through a system of State implementation plans (SIP). Section 319 was added via the 1977 Amendments to the Act and spells out the key elements of an acceptable monitoring and reporting scheme. To a large extent, the requirements of section 319 had already been anticipated in the detailed strategy document prepared by EPA's Standing Air Monitoring Work Group (SAMWG). The regulatory provisions to implement these recommendations were developed through close consultation with the State and local agency representatives serving on SAMWG and through reviews by ad-hoc panels from the State and Territorial Air Pollution Program Administrators and the Association of

Local Air Pollution Control Officials. These modifications to the previous regulations were issued as final rules on May, 10, 1979 (44 FR 27558) and are contained in 40 CFR part 58.

Major amendments which affect the hourly burdens were made in 1983 for lead, 1987 for PM–10, 1993 for enhanced monitoring for ozone, and 1997 for $PM_{2.5}$. The specific required activities for the burden include establishing and operating ambient air monitors and samplers, conducting sample analyses for all pollutants for which a national ambient air quality standard (NAAQS) has been established, preparing, editing, and quality assuring the data, and submitting the ambient air quality data and quality assurance data to EPA.

Some of the major uses of the data are for judging attainment of the NAAQS, evaluating progress in achieving/maintaining the NAAQS or State/local standards, developing or revising SIP's, evaluating control strategies, developing or revising national control policies, providing data for model development and validation, supporting enforcement actions, documenting episodes and initiating episode controls, documenting population exposure, and providing information to the public and other interested parties.

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** document required under 5 CFR 1320.8(d), soliciting comments on the collection of information was published on August 3, 1998 (63 FR 41251); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4,624 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 and local air pollution control agencies.

Estimated Number of Respondents: 130.

Frequency of Response: Quarterly, Semi-Annually, Annually.

Estimated Total Annual Hour Burden: 2,404,606 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $73,643,000.

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 EPA ICR No. 0940.16 and OMB Control No. 2060–0084 in any correspondence. Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, 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: April 29, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–11273 Filed 5–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34131B; FRL–6079–9]

Azinphos-Methyl, Revised Pesticide Risk Assessment; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a public meeting to present the revised risk assessment for one organophosphate pesticide, azinphos-methyl, to interested stakeholders. This public meeting, called a ''Technical Briefing,'' will provide an opportunity for stakeholders to learn about the data, information, and methodologies that the Agency used in revising its risk assessment for azinphos-methyl. In addition, representatives of the U.S. Department of Agriculture (USDA) will also provide ideas on possible risk management for azinphos-methyl.

DATES: The technical briefing will be held on Wednesday, May 19, 1999, from 9 a.m. to 12 noon.

ADDRESSES: The technical briefing will be held at the Environmental Protection Agency, Rm. 1126, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Barry O'Keefe, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8035; e-mail address: okeefe.barry@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. The Agency believes that a wide range of stakeholders will be interested in technical briefings on organophosphates, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides on food. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information or Copies of This Document or Other Documents Discussed in This Notice?

1. *Electronically.* You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the '' **Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/. In addition, a brief summary of the azinphos-methyl revised risk assessment is now available at http://www.epa.gov/pesticides/op/status.htm/, as well as in paper as part of the public version of the official record as described in Unit I.B.2. of this document.

2. *In person or by telephone.* If you have any questions or need additional information about this document, you may contact the person identified in the

''FOR FURTHER INFORMATION CONTACT'' section.

In addition, the Agency has established an official record for the organophosphate azinphos-methyl under docket control number OPP–34131B. The official record consists of the documents specifically referenced in this document. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as Confidential Business Information (CBI). The public version of the official record is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

II. Background

This document announces the Agency's intention to hold a technical briefing for the organophosphate pesticide, azinphos-methyl. The Agency is presenting the revised risk assessments for azinphos-methyl to interested stakeholders. This technical briefing is designed to provide stakeholders with an opportunity to become even more informed about an organophosphate's risk assessment. EPA will describe in detail the revised risk assessment: Including the major points (e.g., contributors to risk estimates); how public comment on the preliminary risk assessment affected the revised risk assessment; and the pesticide use information/data that was used in developing the revised risk assessment. Stakeholders will have an opportunity to ask clarifying questions. In addition, representatives of the USDA will provide ideas on possible risk management.

The technical briefing is part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998 as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessment and risk management decisions. EPA and USDA began implementing this pilot process in August 1998 in response to Vice President Gore's directive to increase transparency and opportunities for stakeholder consultation.

On the day of the technical briefing, in addition to making copies available at the meeting site, the Agency will also release for public viewing the azinphos-methyl revised risk assessments and related documents to the Public Information and Records Integrity Branch and the OPP Internet web site that are described in Unit I.B.1. of this document. In addition, the Agency will issue a **Federal Register** notice to provide an opportunity for a 60-day public participation period during which the public may submit risk management and mitigation ideas, and recommendations and proposals for transition.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: April 30, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–11303 Filed 4–30–99; 4:28 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00598; FRL–6079–2]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 3–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 policy for the use of the FQPA 10x Safety Factor, statistical methods for the use of composite data in acute dietary exposure assessment, and the use of watershed-derived percent crop areas as a refinement tool in FQPA drinking water exposure assessments for tolerance reassessment. The meeting is open to the public. Seating at the meeting will be on a first-come basis.

DATES: The meeting will be held on Tuesday, May 25; Wednesday, May 26; and Thursday, May 27, 1999, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the hotel is: (703) 486–1111.

By mail, submit written comments (one original and 40 copies) to: The Public Information and Records Integrity Branch (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by delivery service, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data also may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. No Confidential Business Information (CBI) should be submitted through e-mail. Additional information on electronic submissions can be found under Unit V. of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Larry C. Dorsey or Paul I. Lewis, Designated Federal Officials, FIFRA Scientific Advisory Panel (7101C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Rm. 117T, CM #2, 1921 Jefferson Davis Highway, Arlington, VA; telephone: (703) 305–5369; e-mail: Dorsey.Larry@epa.gov or Lewis.Paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Meeting

The Office of Pesticide Programs (OPP) will present its policy for the use of the FQPA 10x Safety Factor. Topics to be discussed are the OPP FQPA 10x Safety Factor policy paper, including presentations on toxicological and exposure considerations, and the OPP FQPA Standard Operating Procedures. In addition, EPA's Office of Pollution Prevention and Toxics, in implementing the testing provision of the Toxic Substances Control Act, will discuss a proposed toxicology test battery that will be used for the testing of industrial/commercial chemicals to which there is a high likelihood of exposure to children. This toxicology test battery represents a subset of the core toxicology data set recommended in the OPP FQPA 10x Safety Factor policy paper. OPPT is seeking scientific input/advice specifically on the appropriateness of using this subset for this TSCA-related testing purpose.

The Agency also will present statistical methodology for the use of composite data in acute dietary exposure assessment. The Agency has identified a reliable, statistical methodology for applying existing information from the U.S. Department of Agriculture's (USDA) Pesticide Data Program (PDP) report to acute dietary risk assessments. This methodology consists of extrapolating pesticide residue data from composite samples of fruits and vegetables to single serving sizes of fruits and vegetables. Estimates of probable residues present on single serving sizes of fruits and vegetables will be applied to a probabilistic approach such as, the Monte-Carlo method, in order to estimate dietary (food) risks.

The final session will focus on estimating pesticide concentrations in drinking water. Passage of FQPA has led to the development of tools, policies, and methods for estimating pesticide concentrations in drinking water. As presented at the July 29, 1998 SAP meeting, the Agency proposed to replace the existing small edge of a field pond with a reservoir and factor in the extent of crop coverage into its screening-level drinking water exposure assessments. The proposed SAP session is designed to provide a progress report on the development of ''Watershed-Derived Percent Crop Areas'' (previously termed ''crop area factors'') as presented at the July 1998 SAP meeting as well as to seek scientific advice on implementation of the Watershed-Derived Percent Crop Areas in the FQPA drinking water exposure assessment using the proposed index reservoir modeling scenario.

Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Paul Lewis at the address listed under ''FOR FURTHER INFORMATION CONTACT'' at least 5 business days prior to the meeting so that appropriate arrangements can be made.

II. Availability of Review Materials

A meeting agenda is currently available, and copies of EPA primary background documents for the meeting will be available no later than May 3, 1999. The meeting agenda and EPA primary background documents will be available on the EPA web site -- http://www.epa.gov/pesticides/SAP/ or 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; telephone: (703) 305–5805.

III. Written Comments and Oral Presentations at the Meeting

Members of the public wishing to submit comments should contact either Larry Dorsey or Paul Lewis at the address or the telephone number given under ''FOR FURTHER INFORMATION CONTACT'' to confirm that the meeting date and the agenda have 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 either Larry Dorsey or Paul Lewis, interested persons may be permitted by the Chair of the Scientific Advisory Panel to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audio visual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc). 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. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify either Larry Dorsey or Paul Lewis and submit 40 copies of the summary information. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

IV. Panel Report

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 listed in ''ADDRESSES'' at the beginning of this document.

V. Public Docket and Submission of Electronic Comments

A public record has been established for this notice under docket control number ''OPP–00598'' (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 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch at the address listed in ADDRESSES at the beginning of this document.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on disks in WordPerfect in 5.1/6/7/8.0 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPP–00598.'' Electronic comments may be filed online at many Federal Depository Libraries.

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.

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.

List of Subjects

Environmental protection.

Dated: April 26, 1999.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

[FR Doc. 99–11277 Filed 5–4–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00270; FRL–6081–1]

High Production Volume (HPV) Chemical Initiative; Periodic Update Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: Over the next 6 months, EPA plans to hold several meetings on the High Production Volume (HPV) Chemical Initiative. The purpose of these meetings is to provide an opportunity for periodic updates on the Initiative's HPV Chemical Challenge program, as well as to provide a forum where interested parties can contribute information, discuss and give individual perspectives on various topics related to the HPV Chemical Challenge program. The HPV Chemical Challenge program, which was established in partnership with industry and environmental groups, is a voluntary program that is intended to make basic toxicity data on widely used industrial chemicals available to the public over the next 6 years. Prior to each meeting, EPA intends to develop an agenda for the meeting in consultation with the stakeholders. The meeting agenda will be made publicly available as early as possible prior to each of the meetings as described in Unit II. of this notice. Each meeting will be open to the public, but participation in discussions may be limited to those who pre-register with the Agency as described in Unit III. of this notice.

DATES: The first meeting will be held on May 20, 1999, from 1 p.m. to 3:30 p.m. Requests to participate in this meeting, submitted according to the instructions in Unit III. of this notice, must be received by EPA 5 working days before each meeting. As discussed in Unit VI. of this notice, subsequent meetings will be held in July, September, and November, with dates and/or times still to be determined.

ADDRESSES: The first meeting, May 20, 1999, will be held at: API, 1220 L St. NW., 9th floor, Washington, DC 20005. Metro stop: McPherson Square.

FOR FURTHER INFORMATION CONTACT: For general information: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: 202–554–1404 and TDD: 202–554–0551; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information: David Sarokin, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone number: 202–260–6396; fax number: 202–260–2219; e-mail address: sarokin.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This notice applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this notice. If you have any questions regarding the applicability of this notice 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 Documents Discussed in this Notice?

1. *Electronically.* You may obtain electronic copies of this document and various other documents related to the Agency's HPV Chemical Initiative and the HPV Chemical Challenge program from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''Federal Register - Environmental Documents.'' You can also go directly to the ''Federal Register'' listings at http://www.epa.gov/homepage/fedrgstr/. To access information about the HPV Chemical Initiative, go to http://www.epa.gov/chemrtk.

2. *In person.* If you have any questions or need additional information about this action, you may contact the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

In addition, the Agency has established an official record for the HPV Chemical Challenge program under administrative record number AR–201. The official record consists of the documents specifically referenced in this document, any public comments received during an applicable comment period, and other information related to the HPV Chemical Initiative, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that you consider to be CBI. Your request must be received by EPA no later than 5 working days before the meeting in which you would like to participate. EPA will make every attempt to accommodate requests received by this date, taking into account the time constraints of the agenda for the meeting, and on a first come basis. To ensure proper receipt by EPA, it is imperative that you identify administrative record number AR–201 in the subject line on the first page of your request.

1. *By mail.* You may submit a written requests to: Irina Vaysman (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. 517 East Tower, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* You may deliver a written request to: Irina Vaysman, Rm. 517 East Tower, Waterside Mall, 401 M St., SW., Washington, DC. Submissions can be delivered between 9 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

3. *Electronically.* You may submit a request electronically by E-mail to: http://www.epa.gov/chemrtk. Do not submit any information electronically that you consider to be CBI. You must avoid the use of any special characters and any form of encryption in your E-mail. All E-mail must be identified by the administrative record number AR–201.

IV. What is the HPV Chemical Challenge Program?

The HPV Challenge Program, a key element of the Chemical Right-to-Know initiative was announced last year on the eve of Earth Day, by Vice President Gore and EPA Administrator Carol Browner. As part of this initiative, EPA, in partnership with industry and environmental groups, created a voluntary chemical testing program which will make basic toxicity data on about 2,800 widely used industrial chemicals (chemicals produced in excess of one million pounds annually) available to the public over the next 6 years. Testing will ensue only when existing data are not adequate. The testing will be carried out in a manner consistent with the internationally-recognized testing protocol (as developed by the Organization for Economic Cooperation and

Development (OECD) Screening Information Data Sets (SIDS) program) to ensure that testing can be contributed to the international effort and, conversely, that international SIDS testing and assessments can be used to fulfill the Challenge Program's requirements.

V. What Will be Discussed at the Public Meetings?

The purpose of these meetings is to provide an opportunity for periodic updates on the HPV Chemical Challenge program, as well as to provide a forum where interested parties can contribute information, discuss and give individual perspectives on various topics related to the HPV Chemical Challenge program. Each meeting will be open to the public, but participation in discussions may be limited to those who pre-register with the Agency as described in Unit III. of this notice.

An agenda for each meeting, which EPA will develop in consultation with the stakeholders, will be made publicly available as early as possible prior to the meeting. The agenda for each meeting will be distributed to the participants who registered for that meeting and will be posted on the EPA website at http://www.epa.gov/chemrtk.

VI. Where Will Subsequent Public Meetings be Held?

EPA intends to hold additional meetings in July, September, and November, the dates, times, and locations for which still need to be determined. When scheduled, EPA will announce and provide relevant information about the meeting on the EPA website at http://www.epa.gov/chemrtk. The dates, times, and locations for these subsequent meetings will not be published in the **Federal Register**. Interested parties should consult the EPA Internet site indicated above for up-to-date information about these subsequent meetings.

List of Subjects

Environmental protection.

Dated: April 30, 1999.

Joseph A. Carra,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–11276 Filed 5–4–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–870; FRL–6072–7]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–870, must be received on or before June 4, 1999.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (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 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: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Dani Daniel	Rm. 211, CM #2, 703–305–5409, e-mail:daniel.dani@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Cynthia Giles-Parker (PM 22).	Rm. 249, CM #2, 703–305–7740, e-mail: giles-parker.cynthia@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions 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–870] (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. Comments and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on 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: April 23, 1999.

Peter Caulkins, Acting

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. 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.

1. Novartis Crop Protection, Inc.

PP 9F5045

EPA has received a pesticide petition (9F5045) from Novartis Crop Protection, Inc., P.O.Box 18300, Greensboro, NC 27419-8300 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of difenoconazole ((2S,4R)/(2R,4S)/(2R,4R)/(2S,4S) 1-(2-(4-(4-chlorophenoxy)-2-chlorophenyl)-4-methyl-1,3-dioxolan-2-yl)methyl-1H-1,2,4-triazole) in or on the raw agricultural commodity (RAC) rapeseed at 0.01 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residues in plants is understood for the purpose of the proposed tolerance. The metabolism of ^{14}C-difenoconazole has been studied using both phenyl and triazole labels in wheat, tomatoes, potatoes, grapes, and spring rape The metabolic pathway was the same in these four separate and distinct crops.

2. *Analytical method*—i. *Food*. Novartis Crop Protection, Inc. has submitted a practical analytical method (AG-575B, master record identification (MRID) No. 428065-04) for detecting and measuring levels of difenoconazole in or on food with a limit of quantitation (LOQ) that allows monitoring of food with residues at or above the levels set in the proposed tolerances. EPA has validated this method and copies have been provided to FDA for insertion into pesticide analytical manual (PAM) II. The method is available to anyone who is interested, and may be obtained from the Field Operations Division, Office of Pesticide Programs.

ii. *Livestock*. Novartis Crop Protection, Inc. has submitted a practical analytical method (AG-544A, MRID-43292401) for detecting and measuring levels of difenoconazole in or on cattle tissues and milk and poultry tissues and eggs, with a LOQ that allows monitoring of food with residues at or above the levels set in the proposed tolerances. EPA has validated this method and copies have been provided to FDA for insertion into PAM II. The method is available to anyone who is interested, and may be obtained from the Field Operations Division, Office of Pesticide Programs.

3. *Magnitude of residues*—i. *Food*. Six field trials were analyzed in concordance with the OPPTS guidelines based on expected reduced residues and environmental benefits of seed applications. The six trials, held in areas representing approximately 84% of commercial United States canola production (Agricultural Statistics, 1991), were conducted in Georgia (2%), Minnesota (16%), North Dakota (53%), South Dakota (2%), Idaho (6%), and Washington (5%). No residues were detected in rape seed at either a 1x or 3x treatment rate.

ii. *Livestock*. No tolerances are necessary for grain commodities. Tolerances in meat, milk, poultry or eggs were established for enforcement purposes.

B. Toxicological Profile

The following mammalian toxicity studies were conducted and submitted in support of the establishment of tolerances for difenoconazole.

1. *Acute toxicity*. Difenoconazole has a low order of acute toxicity. The oral rat LD_{50} is 1,453 milligram/kilogram (mg/kg). The rabbit acute dermal LD_{50} is > 2,010 mg/kg and the rat inhalation LC_{50} is > 3.285 milligrams per liter (mg/L). Difenoconazole is not a skin sensitizer in guinea pig and shows slight eye and dermal irritation in the rabbit.

2. *Genotoxicity*. There was no evidence of the induction of point mutations in an Ames test, no evidence of mutagenic effects in a mouse lymphoma test or in a nucleus anomaly test with Chinese hamsters, and no evidence of induction of DNA damage in a rat hepatocyte DNA repair test or in a human fibroblast DNA repair test.

3. *Reproductive and developmental toxicity*. An oral teratology study in rats had a maternal no-observed adverse effect level (NOAEL) of 16 mg/kg/day based on excess salivation and decreased body weight gain and food consumption. The developmental NOAEL of 85 mg/kg/day was based on effects seen secondary to maternal toxicity including slightly reduced fetal body weight and minor changes in skeletal ossification. An oral teratology study in rabbits had a maternal NOAEL of 25 mg/kg/day based on decreased body weight gain, death, and abortion. The developmental NOAEL of 25 mg/kg/day was based on effects seen secondary to maternal toxicity including a slight increase in post-implantation loss and resorptions, and decreased fetal weight. A 2-generation reproduction study in rats had a parental and reproductive NOAEL of 25 part per million (ppm) based on significantly reduced female body weight gain, and reductions in male pup weights at 21-days.

4. *Subchronic toxicity*. A 13-week rat feeding study identified liver as a target organ and had a NOAEL of 20 ppm. A 13-week mouse feeding study also identified liver as a target organ and had a NOAEL of 20 ppm. A 26-week dog feeding study further identified liver, and also the eyes, as target organs and had a NOAEL of 100 ppm. A 21-day dermal study in rabbits had a NOAEL of 10 mg/kg/day based on decreased body weight gain at 100 and 1,000 mg/kg/day.

5. *Chronic toxicity*. A 24-month feeding study in rats had a NOAEL of 20 ppm based on liver toxicity at 500 and 2,500 ppm. An 18-month mouse feeding study had an overall NOAEL of 30 ppm based on decreased body weight gain and liver toxicity at 300 ppm. A 12-month feeding study in dogs had a NOAEL of 100 ppm based on decreased food consumption and increased alkaline phosphatase levels at 500 ppm.

6. *Carcinogenicity*. A 24-month feeding study in rats had a NOAEL of 20 ppm based on liver toxicity at 500 and 2,500 ppm. There was no evidence of an oncogenic response. An 18-month mouse feeding study had an overall NOAEL of 30 ppm based on decreased body weight gain and liver toxicity at 300 ppm. There was an increase in liver tumors only at dose levels that exceeded the maximum tolerated dose (MTD). The oncogenic NOAEL was 300 ppm.

7. *Animal metabolism*. The metabolism of difenoconazole is well understood. Studies with ^{14}C-difenoconazole in the rat, goat, and hen demonstrate that the majority of the

administered dose (76 to > 98%) is eliminated via the excreta as parent and metabolites. Very low concentrations of radioactivity, accounting for < 1 to 4% of the applied dose, remain in tissues. The liver and kidney typically show the highest radioactivity, but in the rat, the highest concentration in any tissue was found in the fat. Concentrations in goat milk reached a plateau on day 6 of the study at 0.043 ppm for the triazole label and 0.007 ppm for the phenyl label when goats were fed approximately 5 ppm for 10 days. Similarly, very little radioactivity was deposited in eggs; radioactivity reached a plateau of 0.248 to 0.299 ppm in yolks after 7 to 8-days, and 0.007 to 0.153 ppm in whites after 5 days, in hens fed at a rate equivalent to 5 ppm in the diet for 14 consecutive days. CGA-205375, an alcohol resulting from the deketalization of the dioxolane ring of difenoconazole, is a major metabolite found in animal tissues, excreta, milk, and eggs. The presence of CGA-71019, containing only the triazole ring, and CGA-189138, containing only the phenyl ring, indicates that bridge cleavage can occur in animals as well as plants. The metabolite patterns in the excreta of hens, goats, and rats were similar.

8. *Metabolite toxicology*. The residue of concern for tolerance setting purposes is the parent compound. Metabolites of difenoconazole are considered to be of equal or lesser toxicity than the parent.

9. *Endocrine disruption*. Developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in rats gave no specific indication that difenoconazole may have effects on the endocrine system with regard to development or reproduction. Furthermore, histologic investigations were conducted on endocrine organs (thyroid, adrenal, and pituitary, as well as endocrine sex organs) from long-term studies in dogs, rats, and mice. There was no indication that the endocrine system was targeted by difenoconazole, even when animals were treated with maximally tolerated doses over the majority of their lifetime. Difenoconazole has not been found in RAC at the LOQ. Based on the available toxicity information and the lack of detected residues, it is concluded that difenoconazole has no potential for interfering with the endocrine system, and there is no risk of endocrine disruption in humans.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. When the potential dietary exposure to difenoconazole from established and pending tolerances (assuming 100% treated) is calculated, the theoretical maximum residue concentration (TMRC) of 0.000583 mg/kg/day utilizes 5.83% of the reference dose (RfD) for the overall U. S. population. For the most exposed population subgroups, non-nursing infants, the TMRC is 0.001656 mg/kg/day, utilizing 16.56% of the RfD, followed by children (1-6 years old), who are exposed to 14.58% of the RfD. In this analysis, canola does not contribute to exposure.

ii. *Drinking water*. Other potential sources of exposure of the general population to residues of pesticides are in drinking water and from non-occupational activities. Difenoconazole is currently used as a seed treatment and residues are, therefore, incorporated into the soil. The likelihood of contamination of surface water from run-off is essentially negligible. In addition, parent and aged leaching, soil adsorption/desorption, and radiolabeled pipe studies indicated that difenoconazole has a low potential to leach in the soil and it would not be expected to reach aquatic environments. For these reasons, and because of the low use rate, exposures to residues in ground and surface water are not anticipated to contribute significantly to the aggregate exposure profile for difenoconazole.

2. *Non-dietary exposure*. Non-occupational exposure to difenoconazole has not been estimated since the current registration is limited to seed treatment. Therefore, the potential for non-occupational exposure to the general population is insignificant.

D. Cumulative Effects

Novartis has considered the potential for cumulative effects of difenoconazole and other substances of common mechanism of toxicity. Novartis has concluded that consideration of a common mechanism of toxicity in aggregate exposure assessment is not appropriate at this time. Novartis has no reliable information to indicate that the toxic effects (generalized liver toxicity) seen at high doses of difenoconazole would be cumulative with those of any other compound. Thus, Novartis is considering only the potential risk of difenoconazole from dietary exposure in its aggregate and cumulative exposure assessment.

E. Safety Determination

1. *U.S. population*. Using very conservative exposure assumptions (tolerance levels for 100% of the United States market) described and based on the completeness of the toxicity data base for difenoconazole, Novartis calculates that aggregate exposure to difenoconazole utilizes < 6% of the RfD for the U.S. population based on chronic toxicity endpoints (NOAEL = 1 mg/kg/day). If more realistic assumptions were used to estimate anticipated residues and appropriate market share, this percentage would be considerably lower, and would be significantly lower than 100%, even for the most highly exposed population subgroup. EPA generally has no concern for exposures below 100% of the RfD. Therefore, Novartis concludes that there is a reasonable certainty that no harm will result from daily aggregate exposure to residues of difenoconazole over a lifetime of exposure.

2. *Infants and children*. Developmental toxicity and 2-generation toxicity studies were evaluated to determine if there is a special concern for the safety of infants and children from exposure to residues of difenoconazole. There was no evidence of embryotoxicity or teratogenicity, and no effects on reproductive parameters, including number of live births, birth weights, and post-natal development, at dose levels that did not cause significant maternal toxicity. In addition, there were no effects in young post-weaning animals that were not seen in adult animals in the 2-generation reproduction study. Therefore, Novartis concludes that it is inappropriate to assume that infants and children are more sensitive than the general population to effects from exposure to residues of difenoconazole, and also concludes that the use of an additional safety factor to protect infants and children is unnecessary.

F. International Tolerances

There are pending Codex maximum residue levels (MRLs) for this compound in Mexico for oats, wheat, and barley. There are also MRLs for this compound in Australia for carrots at 0.02 ppm, and bananas at 0.05 ppm.

2. Novartis Crop Protection, Inc.

PP 9F5046

EPA has received a pesticide petition (9F5046) from Novartis Crop Protection, Inc., PO Box 18300, Greensboro, North Carolina 27419 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Thiamethoxam in or on the raw agricultural commodity (RAC) rape seed at 0.02 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA

has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The primary metabolic pathways of thiamethoxam in plants (corn, rice, pears, and cucumbers) were similar to those described for animals, with certain extensions of the pathway in plants. Parent compound and CGA-322704 were major metabolites in all crops. The metabolism of thiamethoxam in plants and animals is understood for the purposes of the proposed tolerances. Parent thiamethoxam and the metabolite, CGA-322704, are the residues of concern for tolerance setting purposes.

2. *Analytical method*. Novartis Crop Protection Inc. has submitted practical analytical methodology for detecting and measuring levels of thiamethoxam in or on RAC. The method is based on crop specific cleanup procedures and determination by liquid chromatography with either ultraviolet (UV) or mass spectrometry (MS) detection. The limit of detection (LOD) for each analyte of this method is 1.25 nanogram (ng) injected for samples analyzed by UV and 0.25 ng injected for samples analyzed by MS, and the limit of quantitation (LOQ) is 0.005 ppm for milk and juices and 0.01 parts per million (ppm) for all other substrates.

3. *Magnitude of residues*. A residue program was performed for thiamethoxam on a full geography of canola, using a maximum application rate of 400 g.a.i./100 kilogram (kg) seed (0.024 lbs. a.i./acre, at the typical seeding rate). Two field trials also included seed treated at 3 times the normal rate for thiamethoxam. No residues were detected above the method LOD for thiamethoxam. The proposed tolerance on canola is 0.02 ppm for thiamethoxam.

B. Toxicological Profile

1. *Acute toxicity*. Thiamethoxam has low acute toxicity. The oral LD_{50} in rats is 1,563 millogram kilogram (mg/kg) for males and females, combined. The rat dermal LD_{50} is > 2,000 mg/kg and the rat inhalation LC_{50} is > 3.72 milligrams per liter (mg/L) air. Thiamethoxam is not a skin sensitizer in guinea pigs and does not produce dermal or eye irritation in rabbits. End-use formulations of thiamethoxam have similar low acute toxicity profiles.

2. *Genotoxicty*. Thiamethoxam did not induce point mutations in bacteria (Ames assay in *Salmonella* typhimurium and *Escherichia coli*) or in cultured mammalian cells (Chinese hamster V79) and was not genotoxic in an *in vitro* unscheduled DNA synthesis assay in rat hepatocytes. Chromosome aberrations were not observed in an *in vitro* test using Chinese hamster ovary cells and there were no clastogenic or aneugenic effects on mouse bone marrow cells in an *in vivo* mouse micronucleus test. These studies show that thiamethoxam is not genotoxic.

3. *Reproductive and developmental toxicity*. In rat and rabbit teratology studies with thiamethoxam there was no evidence of teratogenicity. In rabbits, thiamethoxam caused decreased body weights (bwt), decreased food consumption and premature death of two females administered 150 mg/kg/day during gestation. This maternal toxicity was accompanied by reduced fetal bwts and an increase in the incidence of minor skeletal anomalies or variations. Reduced maternal bwts and food consumption were also noted in females administered 50 mg/kg/day thiamethoxam during gestation. There was no indication of developmental toxicity at 50 mg/kg/day. The no-observable adverse effect level (NOAEL) in rabbits for maternal toxicity was 15 mg/kg/day. The NOAEL for developmental toxicity was 50 mg/kg/day. In rats, thiamethoxam caused decreased bwts, decreased food consumption and hypoactivity at 200 and 750 mg/kg/day. Reduced fetal bwts and an increase in the incidence of minor skeletal anomalies and variations were observed only at 750 mg/kg/day. There was no indication of developmental toxicity at 200 mg/kg/day. The NOAEL in rats for maternal toxicity was 30 mg/kg/day and for developmental toxicity was 200 mg/kg/day. In a 2-generation reproduction study in rats, parental bwts and food consumption were decreased at 2,500 ppm highest dose tested (HDT). Hyaline changes in the kidneys of adult males were observed at 2,500 and 1,000 ppm. Reproductive parameters were not affected by treatment with thiamethoxam. Effects on offspring were secondary to parental toxicity and consisted of slightly reduced offspring bwts at 1,000 ppm and 2,500 ppm. The NOAEL for systemic toxicity in parental animals and for offspring toxicity was 30 ppm (equivalent to 1.3 - 6.4 mg/kg/day).

4. *Subchronic toxicity* Thiamethoxam was evaluated in 13-week subchronic oral toxicity studies in rats, dogs and mice. Liver, kidneys and spleen were identified as target organs. The NOAEL was 25 ppm (1.74 mg/kg/day) in male rats based on the finding of a hyaline change in the kidney at 250 ppm (17.6 mg/kg/day). This kidney effect represents an accumulation of alpha-2-microglobulin, which is unique to the male rat and not relevant for human risk assessment. The NOAEL was 1,250 ppm (92.5 mg/kg/day) for female rats. The NOAEL in dogs was 250 ppm (8.23 mg/kg/day). The NOAEL in mice was 10 ppm (1.41 mg/kg/day) for males and 100 ppm (19.2 mg/kg/day) for females. No dermal irritation was observed in a 28-day repeated dose dermal toxicity study with thiamethoxam in rats given 1,000 mg/kg/day. The dermal NOAEL for systemic toxicity in rats was 250 mg/kg/day for males and 60 mg/kg/day for females.

5. *Neurotoxicity*. Thiamethoxam did not cause neurotoxicity in an acute neurotoxicity study in rats or in a subchronic 13-week neurotoxicity study in rats. The NOAEL for systemic toxicity in the acute neurotoxicity study was 100 mg/kg. The NOAEL for systemic toxicity in the subchronic neurotoxicity study was 95.4 mg/kg/day for males and 216.4 mg/kg/day for females.

6. *Chronic toxicity*. The carcinogenic potential of thiamethoxam has been evaluated in rats and mice. The proposed carcinogenic classification for thiamethoxam is as a Group C carcinogen. This classification is based on a liver tumor response in male and female mice at dose levels exceeding the maximum tolerance dose (MTD) and/or causing organ toxicity and induction of liver metabolizing enzymes. A NOAEL for liver tumors in mice was established at 20 ppm (2.63 mg/kg/day). No evidence of carcinogenicity was observed in rats. In the absence of a mutagenic activity, it is concluded that the mechanism of action leading to liver tumors in mice is not via genotoxic effects. Therefore, mouse liver tumors associated with thiamethoxam treatment have a threshold level.

7. *Animal metabolism*. Metabolism of thiamethoxam has been well characterized in animals. Metabolism in rats proceeds primarily via hydrolysis of the oxadiazine ring, followed by N-demethylation. Several minor pathways of metabolism of thiamethoxam were identified in animals. In rats, the majority of the radioactive dose was absorbed and then excreted in the urine. Parent compound was the major residue in urine. In hens and goats, the metabolite profile was the same as in rats, with certain extensions of the pathway.

8. *Metabolite toxicology*. The metabolism profile for thiamethoxam supports the use of an analytical enforcement method that accounts for parent thiamethoxam and CGA-322704. Other metabolites are considered of

equal or lesser toxicity than parent compound.

9. *Endocrine disruption*. Thiamethoxam does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. There is no evidence that thiamethoxam has any effect on endocrine function in developmental or reproduction studies. Furthermore, histological investigation of endocrine organs in chronic dog, rat and mouse studies did not indicate that the endocrine system is targeted by thiamethoxam.

C. Aggregate Exposure

1. *Dietary exposure—Food and drinking water*. Chronic and acute dietary exposure to thiamethoxam was based on the occurrence of no detectable residues of thiamethoxam or its major metabolite resulting from the use of Helix on canola. There is no adverse exposure to thiamethoxam in the diet when chronic and acute assessments are made using tolerance level residues for canola oil (analytical method limit of quantitation (LOQ)), and 100% market share. The inclusion of the maximum concentration of thiamethoxam in water, taken from the highest estimated residue observed from the generic expected environmental concentration (GENEEC) and screening concentration In GROund (SCI-GROW) models, led to a maximum chronic exposure of 0.000019 mg/kg bwt/day in the most sensitive population subgroup, non-nursing infants (< 1-year old). This is only 0.1% of the proposed reference dose (RfD) of 0.013 mg/kg bwt/day. The inclusion of the water concentration estimate in the acute exposure assessment led to a margin of exposure (MOE) (NOAEL/exposure) of 264,491 at the 99.9th percentile of the most sensitive population subgroup, all infants (< 1-year old). The results of these analyses show that there is reasonable certainty that no harm will result from the exposure to dietary residues of thiamethoxam (including drinking water) from the use of Helix on canola.

2. *Non-dietary exposure*. There are no other uses currently registered for thiamethoxam that would lead to exposure from non-dietary sources. The proposed uses involve application of thiamethoxam to canola seed as part of the Helix product in an agricultural environment. A discussion of exposure from non-dietary sources will be made when future uses of thiamethoxam are proposed.

D. Cumulative Effects

The potential for cumulative effects of thiamethoxam and other substances that have a common mechanism of toxicity has also been considered. Thiamethoxam belongs to a new pesticide chemical class known as the neonicotinoids. There is no reliable information to indicate that toxic effects produced by thiamethoxam would be cumulative with those of any other chemical including another pesticide. Therefore, Novartis believes it is appropriate to consider only the potential risks of thiamethoxam in an aggregate risk assessment.

E. Safety Determination

1. *U.S. population*. Using the exposure assumptions and the proposed RfD described above, the aggregate exposure (including drinking water) to thiamethoxam from the application of helix to canola will utilize < 0.1% of the RfD for the U.S. population. Therefore, Novartis concludes that there is reasonable certainty that no harm will result from aggregate exposure to thiamethoxam residues from the use of helix on canola.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of thiamethoxam, data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat have been considered.

In teratology studies, delayed fetal development was apparent only at maternally toxic doses of thiamethoxam in rats and rabbits. In rabbits, 150 mg/kg/day was clearly toxic to does, causing death, weight loss, reduced food consumption and perineal or vaginal discharge. Developmental toxicity occurred secondary to maternal toxicity and consisted of reduced fetal bwts and an increase in minor skeletal anomalies or variations. Maternal toxicity was also noted at 50 mg/kg/day, consisting of reduced bwts and food consumption and total resorptions in one female. There was no indication of developmental toxicity at 50 mg/kg/day. The NOAEL for maternal toxicity was 15 mg/kg/day and for developmental toxicity was 50 mg/kg/day in rabbits. In rats, 200 and 750 mg/kg/day caused maternal toxicity, but developmental toxicity secondary to maternal toxicity was observed only at 750 mg/kg/day. The NOAEL for maternal toxicity was 30 mg/kg/day and for developmental toxicity was 200 mg/kg/day.

In a rat multigeneration study, parental toxic effects were noted at 2,500 ppm (250 mg/kg/day). and 1,000 ppm (100 mg/kg/day). Offspring bwts were reduced in males and females at 2,500 ppm (250 mg/kg/day) and in females (F1 only) at 1,000 ppm (100 mg/kg/day). The NOAEL for systemic toxicity in adult males was 30 ppm (approximately 3 mg/kg/day, range = 1.3 - 4.3 mg/kg/day) and in adult females was 1,000 ppm (approximately 100 mg/kg/day, range = 59.3 - 219.6 mg/kg/day). The NOAEL for toxicity to offspring was 30 ppm (approximately 3 mg/kg/day, range = 1.3 - 4.3 mg/kg/day). These studies show no evidence that developing offspring are more sensitive to than adults to the effects of thiamethoxam.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological requirements, the database for thiamethoxam relative to pre- and post-natal effects for children is complete. Further, for thiamethoxam, the developmental studies showed no increased sensitivity in fetuses as compared to maternal animals following in utero exposures in rats and rabbits, and no increased sensitivity in pups as compared to the adults in the multi-generation reproductive toxicity study. Therefore, it is concluded that an additional uncertainty factor is not warranted to protect the health of infants and children and that an RfD of 0.013 mg/kg/day is appropriate for assessing aggregate risk to infants and children of thiamethoxam.

Assuming tolerance level residues and 100% of crops treated, only 0.1% of the thiamethoxam chronic RfD is utilized in the population subgroup all infant (< 1-year old) when helix is used as a seed treatment on canola. Therefore, based on the completeness and reliability of the toxicity database, Novartis concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to thiamethoxam residues.

F. International Tolerances

There are no Codex maximum residue level (MRLs) established for residues of thiamethoxam on canola.

3. Norvartis Crop Protection, Inc.

PP 9F5051

EPA has received a pesticide petition (PP 9F5051) from Novartis Crop Protection, Inc. Greensboro, North Carolina, 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 Thiamethoxam in or on the raw agricultural commodity (RAC) fruiting vegetables at 0.25 parts per million (ppm), tomato paste at 0.80 ppm, head and stem brassica vegetables at 1.0 ppm, leafy brassica greens at 2.0 ppm, cucurbit vegetables at 0.2 ppm, leafy vegetables, tuberous and corm vegetables at 0.02 pm, barley hay at 0.05 ppm, barley straw at 0.03 ppm, cottonseed at 0.05 ppm, cotton gin by-products at 1.0 ppm, pome fruit at 0.2 ppm, wheat forage at 0.5 ppm, wheat grain, wheat straw, wheat hay, barley grain, sorghum grain, sorghum forage and sorghum fodder at 0.02 ppm and milk at 0.02 ppm. EPA has 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 primary metabolic pathways of thiamethoxam in plants (corn, rice, pears, and cucumbers) were similar to those described for animals, with certain extensions of the pathway in plants. Parent compound and CGA-322704 were major metabolites in all crops. The metabolism of thiamethoxam in plants and animals is understood for the purposes of the proposed tolerances. Parent thiamethoxam and the metabolite, CGA-322704, are the residues of concern for tolerance setting purposes.

2. *Analytical method*. Novartis Crop Protection Inc. has submitted practical analytical methodology for detecting and measuring levels of thiamethoxam in or on RAC. The method is based on crop specific cleanup procedures and determination by liquid chromatography with either ultraviolet (UV) or mass spectrometry (MS) detection. The limit of detection (LOD) for each analyte of this method is 1.25 nanogram (ng) injected for samples analyzed by UV and 0.25 ng injected for samples analyzed by MS, and the limit of quantitation (LOQ) is 0.005 ppm for milk and juices and 0.01 ppm for all other substrates.

3. *Magnitude of residues*. A residue program was performed for thiamethoxam on a full geography of cucumbers, cantaloupes and squash as representative cucurbit crops, tomatoes and peppers as representative fruiting vegetable crops, head lettuce, leaf lettuce, celery and spinach as representative leafy vegetable crops, broccoli and cabbage as representative head and stem brassica vegetable crops, mustard greens as a representative leafy brassica green vegetable crop, potatoes as a representative crop of tuberous and corm vegetables, and apples and pears as representative pome fruit crops. A seed treatment residue program was performed for thiamethoxam on sorghum, wheat, barley and cotton where seed was treated using specific seed treatment formulations. Cotton was also treated via foliar application. Field residue trials were performed for thiamethoxam on tobacco using both an in-furrow transplant drench and a post-foliar spray. Novartis also completed a three-level dairy study and calculated the rate of transfer of residues of thiamethoxam from residues in the animal feed to beef and dairy commodities.

B. Toxicological Profile

1. *Acute toxicity*. Thiamethoxam has low acute toxicity. The oral LD_{50} in rats is 1,563 milligram kilogram (mg/kg) for males and females, combined. The rat dermal LD_{50} is > 2,000 mg/kg and the rat inhalation LC_{50} is > 3.72 milligrams per liter (mg/L) air. Thiamethoxam is not a skin sensitizer in guinea pigs and does not produce dermal or eye irritation in rabbits. End-use formulations of thiamethoxam have similar low acute toxicity profiles.

2. *Genotoxicty*. Thiamethoxam did not induce point mutations in bacteria (Ames assay in *Salmonella typhimurium* and *Escherichia coli*) or in cultured mammalian cells (Chinese hamster V79) and was not genotoxic in an *in vitro* unscheduled DNA synthesis assay in rat hepatocytes. Chromosome aberrations were not observed in an *in vitro* test using Chinese hamster ovary cells and there were no clastogenic or aneugenic effects on mouse bone marrow cells in an *in vivo* mouse micronucleus test. These studies show that thiamethoxam is not genotoxic.

3. *Reproductive and developmental toxicity*. In rat and rabbit teratology studies with thiamethoxam there was no evidence of teratogenicity. In rabbits, thiamethoxam caused decreased body weights (bwts), decreased food consumption and premature death of two females administered 150 mg/kg/day during gestation. This maternal toxicity was accompanied by reduced fetal bwts and an increase in the incidence of minor skeletal anomalies or variations. Reduced maternal body weights (bwts) and food consumption were also noted in females administered 50 mg/kg/day thiamethoxam during gestation. There was no indication of developmental toxicity at 50 mg/kg/day. The no-observable adverse effect level (NOAEL) in rabbits for maternal toxicity was 15 mg/kg/day. The NOAEL for developmental toxicity was 50 mg/kg/day. In rats, thiamethoxam caused decreased bwts, decreased food consumption and hypoactivity at 200 and 750 mg/kg/day. Reduced fetal bwts and an increase in the incidence of minor skeletal anomalies and variations were observed only at 750 mg/kg/day. There was no indication of developmental toxicity at 200 mg/kg/day. The NOAEL in rats for maternal toxicity was 30 mg/kg/day and for developmental toxicity was 200 mg/kg/day. In a 2-generation reproduction study in rats, parental bwts and food consumption were decreased at 2,500 ppm highest dose tested (HDT). Hyaline changes in the kidneys of adult males were observed at 2,500 and 1,000 ppm. Reproductive parameters were not affected by treatment with thiamethoxam. Effects on offspring were secondary to parental toxicity and consisted of slightly reduced offspring bwts at 1,000 ppm and 2,500 ppm. The NOAEL for systemic toxicity in parental animals and for offspring toxicity was 30 ppm (equivalent to 1.3 - 6.4 mg/kg/day).

4. *Subchronic toxicity*. Thiamethoxam was evaluated in 13-week subchronic oral toxicity studies in rats, dogs and mice. Liver, kidneys and spleen were identified as target organs. The NOAEL was 25 ppm (1.74 mg/kg/day) in male rats based on the finding of a hyaline change in the kidney at 250 ppm (17.6 mg/kg/day). This kidney effect represents an accumulation of alpha-2-microglobulin, which is unique to the male rat and not relevant for human risk assessment. The NOAEL was 1,250 ppm (92.5 mg/kg/day) for female rats. The NOAEL in dogs was 250 ppm (8.23 mg/kg/day). The NOAEL in mice was 10 ppm (1.41 mg/kg/day) for males and 100 ppm (19.2 mg/kg/day) for females. No dermal irritation was observed in a 28-day repeated dose dermal toxicity study with thiamethoxam in rats given 1,000 mg/kg/day. The dermal NOAEL for systemic toxicity in rats was 250 mg/kg/day for males and 60 mg/kg/day for females.

5. *Neurotoxicity*. Thiamethoxam did not cause neurotoxicity in an acute neurotoxicity study in rats or in a subchronic 13-week neurotoxicity study in rats. The NOAEL for systemic toxicity in the acute neurotoxicity study was 100 mg/kg. The NOAEL for systemic toxicity in the subchronic neurotoxicity study was 95.4 mg/kg/day for males and 216.4 mg/kg/day for females.

6. *Chronic toxicity*. Chronic toxicity studies with thiamethoxam have been conducted in rats and dogs. In the dog,

minor changes in blood chemistry parameters, including increased plasma creatinine and plasma urea levels, and decreased alanine aminotransferase activities, occurred at the lowest-observable adverse effect level (LOAEL) of 750 ppm (21.0 mg/kg/day). The NOAEL in the dog was 150 ppm (4.05 mg/kg/day). The NOAEL established in the rat chronic toxicity study was 30 ppm (1.29 mg/kg/day) for males, based on kidney changes, (hyaline change, chronic tubular lesions, basophilic proliferation and lymphocytic infiltration) at the LOAEL of 500 ppm (21.0 mg/kg/day). These kidney changes are attributed to an accumulation of alpha-2-microglobulin, which is specific to the male rat, and not relevant to humans. In the female rat, the NOAEL was 1,000 ppm (50.3 mg/kg/day) based on decreased bwts and hemosiderosis of the spleen at the LOAEL of 3,000 ppm (155 mg/kg/day).

7. *Carcinogenicity*. The carcinogenic potential of thiamethoxam has been evaluated in rats and mice. The proposed carcinogenic classification for thiamethoxam is as a Group C carcinogen. This classification is based on a liver tumor response in male and female mice at dose levels exceeding the maximum tolerance dose (MTD) and/or causing organ toxicity and induction of liver metabolizing enzymes. A NOAEL for liver tumors in mice was established at 20 ppm (2.63 mg/kg/day). No evidence of carcinogenicity was observed in rats. In the absence of a mutagenic activity, it is concluded that the mechanism of action leading to liver tumors in mice is not via genotoxic effects. Therefore, mouse liver tumors associated with thiamethoxam treatment have a threshold level.

8. *Animal metabolism*. Metabolism of thiamethoxam has been well characterized in animals. Metabolism in rats proceeds primarily via hydrolysis of the oxadiazine ring, followed by N-demethylation. Several minor pathways of metabolism of thiamethoxam were identified in animals. In rats, the majority of the radioactive dose was absorbed and then excreted in the urine. Parent compound was the major residue in urine. In hens and goats, the metabolite profile was the same as in rats, with certain extensions of the pathway.

9. *Metabolite toxicology*. The metabolism profile for thiamethoxam supports the use of an analytical enforcement method that accounts for parent thiamethoxam and CGA-322704. Other metabolites are considered of equal or lesser toxicity than parent compound.

10. *Endocrine disruption*. Thiamethoxam does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. There is no evidence that thiamethoxam has any effect on endocrine function in developmental or reproduction studies. Furthermore, histological investigation of endocrine organs in chronic dog, rat and mouse studies did not indicate that the endocrine system is targeted by thiamethoxam.

C. Aggregate Exposure

1. *Dietary exposure*. Chronic dietary exposure was estimated using a Tier I approach by inputting tolerance level residues into the dietary exposure evaluation model (DEEM™) software. The Tier I assessment was partially refined by adjusting for projected percent crop-treated information, and was made using the department of agriculture (USDA) National Food consumption Survey, Continuing Survey of Food Intakes by Individuals (CSFII) 1994-96. The maximum total exposure to the U. S. population (48 States, all seasons) was calculated to be 4.1% of the reference dose of 0.013 mg/kg bwt/day. The maximum exposure to the most sensitive population sub-group, children (1-6 years) was 9.5% of the reference dose (RfD). The inclusion of the maximum concentration of thiamethoxam in water, taken from the highest estimated concentration observed from the generic expected environmental concentration (GENEEC) and screening concentration In GROund water (SCI GROW) models, led to a maximum chronic dietary exposure of 4.5% in the United States population and 10.0% in children (1-6 years old).

Acute dietary exposure was calculated using a Tier III, probabilistic assessment. A distribution of residue data points was included for the typically non-blended commodities of vegetables (tuberous, fruiting, cucurbit, brassica and leafy), pome fruits, meat and milk, while the average field trial value was used for the typically blended commodities of grains (wheat, sorghum, and barley), seed oil (cotton and canola), apple juice and tomato paste and puree. The acute assessment used adjustment for percent of crop treated, and was made using the DEEM software with the Monte Carlo analysis and the CSFII 1994-96 food consumption survey. The margin of exposure (MOE) (NOAEL/exposure) for the United States population (all seasons) at the 99.9th percentile of the exposure distribution was 4,995 using the NOAEL value of 15 mg/kg bwt/day. At the 99.9th percentile, the MOE for the most sensitive population sub-group (non-nursing infants < 1-year old) was 1,012. Inclusion of the drinking water value to the acute assessment led to an MOE of 4,904 at the 99.9th percentile of the United States population, and 1,008 for the population sub-group non-nursing infants < 1-year old. The results of these analyses show that there is reasonable certainty that no harm will result from exposure to dietary residues (including drinking water) of thiamethoxam.

2. *Non-dietary exposure*. Novartis also requests registrations for the use of thiamethoxam on dogs, turf and ornamentals. Novartis has identified potential non-dietary exposures to toddlers for these uses. These exposures include the following scenarios:

i. Incidental non-dietary ingestion of residues on lawns from hand-to-mouth transfer.

ii. Ingestion of thiamethoxam treated grass.

iii. Incidental ingestion of pesticide residues on pets from hand-to-mouth transfer.

According to current EPA policy, these exposures are considered to be short-term oral exposures. EPA does not expect incidental ingestion of pesticide residues on pets from hand-to-mouth transfer to occur during the same period as the exposures from the turf uses. Thus, Novartis considered these exposures in separate estimates of risk. According to current EPA 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 = 15 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 exposure) plus residential exposure. The short-term risk estimates for the population subgroup children, 1 to 6-years old, is summarized below. This population subgroup was chosen because it has the highest chronic food exposure and because toddlers have the highest exposure from the residential uses. From the results below, Novartis concludes there is no concern associated with the aggregate exposure to thiamethoxam.

3. *Short-term aggregate exposure and risk including turf for children 1 to 6-years old*—i. Dietary exposure estimate including water is 0.001296 mg/kg bwt/day.

ii. Residential exposure from turf is calculated to be 0.00497 mg/kg bwt/day.

iii. Total exposure equals 0.0063 mg/kg bwt/day.

iv. Percent Acute RfD consumed is 0.04%

4. *Short-term aggregate exposure and risk including pet use for children 1 to 6-years old*—i. Dietary exposure estimate including water is 0.001296 mg/kg bwt/day.

ii. Predicted hand to mouth transfer is 0.0341 mg/kg bwt/day.

iii. Total exposure equals 0.035 mg/kg bwt/day.

iv. Percent Acute RfD consumed is 0.23%.

D. Cumulative Effects

The potential for cumulative effects of thiamethoxam and other substances that have a common mechanism of toxicity has also been considered. Thiamethoxam belongs to a new pesticide chemical class known as the neonicotinoids. There is no reliable information to indicate that toxic effects produced by thiamethoxam would be cumulative with those of any other chemical including another pesticide. Therefore, Novartis believes it is appropriate to consider only the potential risks of thiamethoxam in an aggregate risk assessment.

E. Safety Determination

1. *U. S. population*. Using the chronic exposure assumptions and the proposed RfD described above, the aggregate exposure (including drinking water) to thiamethoxam to the U. S. population (48 States, all seasons) was calculated to be 4.5% of the RfD of 0.013 mg/kg bwt/day. Therefore, Novartis concludes that there is reasonable certainty that no harm will result from aggregate chronic exposure to thiamethoxam residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of thiamethoxam, data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat have been considered.

In teratology studies, delayed fetal development was apparent only at maternally toxic doses of thiamethoxam in rats and rabbits. In rabbits, 150 mg/kg/day was clearly toxic to does, causing death, weight loss, reduced food consumption and perineal or vaginal discharge. Developmental toxicity occurred secondary to maternal toxicity and consisted of reduced fetal bwts and an increase in minor skeletal anomalies or variations. Maternal toxicity was also noted at 50 mg/kg/day, consisting of reduced bwts and food consumption and total resorptions in one female. There was no indication of developmental toxicity at 50 mg/kg/day. The NOAEL for maternal toxicity was 15 mg/kg/day and for developmental toxicity was 50 mg/kg/day in rabbits. In rats, 200 and 750 mg/kg/day caused maternal toxicity, but developmental toxicity secondary to maternal toxicity was observed only at 750 mg/kg/day. The NOAEL for maternal toxicity was 30 mg/kg/day and for developmental toxicity was 200 mg/kg/day.

In a rat multigeneration study, parental toxic effects were noted at 2,500 ppm (250 mg/kg/day) and 1,000 ppm (100 mg/kg/day). Offspring bwts were reduced in males and females at 2,500 ppm (250 mg/kg/day) and in females (F1 only) at 1,000 ppm (100 mg/kg/day). The NOAEL for systemic toxicity in adult males was 30 ppm (approximately 3 mg/kg/day, range = 1.3 - 4.3 mg/kg/day) and in adult females was 1,000 ppm (approximately 100 mg/kg/day, range = 59.3 - 219.6 mg/kg/day). The NOAEL for toxicity to offspring was 30 ppm (approximately 3 mg/kg/day, range = 1.3 - 6.4 mg/kg/day). These studies show no evidence that developing offspring are more sensitive to than adults to the effects of thiamethoxam.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological requirements, the database for thiamethoxam relative to pre- and post-natal effects for children is complete. Further, for thiamethoxam, the developmental studies showed no increased sensitivity in fetuses as compared to maternal animals following in utero exposures in rats and rabbits, and no increased sensitivity in pups as compared to the adults in the multi-generation reproductive toxicity study. Therefore, it is concluded that an additional uncertainty factor is not warranted to protect the health of infants and children and that an RfD of 0.013 mg/kg/day is appropriate for assessing aggregate risk to infants and children of thiamethoxam.

Assuming tolerance level residues and adjusting for the percent of crops treated, only 7.0% of the thiamethoxam chronic RfD is utilized in the population subgroup all infant (> 1-year old). Therefore, based on the completeness and reliability of the toxicity database, Novartis concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to thiamethoxam residues.

F. International Tolerances

There are no Codex maximum residue levels (MRLs) established for residues of thiamethoxam on fruiting vegetables, tomato paste, head and stem brassica vegetables, leafy brassica greens, cucurbit vegetables, leafy vegetables, tuberous and corm vegetables, barley grain, barley hay, barley straw, cottonseed, cotton gin by-products, pome fruit, wheat grain, wheat forage, wheat straw, wheat hay, sorghum grain, sorghum forage, sorghum fodder, or milk. (Dani Daniel)

[FR Doc. 99–11169 Filed 5–4–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181069; FRL 6078–7]

Emamectin Benzoate, Receipt of Application for Emergency Exemptions; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Oklahoma Department of Agriculture (hereafter referred to as the ''Applicant'') to use the insecticide emamectin benzoate (CAS 137512–74–4) to treat up to 150,000 acres of cotton to control the beet armyworm. Emamectin benzoate is an unregistered material, and its proposed use is thus use of a ''new'' chemical. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before May 20, 1999.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181069,'' should be submitted by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, 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 SUPPLEMENTARY INFORMATION. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted in any 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 provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The docket is available for public inspection at the Virginia address given above, 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location, telephone number and e-mail address: Rm. 271, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–308–9356); e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of emamectin benzoate on cotton to control beet armyworm. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, the beet armyworm (BAW) has been a sporadic pest of cotton the past four years, and has caused major economic losses throughout the cotton growing areas. BAW populations were present in especially large numbers over the last growing season. Key outbreak factors are mild winters; late planting; delayed crop maturity; heavy early season organophosphate and pyrethroid use; prolonged hot, dry weather; presence of the BAW early in the season; and weather conditions that support migration of the adult moths. Much of the acreage in question is in the boll weevil eradication program, which requires insecticides that are harsh on natural enemies of the BAW to be used early in the season. The applicant states that this, in combination with lingering drought conditions and a mild winter are expected to result in high BAW populations for the upcoming season. Available insecticides are either ineffective, do not fit into the boll weevil eradication program, or are not expected to be available in sufficient quantities to treat all affected acreage.

Under the proposed exemption, emamectin benzoate may be applied at a rate of 0.0075 – 0.01 lb., active ingredient (a.i.,) (6 – 8 oz. product) per acre, with up to 3 applications during the growing season, using ground or aerial equipment. If all acres are treated at the maximum rate, this could potentially result in a total use of 4,500 lb., a.i., or 28,125 gal. of product.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** for an application for a specific exemption proposing the use of a new (unregistered) chemical. Such notice provides for opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established under docket number (OPP–181069) 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 the paper record maintained 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. Comments 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–181069). Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Oklahoma Department of Agriculture.

List of Subjects

Environmental protection, pesticides and pests, emergency exemptions.

Dated: April 23, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–11170 Filed 5–4–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50858; FRL–6078–2]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following applicant. The permit is in accordance with, and subject to, the provisions of 40 CFR part l72, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Highway, Rm. 910W16, CM #2, Arlington, VA, 703–308–8715, e-mail: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has issued the following EUP:

68467–EUP–2. Issuance. Mycogen Plant Sciences, Mycogen Corporation, 5501 Oberlin Drive, San Diego, CA 92121. This experimental use permit allows the use of 4 grams of the insecticidal *Bacillus thuringiensis* Cry1F protein in seeds shipped containing the plant-pesticide (*Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production (plasmid insert PHI8999) in corn plants) on 134 acres of corn to evaluate the control of various insect pests including European corn borer. The program is authorized only in the States of Hawaii, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Puerto Rico, South Dakota, Tennessee, Texas, and Wisconsin. The experimental use permit is effective from April 15, 1999 to March 31, 2000. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only.

Persons wishing to review this EUP are referred to the designated contact person. Inquires concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: April 22, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–11168 Filed 5–4–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission

April 27, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 6, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0716.

Title: Proposed Section 73.1630 Blanketing Interference.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Individual or households; Business of other for-profit entities; Not-for-profit institutions.

Number of Respondents: 21,000.

Estimated Time per Response: 1 to 2 hours.

Frequency of response: On occasion reporting requirements.

Total Annual Burden: 41,000 hours

Total Annual Cost: None.

Needs and Uses: This rulemaking proceeding proposed to provide detailed clarification of the AM, FM, and TV licensee's responsibilities in resolving/eliminating blanketing interference caused by their individual stations. Under the current rules (section 73.88 (AM), section 73.318 (FM), section 73.685(d) (TV)), the licensee is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a licensee is only required to provide technical assistance in determining the cause of the interference. In this NPRM, we proposed to consolidate all blanketing interference rules under a new section 73.1630, Blanketing Interference. This new rule was designed to facilitate the resolution of broadcast interference problems and set forth all responsibilities of the licensee/permittee of a broadcast station.

For one year after the broadcast station commences program tests, the licensee is financially responsible for resolving blanketing interference complaints. After the first year, the licensee is obligated to provide technical assistance to resolve complaints of blanketing interference. The information provided to complainants will be used to facilitate the resolution of complaints of blanketing interference.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–11209 Filed 5–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

April 26, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 4, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0411.

Title: Procedures for Formal Complaints Filed Against Common Carriers.

Form Number: FCC 485.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities; individuals or

households; not-for-profit institutions; Federal Government; and State, Local or Tribal Governments.

Number of Respondents: 11,203.

Estimated Time Per Response: 0.5 to 20 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 16,677 hours.

Total Annual Costs: $69,200.

Needs and Uses: Information filed pursuant to 47 CFR 1.720 *et seq.* is provided either with or in response to a formal complaint to determine whether or not there has been a violation of the Communications Act of 1934, as amended, or the Commission's Rules or Orders. Effected respondents are complainants and potential defendant common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–11210 Filed 5–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time: 2:00 p.m.

Date: May 19, 1999.

Place: 4th Floor, Conference Room, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC.

Status: Open.

Matters to be considered:

1. Approve minutes of the April 29, 1998, meeting.
2. Report of the Executive Director on Thrift Savings Plan status.
3. November 15, 1998–January 31, 1999, Thrift Savings Plan Open Season.
4. Legislation.
5. Nomination of Council Chairman and election of Vice-Chairman.
6. New Business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact Elizabeth S. Woodruff, Committee Management Officer, on (202) 942–1660.

Dated: April 29, 1999.

John J. O'Meara,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 99–11191 Filed 5–4–99; 8:45 am]

BILLING CODE 6760–01–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service Notice of Intent To Prepare an Environmental Impact Statement (EIS)

The General Services Administration (GSA) hereby gives notice it intends to prepare an Environmental Impact Statement pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), as implemented by GSA's Order PBS P 1095.4B on the following project:

United States Mission to the United Nations, 799 United Nations Plaza, New York, NY

The proposed action will involve the construction of a replacement facility for the United States Mission to the United Nations (USUN). The Mission is located at 799 United Nations Plaza, the southwest corner of First Avenue and 45th Street directly across from the United Nations Headquarters Complex. The existing building housing the Mission has proven to be physically and operationally inadequate to accommodate USUN personnel and functions. The building footprint only covers slightly more than half of the total site area, which is 11,990 square feet. The small floorplates of the existing facility severely restrict the potential for providing efficient layouts and required space adjustments. As part of the proposed action, it is proposed that this building will be demolished and replaced with a new more efficient facility constructed on the site.

The Draft EIS will evaluate the proposed action, the no-action alternative, and any other reasonable alternatives identified through the scoping process. Scoping will be accomplished through direct mail correspondence with interested persons, parties, and organizations and through a Public Scoping Meeting.

The Public Scoping Meeting will be held on May 12, 1999. The meeting will be held in conjunction with the Community Board 6 full Board Meeting at the New York University Medical Center, 550 First Avenue (31st/32nd Street), Classroom A, at 7:30 p.m.

As part of the Public Scoping process, GSA solicits your written comments on the scope of alternatives and potential impacts at the following address: Peter A. Sneed, Senior Program Analyst, Portfolio Management Division, General Services Administration, 26 Federal Plaza, Room 1609, New York, NY 10278. Written comments should be received no later than June 11, 1999. Requests for further information may also be forwarded to this address.

Dated: April 28, 1999.

Thomas J. Ryan,

Regional Administrator.

[FR Doc. 99–11233 Filed 5–4–99; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS become entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13⅜% for the quarter ended March 31, 1999. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: April 28, 1999.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 99–11196 Filed 5–4–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Health and Science; Statement of Organizations, Functions, and Delegations of Authority

Part A, Office of the Secretary (OS), Chapter AC, Office of Public Health and Science (OPHS), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (60 FR 56605–06, November 9, 1995), as previously amended at 60 FR 471–3, January 4, 1995, and 58 FR 107, January 4, 1993, is amended to reflect

the realignment of the functions within the Office on Women's Health (OWH), OPHS, to provide a critically needed management substructure to assist the Director in the planning, coordination, and operation of the OWH.

The changes are as follows:

Under Chapter AC, Office of Public Health and Science, Section AC.20 Functions, delete paragraph B, ''Office on Women's Health (ACB),'' and replace with the following:

1. Office on Women's Health (ACB)—The Office on Women's Health is headed by the Deputy Assistant Secretary for Health (Women's Health), who reports to the Assistant Secretary for Health, is Director of the Office on Women's Health, and serves as the principal advisor on scientific, ethical, and policy issues relating to women's health. The issues cut across all HHS components which provide research, service, prevention, promotion, treatment, training, education and dissemination of information relating to women's health.

2. The Immediate Office of the Director (ACB1), headed by the Deputy Assistant Secretary for Health (Women's Health) coordinates the programmatic aspects of HHS components in regard to issues relating to women's health; serves as the locus within HHS to identify changing needs, to recommend new studies, and to assess new challenges to the health of women; serves as a focal point within HHS to coordinate the continuing implementation of health objectives for the future; assures liaison with relevant HHS agencies and offices; and facilities the expansion of services and access to health care for a women.

Plans and directs financial management activities, including budget formulation and execution; provides liaison on personnel management activities with the OPHS, and the Program Support Center, Division of Human Resources (PSC); provides administrative services in support of OWH; and serves as the focal point for the support of information resources management, telecommunications equipment and systems for the OWH. The Immediate Office will also provide scientific analyses for all initiatives.

3. The Division of Policy and Program Development (ACB2), headed by the Division Director, advises the OWH Director on the development of strategic and operational plans and provides staff support to and liaison with program staff in coordinating, integrating, and articulating these plans; advises the OWH Director on policy issues; develops the OWH's plan for evaluating the focus and impact of ongoing programs and the development of new programs and policies; provides analytical reports of program trends and future forecasts; and is responsible for implementing the Congressional, international health, and national (regional) components for the OWH mission.

4. The Division of Program Management (ACB3), headed by the Division Director, provides technical consultation and assistance to the Centers of Excellence in Women's Health, which are responsible for providing state-of-the-art comprehensive and integrated health care services, multidisciplinary research, and public health and health care professional education targeted toward the special needs of women; and coordinates OWH requirements relating to contracts and reimbursable agreements for major office activities. The contract development, review and award process is supported and coordinated with the Program Support Center, DHHS.

5. The Division of Communications (ACB4), headed by the Division Director, provides oversight and direction to the management of the National Women's Health Information Center toll-free telephone number and web site; plans, organizes, administers, and when appropriate, implements the OWH's communication programs consistent with policy direction established by the Office of the Assistant Secretary for Public Affairs; systematically captures, assesses, and disseminates information on scientific and policy developments relating to women's health research results and current or emerging trends and issues; manages the OWH information, education and awareness activities both within the Department and externally; coordinates, assigns, develops, researches, and prepares briefing materials on women's health for DASH and other HHS offices; manages public information activities and media and press relations; plans and coordinates efforts to promote the OWH's programs and policies in the voluntary and corporate sectors; and manages exhibits, and develops visual and other graphic materials for the OWH.

Dated: April 26, 1999.

John J. Callahan,

Assistant Secretary for Management and Budget.

[FR Doc. 99–11197 Filed 5–4–99; 8:45 am]

BILLING CODE 4110–60–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1999.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: June 9, 1999; 9:00 a.m.–5:00 p.m.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Agenda: Items will include, but not be limited to: an update on Vaccines in Clinical Trials, an update on Pre-1988 Claims, a discussion on coverage of new vaccines, and reports from the Department of Justice, the National Vaccine Program Office, and routine program reports.

Public comment will be permitted before lunch and at the end of the Commission meeting on June 9, 1999. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Shelia Tibbs, Committee Management Assistant, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign-up in Conference Rooms G and H on June 9, 1999. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Tibbs, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6593.

For further information, call Ms. Eve Morrow at (301) 594–4144.

Agenda items are subject to change as priorities dictate.

Dated: April 28, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–11251 Filed 5–4–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Invention; Availability for Licensing; ''Receptor-Mediated Delivery of Third-Party Proteins and Peptides to the Cytosol of Mammalian Cells''

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by or controlled by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

ADDRESSES: Licensing information and copies of U.S. patents and patent applications referenced below may be obtained by contacting J. R. Dixon, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 206; fax 301/402–0220; E-Mail: jd212g@NIH.GOV). A signed Confidential Disclosure Agreement is required to receive a copy of any patent application.

SUPPLEMENTARY INFORMATION: Invention Title: ''Recombinant Chimeric Proteins Deliverable Across Cellular Membranes into Cytosol of Target Cells''.

Inventors; Drs. Ira H. Pastan (NCI), Trevor Prior (NCI), Waldemar Y. Debinski (NCI), Clay Siegall (NCI).

DHHS Ref. No. E–020–91/0 [= USP SN: 5,328,984 (= 07/663,455)—Filed March 4, 1991].

The following patent applications and patents are also available, to the extent necessary to practice the technology disclosed in the U.S.P. SN: 5,328,984, for licensing from the National Institutes of Health's Office of Technology Transfer:

1. 08/683,621, entitled: ''Hybrid Molecules Having Translocation Region and Cell-Binding Region'', inventor: John R. Murphy, Filed: July 17, 1996. [E–998–98/7]

2. 5,668,255 [= 08/102,387], entitled: ''Hybrid Molecules Having Translocation Region and Cell-Binding Region'', inventor: John R. Murphy, Filed: August 4, 1993. [E–998–98/6]

3. 07/722,484, entitled: ''Hybrid Molecules Having Translocation Region and Cell-Binding Region'', inventor: John R. Murphy, Filed: June 26, 1991. [E–998–98/5]

4. 07/538,276, entitled: ''Hybrid Molecules Having Translocation Region and Cell-Binding Region'', inventor: John R. Murphy, Filed: June 14, 1990. [E–998–98/4]

5. 07/456,095, entitled: ''Hybrid Molecules Having Translocation Region and Cell-Binding Region'', inventor: John R. Murphy, Filed: December 22, 1998. [E–998–98/3]

6. 06/742,554, entitled: ''Hybrid Protein and Fused Gene Encoding Same'', inventor: John R. Murphy, Filed June 7, 1985. [E–998–98/2]

7. 06/726,808, entitled: ''Hybrid Protein and Fused Gene Encoding Same'', inventor: John R. Murphy, Filed: April 25, 1985. [E–998–98/1]

8. 06/618,199, entitled: ''Hybrid Protein and Fused Gene Encoding Same'', inventor: John R. Murphy, Filed: June 7, 1984. [E–998–98/0].

Background

Protein toxins have several distinctive properties that allow them to facilitate the delivery of third-party proteins to the cell cytosol. First, they are modular in nature and possess separate domains that function independently to perform distinct functions. By domain swapping, toxins can be converted into delivery agents. Toxins enter cells by receptor-mediated endocytosis, avoid degradation, and translocate to the cell cytosol where they are cytotoxic. By disabling the toxin's cytotoxicity domain, it is possible to replicate this delivery pathway without causing damage to the cell. Further, by altering toxin-expressing vectors to include cDNAs encoding non-toxin related proteins and peptides, it is possible to mediate delivery of third-party proteins from the cell exterior to the cytosol. Thus, functionally active proteins can be joined to the toxin translocation module and the resulting chimeric protein developed into a delivery vehicle. Further the toxins' binding domain can be replaced with receptor-binding ligands of choice. By combining domains of different origins, various therapeutic proteins can be generated. Toxin-mediated delivery to the cytosol can be used for: enzyme replacement (to complement a genetic defect), peptide delivery for the generation of cytotoxic lymphocytes, delivery of anti-viral peptides, agonist of antagonist peptides of signaling pathways, etc.

Invention

This invention provides a method of making a hybrid foreign protein that can be delivered into the cytosol of the target cells across the cellular membranes. Further, the present invention provides a suitable vector containing a nucleotide sequence that encodes a hybrid protein.

The advantages of the invention are achieved by (1) providing a recombinant molecule possessing at least a recognition element, a translocation function, and one or more recombinant sites for inserting foreign proteins or polypeptides, and (2) making a recombinant chimeric protein translocatable across cellular membranes into the cytosol of target cells, said chimeric protein having at least one segment which is a functionally active foreign protein desired to be introduced *de novo* into cytosol of target cells, a recognition element that directs the hybrid protein to the target cells, and an additional segment having at least a translocation function which internalizes the protein and delivers the foreign protein into the cytosol of the target cells. In the case of *Pseudomonas* Exotoxin (''PE''), the recombinant sites could be located in either or both of domains Ib or III, but not in domain II. These chimeric proteins can be used for cytotoxic, diagnostic, or therapeutic purposes, such as for compensating the deficiency or defect of an enzyme or a protein which may be causative of a disease or an abnormality. The above mentioned invention is available, including any available foreign intellectual property rights, for licensing on an exclusive or non-exclusive basis.

Dated: April 28, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–11204 Filed 5–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Fogarty International Center Advisory Board.

The meetings will be open to the public as indicated below, with attendance limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: May 17–18, 1999.

Open: May 18, 1999, 8:30 AM to 12:00 PM.

Agenda: Report by the FIC Director, status of long-range planning efforts, and presentations.

Place: Lawton Chiles International House, 16 Center Drive (Building 16), Bethesda, MD 20892.

Closed: May 18, 1999, 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Lawton Chiles International House, 16 Center Drive (Building 16), Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Forgarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892, 301–496–2075.

Name of Committee: Fogarty International Center Advisory Board Research Awards Subcommittee.

Date: May 17, 1999.

Time: 1:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Building 31, Room B2C07, National Institutes of Health, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Forgarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892, 301–496–2075.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: April 28, 1999.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–11207 Filed 5–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: May 3–4, 1999.

Time: May 3, 1999, 7:30 AM to 5:00 PM.

Agenda: Reports on the Program activities of the Center; (2) a discussion of general priority areas of research for the Center; and (3) a report on fiscal issues concerning the NCMRR and NICHD.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD.

Contact Person: Mary Ellen Cheung, Chief, Biological Sci. and Career Dev. Prog., National Ctr. for Medical Rehabilitation Research, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 2A03, Bethesda, MD 20892, (301) 402–2242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 28, 1999.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–11206 Filed 5–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 10, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1250 S. Hayes Street, Arlington, VA 22202.

Contact Person: H. Mac Stiles, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7816, Bethesda, MD 20892, 301–435–1785

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 10, 1999.

Time: 10:00 AM to 1:00 PM.

Agenda: To review and evaluation grant applications.

Place: Georgetown Holiday Inn, Washington, DC 20007.

Contact Person: Gerald W. Becker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, 301–435–1170

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 10, 1999.

Time: 10:00 AM to 11:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William C. Branche, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182,

MSC 7808, Bethesda, MD 20892, 301–435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 10, 1999.

Time: 2:00 AM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Everett E. Sinnett, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7818, Bethesda, MD 20892, 301–435–1016__ev sinnett@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 10, 1999.

Time: 2:00 AM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcia Litwack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, 301–435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 28, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–11205 Filed 5–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 64 FR 8583, February 22, 1999, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reorganize the Office of Disease Prevention (ODP) as follows: (1) Abolish the Division of Disease prevention, ODP, and transfer its functions to the ODP and (2) revise the functional statement of the ODP.

Section N-B, Organization and Functions, under the heading *Office of the Director (NA, formerly HNA), Office of Disease Prevention (NA2, formerly HNA2)* is amended as follows:

(1) The title and functional statement of the *Division of Disease Prevention (NA22, formerly HNA22)* are abolished in their entirety.

(2) The functional statement for the *Office of Disease Prevention (NA2, formerly HNA2)* is replaced with the following:

Office of Disease Prevention (NA2, formerly HNA2). Coordinates the activities of disease prevention, rare diseases, dietary supplements, and medical applications of research, and advises the NIH Director and senor staff on the following: (a) research related to disease prevention, and promotion of disease prevention research; (b) research related to dietary supplements and their role in disease prevention; (c) research and activities related to rare diseases; and (d) medical applications of research including drugs, procedures, devices and other technology developed from basic biomedical research at NIH. The Office also: (1) Advises the Associate Director for Disease Prevention and provides guidance to the research institutes on research related to disease prevention; (2) coordinates and facilitates the systematic identification of research activities pertinent to all aspects of disease prevention, including: (a) identification of risk factors for disease; (b) risk assessment, identification, and development of biologic, environmental, and behavioral interventions to prevent disease occurrence or progression of presymptomatic disease; and (c) the conduct of field trials and demonstrations to assess interventions and encourage their adoption, if warranted; (3) identifies, coordinates, and encourages fundamental research aimed at elucidating the chain of causation of acute and chronic diseases; (4) coordinates and facilitates clinically relevant NIH-sponsored research bearing on disease prevention, including interventions to prevent the progression of detectable but asymptomatic disease; (5) promotes the coordinating linkage for research institutes on biobehavioral modification toward prevention of disease; (6) coordinates with the Office of Medical Applications of Research to promote the effective transfer of identified safe and efficacious preventive interventions to the health care community and the public; (7) works with the research institutes to initiate and develop FRAs, PAs, and FFPs to enhance disease prevention program development; and sponsors singly or in combination with other organizations, workshops and conferences on disease prevention; (8) provides a link between the disease prevention and health promotion activities of the research institutes of the NIH, the Surgeon General and Assistant Secretary for Health, and the Secretary, DHHS; (9) monitors the effectiveness and progress of disease prevention and health promotion activites of the NIH; and (10) reports expenditures and personnel involved in prevention activities at NIH.

Delegations of Authority Statement: All delegations and redelegations of authority to offices and employees of NIH which were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: April 22, 1999.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 99–11208 Filed 5–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4444–N–04]

Withdrawal of Request for Comment on Notice of Proposed Information Collection Regarding Lead-Based Paint Hazards Reduction

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This notice withdraws the notice requesting public comments on information collection requirements for the Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Housing and Housing Receiving Federal Assistance. The notice requesting public comments was published in error.

FOR FURTHER INFORMATION CONTACT: Steve Weitz, Department of Housing and Urban Development, 451 7th Street, SW, Room P–3206, Washington, DC 20410, telephone (202) 755–1785, ext. 106. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On April 16, 1999 (64 FR 18923), HUD published a notice of proposed information collection, requesting public comments for a period of 60 days on the proposed information collection requirements for

the Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Housing and Housing Receiving Federal Assistance (''Requirements''). This notice was published in error and therefore is withdrawn. The 60-day public comment request on the information collection requirements will be published when the final rule for the Requirements are published. Publication concurrently with the final rule will allow the public to better comment on the estimated burden. HUD expects that the requirements of the final rule that are subject to the Paperwork Reduction Act will have a delayed effective date that will provide sufficient time for public comment. HUD also expects that this final rule will be published within the next few weeks.

Dated: April 29, 1999.

Camille E. Acevedo,

Assistant General for Regulations.

[FR Doc. 99–11252 Filed 5–4–99; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan and Draft Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of Draft Comprehensive Conservation Plan and Draft Environmental Impact Statement.

SUMMARY: This notice advises the public that a Draft Comprehensive Conservation Plan (CCP) and a Draft Environmental Impact Statement (DEIS) for Little Pend Oreille National Wildlife Refuge is available for public review. The Refuge is located in Stevens County, Washington. The U.S. Fish and Wildlife Service (Service) Service is furnishing this notice in compliance with Service CCP policy and the National Environmental Policy Act (NEPA) and implementing regulations for the following purposes: (1) To advise the public and other agencies of the availability of the document; (2) to solicit public comment on the Draft CCP and DEIS; and (3) to announce public open house meetings.

DATES: Submit comments on or before June 30, 1999. See **SUPPLEMENTARY INFORMATION** for meeting dates and locations.

ADDRESSES: Address comments and requests for more information to: Refuge Manager, Little Pend Oreille National Wildlife Refuge, 1310 Bear Creek Road, Colville, Washington 99114. E-mail comments may be sent to: FWS1Public__Comments__LPO@fws.gov.

FOR FURTHER INFORMATION CONTACT: Lisa Langelier, Refuge Manager (509) 684–8384

SUPPLEMENTARY INFORMATION: The proposed action is to develop a Comprehensive Conservation Plan for the Little Pend Oreille National Wildlife Refuge that best achieves the unit's purpose, vision and goals; contributes to the System mission; addresses the significant issues and relevant mandates, and is consistent with principles of sound fish and wildlife management.

Major issues addressed in the draft CCP/EIS include grazing; management of degraded aquatic and riparian habitats; overstocked forest habitats; military training; and various recreational public uses. The plan includes the following topics: (a) An assessment of existing biological, physical, and cultural resources, and their condition; (b) a summary of significant issues identified through scoping; (c) identification of five alternatives which incorporate varying objectives and strategies for habitat management, management of public access and uses, and management of other programs including military training, grazing, and cultural resources; (d) an analysis of the environmental consequences that would be predicted under adoption of any of the identified alternatives; (e) compatibility determinations for public uses, as required by Service law and policy; (f) an appendix summarizing the projects that would be undertaken under the preferred alternative.

A range of alternatives are considered in the draft CCP/EIS:

(A) *The no Action Alternative*—Make no changes to the prevailing practices and uses at the refuge.

(B) *Restore Wildlife Habitat While Managing Existing Public Uses*—This alternative incorporates an active forest and riparian restoration program. It also accomodates most existing public uses, but adopts some restrictions on some uses to ensure less impact to the environment.

(C) *Restore Wildlife Habitat While Emphasizing Priority Uses*—This alternative adopts a greater emphasis on priority uses identified under the Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57) and eliminates non-priority uses. This alternative also incorporates a strong forest and riparian restoration program.

(D) *Manage the Refuge as an Ecological Reserve and Reduce Human Disturbances*—This alternative minimizes human access and use of the refuge while conducting a habitat restoration program. This alternative includes a greater emphasis on hydrologic restoration than other alternatives.

(E) *Combination of Alternatives B and C—Agency Preferred Alternative*—This alternative places management emphasis on restoration of forest and riparian habitat components. A wide range of recreational activities would be supported including hunting, fishing, wildlife observation, photography, and interpretation. Snowmobiling would be eliminated. Other recreational uses, such as camping and horseback riding would continue, but would be managed to reduce impacts to the environment. Camping would be restricted in environmentally sensitive areas such as riparian zones and during some seasons. The annual livestock grazing program would be discontinued, however some periodic grazing may occur to meet wildlife objectives. The Air Force survival training program would be phased out over 5 years.

With the publication of this notice, the public is encouraged to attend public open houses and/or submit written comments on draft CCP/EIS.

Two public open houses will be held as follows:

May 12, 1999, 5pm–8pm, Community Colleges of Spokane, Colville Center, 985 South Elm, Theater, Colville, Washington. (Presentation at 7:00 pm)

May 13, 1999, 5pm–8pm, Inland NW Wildlife Council Building, 6116 North Market St., Spokane, Washington. (Presentation at 7:00 pm)

The Service started the process of developing a management plan for Little Pend Oreille National Wildlife Refuge (Little Pend Oreille NWR) in 1995. Open houses and public meetings were held in 1995, 1996, 1997, and 1998. Previous notices have been published in the **Federal Register** (61 FR 65591, Dec. 13, 1996 and 63 FR 39884, July 24, 1998).

Persons and organizations involved in the scoping process have included: the U.S. Forest Service; U.S. Natural Resource Conservation Service; Washington Department of Fish and Wildlife; U.S. Air Force; Washington Department of Natural Resources; interested local tribes, members of conservation organizations; timber industry representatives; grazing permittees; recreational interest groups; inholders and neighboring landowners;

and other interested citizens. Comments and concerns received have been used to identify issues, prepare alternatives and identify a preferred alternative (Alternative E) for the draft CCP/EIS.

All comments received from individuals on Environmental Assessments and Environmental Impact Statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations [40CFR 1506.6(f)], and other Service and Departmental policy and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the commentator's name, address, or other identifying information. Such comments may be submitted anonymously to the Service.

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.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

We estimate that the Final CCP/Environmental Impact Statement will be available in November, 1999.

Dated: April 28, 1999.

Tom Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–11240 Filed 5–4–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BW–110–1830–00 24 1A]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

The proposed collection of information listed below has been sent to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* On June 16, 1998, BLM published a notice in the **Federal Register** (63 FR 32893) requesting comment on this proposed collection. The comment period ended on August 17, 1998. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below. OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration of your comments, please submit your comments and suggestions on the information requirements in this collection within 30 days directly to the Office of Management and Budget, Interior Desk Officer (1004–NEW), Office of Information and Regulatory Affairs, Washington, D.C. 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (W0–630), 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments

We specifically request your comments on the following:

(1) Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

(2) The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

(3) The quality, utility and clarity of the information to be collected; and

(4) How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

Title: Taxpayer Identification/Social Security Number Form.

OMB Control Number: 1004 _____.

Abstract: The BLM proposes to require the social security or taxpayer identification numbers of all entities doing business with it. This information is required by the Debt Collection Improvement Act of 1996, 31 U.S.C. 7701, which gives the Department of the Treasury new powers to collect delinquent payments from individuals and entities that are more than 180 days late in paying the monies owed to the federal government. BLM will initially collect the information on a form and later on the automated Collection and Billing System.

Bureau Form Number: 1372–6.

Frequency: Once.

Description of Respondents: Respondents are those entities who do business with BLM: lessees, licensees, permittees, and contract holders. Individuals who pay recreation fees will not be affected.

Annual responses: 120,000 the first year and 5,000 thereafter.

Annual burden hours: 20,000 the first year and 83 thereafter.

Collection clearance officer: Carole Smith, (202) 452–0367.

Dated: April 26, 1999.

Carole, J. Smith,

Bureau of Land Management, Information Clearance Officer.

[FR Doc. 99–11199 Filed 5–4–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1310–01; TXNM 96122]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease TXNM 96122, for lands in Montgomery County, Texas, was timely filed and was accompanied by all required rentals and royalties accruing from December 1, 1998, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre and 16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective December 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT:

Angela Trujillo, BLM, New Mexico State Office, (505) 438–7592.

Dated: April 27, 1999.

Angela Trujillo,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 99–11262 Filed 5–4–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–950–1420–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

The plats of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., April 21, 1999.

The plat representing the dependent resurvey of the Eighth Guide Meridian West, through Township 40 North, between Ranges 64 and 65 West, the Tenth Standard Parellel North, through Range 64 West, the South and East Boundaries and the subdivisional lines, T. 40 N., R. 64 W., Sixth Principal Meridian, Wyoming, Group No. 597, was accepted March 1, 1999.

The plat representing the dependent resurvey of the Eighth Guide Meridian West, through Township 62 North, between Ranges 64 and 65 West, the South and East Boundaries and the subdivisional lines, T. 42 N., R. 64 W., Sixth Principal Meridian, Wyoming, Group No. 608, was accepted March 1, 1999.

The plat representing the dependent resurvey of a portion of the Thirteenth Standard Parallel North, through Range 93 West, and a portion of the West Boundary, and the subdivision of section 6 and the metes and bounds surveys of parcels 9A and 9B, section 6, T. 52 N., R. 93 W., Sixth Principal Meridian, Wyoming, Group No. 639, was accepted March 1, 1999.

The plat representing the dependent resurvey of a portion of the Fourteenth Guide Meridian West, through Township 27 North, between Ranges 112 and 113 West, the South, East and North Boundaries and the subdivisional lines, T. 27 N., R. 112 W., Sixth Principal Meridian, Wyoming, Group No. 606, was accepted March 1, 1999.

The plat representing the dependent resurvey of the subdivisional lines, T. 47 N., R. 75 W., Sixth Principal Meridian, Wyoming, Group No. 620, was accepted March 23, 1999.

The plat representing the dependent resurvey of the Sixth Standard Parellel North, through Range 110 West, the East and North Boundaries and the subdivisional lines, T. 25 N., R. 110 W., Sixth Principal Meridian, Wyoming, Group No. 621, was accepted March 23, 1999.

The supplemental plat showing Lot 1, Tract 70, in Townships 52 and 53 North, Range 101 West, is based on the plats approved January 5, 1907, and June 13, 1914. Lot 1 is based on an aliquot part subdivision (SE¼SE¼) of original section 34, Township 53 North, Range 101 West, now designated as Tract 70, Tps. 52 and 53 N., R. 101 W., Sixth Principal Meridian, Wyoming, was accepted April 20, 1999.

All inquiries concerning the survey of the above described lands should be sent to the Chief, Cadastral Survey, Wyoming State Office, Bureau of Land Management, P. O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: April 26, 1999.

John P. Lee,

Chief Cadastral Survey Group.

[FR Doc. 99–11263 Filed 5–4–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Environmental Assessment for Big Cypress National Preserve, FL

AGENCY: Big Cypress National Preserve, Florida, National Park Service.

ACTION: Notice of Availability of Environmental assessment.

SUMMARY: In accordance with the National Environmental Policy Act, CFR § 1501.3 of Title 40, the Big Cypress National Preserve, a unit of the National Park System, has completed a ''Draft Environmental Assessment'' regarding the continued operation of commercial airboat tours over lands and waters in the vicinity of Everglades City, Florida. These commercial airboat tours have been provided for a fee to the public over lands that were previously in private ownership. On December 18, 1996, as a result of a land exchange, the Preserve assumed management responsibility for the lands upon which these tours take place. The Preserve proposes to allow the tours to continue under limits and controls. The draft environmental assessment has been prepared to document the environmental consequences of continuing the activity.

Persons wishing to receive a copy of the Assessment may do so by contacting the Preserve at the following location: Superintendent, Big Cypress National Preserve, HCR 61, Box 110, Ochopee, FL 43141, Telephone (941) 695–2000, extension 310.

DATES: Written comments on the Draft Environmental Assessment will be accepted by the Superintendent for a period of 30 days from the date of this notice and will become part of the official record.

FOR FURTHER INFORMATION CONTACT: The Superintendent at the above address.

Dated: April 28, 1999.

W. Thomas Brown,

Acting Regional Director Southeast Region.

[FR Doc. 99–11203, Filed 5–4–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Telecommunications Facilities; Construction and Operation; Grand Teton National Park, WY

AGENCY: Teton Grand National Park, DOI.

ACTION: Public Notice.

SUMMARY: Public notice is hereby given that Grand Teton National Park proposes to consider the initial application made by Union Telephone Company to install a wireless communication facility on Steamboat Mountain, within the boundaries of J.D. Rockefeller Parkway.

EFFECTIVE DATE: Comments will be accepted on or before June 4, 1999.

ADDRESSES: Interested parties should contact National Park Service, Superintendent's Office, Grand Teton National Park, Drawer 170, Moose, WY 83012. To obtain a copy of the initial application, telephone (307) 739–3428. The cost for each copy of the initial application made is $50. Checks should be payable to the National Park Service and sent to the above address.

SUPPLEMENTARY INFORMATION: The initial application made by Union Telephone Company requests that a cellular site be constructed at N. latitude 44–3–5, W. longitude 110–41–50, in J.D. Rockefeller Parkway. The Superintendent will consider and evaluate all comments received as a result of this public notice before authorizing Union to proceed beyond the initial application phase of the project review and permitting process.

Dated: April 28, 1999.

Jack Neckels,

Superintendent, Grand Teton National Park.

[FR Doc. 99–11202 Filed 5–4–99; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–208 (Review)]

Barbed Wire and Barbless Wire Strand From Argentina

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on barbed wire & barbless wire strand from Argentina would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on December 2, 1998 (63 FR 66563) and determined on March 5, 1999 that it would conduct an expedited review (64 FR 12351, March 12, 1999). The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 3, 1999. The views of the Commission are contained in USITC Publication 3187 (May 1999), entitled Barbed Wire & Barbless Wire Strand from Argentina: Investigation No. 731–TA–208 (Review).

Issued: April 29, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11279 Filed 5–4–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Bragg, Commissioner Crawford, and Commissioner Askey dissenting.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Notice is hereby given that a proposed Partial Consent Decree (''Decree'') in *United States* v. *Alabama Electric Cooperative, et al.*, Civil Action No. 982474–GTV, was lodged on April 15, 1999, with the United States District Court for the District of Kansas.

The complaint filed in the above-referenced matter alleges that Settling Defendants Consolidated Edison Company of New York, Inc.; El Paso Electric Company; High Voltage Maintenance Corporation; Jersey Central Power & Light Company d/b/a GPU Energy; MidAmerican Energy Company on behalf of itself and as successor to Iowa Power and Light Company, Midwest Power Systems, Inc. and Sherrard Power System, Inc.; SCA Chemical Services, Inc.; Sierra Pacific Power Company; and UtiliCorp United, Inc. as successor to Missouri Public Service and Westplains Energy (d/b/a Centel Western Power and Southern Colorado Power), are jointly and severally liable for the United States' response costs at the Osage Metals Superfund Site (''Site'') in Kansas City, Kansas, pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

The Site was the location of a metals salvage and reclamation facility between 1948 and 1993. EPA sampling at the Site in 1994 showed high levels of lead and polychlorinated biphenyls, which are hazardous substances within the meaning of CERCLA, and the United States incurred response costs responding to the release or threat of release of these substances at the Site. The Site is now cleaned to industrial levels and is the location of a working warehouse. The United States anticipates no future response actions at the Site.

Under the proposed Decree, Settling Defendants shall pay the United States $211,000.00 plus interest toward the United States' approximately $1.12 million in unreimbursed past costs at the Site. The Settling Defendants also covenant not to sue any *de micromis* parties, or any *de minimis* parties that have settled or do settle with the United States. In exchange, the United States gives Settling Defendants a covenant not to sue and contribution protection for past response costs and future enforcement costs at the Site. Thirteen federal agencies, who were not named as defendants in this action, are also resolving their potential liability in the proposed Decree. Under the proposed Decree, the settling federal agencies shall pay the United States $633,864. The settling federal agencies also covenant not to sue any *de micromis* parties, or any *de minimis* parties that have settled or do settle with the United States. In exchange, the United States provides the settling federal agencies the releases of liability.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20430, and should refer to *United States* v. *Alabama Electric Cooperative, et al*, DOJ Ref. #90–11–3–1617B.

The proposed consent decree may be examined at the office of the United States Attorney, District of Kansas, 500 State Avenue, Suite 360, Kansas City, KS 66101, 913–551–6730; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101, 913–551–7255; and at the Consent decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Library. In reque Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy of the Decree, *with all attachments*, please refer to the referenced case and enclose a check in the amount of $15.25 (25 cents per page reproduction costs), payable to the Consent Decree sting a copy of the Decree without the attachments, please enclose a check in the amount of $9.50.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11265 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Notice is hereby given that a proposed Partial Consent Decree (''Decree'') in *United States* v. *Alabama Electric Cooperative, et al*, Civil Action No. 982474–GTV, was lodged on April 15, 1999, with the United States District Court for the District of Kansas.

The complaint filed in the above-referenced matter alleges that Settling Defendant Transformer Service, Inc. (''TSI'') and the 123 other named defendants are jointly and severally liable for the United States' response costs at the Osage Metals Superfund Site (''Site'') in Kansas City, Kansas, pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

The Site was the location of a metals salvage and reclamation facility between 1948 and 1993. EPA sampling at the Site in 1994 showed high levels of lead and polychlorinated biphenyls, which are hazardous substances within the meaning of CERCLA, and the United States incurred response costs responding to the release or threat of release of these hazardous substances at the Site. The Site is now cleaned to industrial levels and is the location of a working warehouse. The United States anticipates no future response actions at the Site.

Under the proposed Decree, Settling Defendant TSI shall pay the United States $4,493.00 plus interest toward the United States' approximately $1.12 million in unreimbursed past costs at the Site. TSI also covenants not to sue any *de micromis* parties, or any *de minimis* parties that have settled or do settle with the United States. In exchange, the United States gives TSI a covenant not to sue and contribution protection for past response costs and certain future enforcement costs at the Site. The United States' covenants are contingent upon TSI's certification that it has provided the United States with a full and accurate statement of its assets and liabilities. If TSI has hidden assets that it could have used to pay response costs. the United States' covenant not to sue is void.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to the *United States* v. *Alabama Electric Cooperative, et al*, DOJ Ref.#90–11–3–1617B.

The proposed consent decree may be examined at the office of the United States Attorney, District of Kansas, 500 State Avenue, Suite 360, Kansas City, KS 66101, 913–551–6730; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101, 913–551–7255; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy of the Decree, with all attachments, please refer to the referenced case and enclose a check in the amount of $13.50 (25 cents per page reproduction costs), payable to the Consent Decree Library. In requesting a copy of the Decree without the attachments, please enclose a check in the amount of $8.00.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11266 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Clean Water Act and the Rivers and Harbors Act

Under 28 CFR 50.7, notice is hereby given that on April 23, 1999, three proposed Consent Decrees in *United States* v. *The Sanitary District of Hammond, et al.,* Civil Action No. 2:93 CV 225 JM, were lodged with the United States District Court for the Northern District of Indiana.

The United States and the State of Indiana asserted claims in this case under the Clean Water Act, 33 U.S.C. 1251 *et seq.,* and the Rivers and Harbors Act of 1899, 33 U.S.C. 403 and 407, against the Sanitary District of Hammond (''HSD''), the City of Hammond, Indiana (the ''City''), the Town of Munster, Indiana (the ''Town''), and several other defendants that send wastewater to HSD's wastewater treatment plant. The case was resolved as to the defendants other than HSD, the City, and the Town by Consent Decrees entered by the Court in 1995. The settlements lodged today, if entered, will fully resolve this action against all of the remaining defendants.

The proposed HSD Consent Decree includes injunctive relief to redress HSD's effluent limit violations, unpermitted discharges, combined sewer overflow violations, noncompliance with closure requirements regarding sludge lagoons at the HSD treatment plant, and inflow problems that interfere with HSD's treatment processes. In addition, HSD will play $2.1 million toward a fund established under the prior settlements for remediation of contaminated sediments in the Grand Calumet River and $225,000 in civil penalties to be split equally by the United States and the State of Indiana.

The proposed Consent Decrees with the City and the Town require them to take action on any further resolutions adopted by HSD modifying user fees or pretreatment requirements within set time periods, redressing delays that have hampered HSD's ability to implement improvements in its operations. In addition, the City and Town will implement, in conjunction with HSD, a program to eliminate inflow to HSD's collection system from residential down spouts, remedying a major source of inflow to the system. Finally, the City and Town settlements require these defendants to submit to the U.S. Environmental Protection Agency and the Indiana Department of Environmental Management a report specifically identifying those portions of the HSD sewerage collection system that each owns or operates.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The Sanitary District of Hammond, et al.,* D.J. Ref. 90–5–1–1–3308A.

The Consent Decrees may be examined at the Office of the United States Attorney, Northern District of Indiana, 1001 Main Street, Suite A, Dyer, Indiana 46311, at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. Copies of the Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting copies, please enclose a check in the amount of $22.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11268 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on April 21, 1999 a proposed Consent Decree (The ''decree'') in *United States* v. *Montana Power Company,* Civil Action No. CV 99–28–BUDWM, was lodged with the United States District Court for the District of Montana.

In this action the United States sought to recover EPA's past costs incurred in connection with a removal action in the Butte Priority Soils Operable Unit (''BPSOU'') which is part of the larger Silver Bow Creek/Butte Area NPL Site in Montana. Montana Power Company

(MPC) owns 30 acres of land which are located in the BPSOU. The proposed decree is a cash-out of MPC's liability under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and settles potential claims under CERCLA § 106, 42 U.S.C. 9606 and Section 7003 of RCRA, 42 U.S.C. 6973. Under the terms of the proposed decree, MPC will pay the sum of $100,000 to the EPA Hazardous Substances Superfund.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Montana Power Company,* D.J. Ref. 90–11–3–1734. Commuters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003 of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, District of Montana, 2929 Third Avenue North, #400, Billings, MT 59103, at U.S. EPA Region VIII, 999 18th Street, Suite 700, Denver, CO 80202, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $26.75 payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11264 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act 33 U.S.C. 1301, et seq.

Notice is hereby given that on April 23, 1999 a proposed Consent Decree (''Decree'') in *United States* v. *Sinclair Oil Corporation,* Civil Action No. 98 CV 166B, was lodged with the United States District Court for the District of Wyoming. The United States filed this action pursuant to Sections 301 and 311 of the Clean Water Act, as amended by the Oil Pollution Act, 33 U.S.C. 1301 and 1321, as amended by the oil pollution Act, 33 U.S.C. 1301 and 1321, seeking injunctive relief and civil penalties for the Defendant's discharge of oil from a rupture in its underground pipeline into a navigable water of the United States in violation of the Clean Water Act and the Oil Pollution Act.

The proposed Consent Decree requires the Defendant to either: (i) Repair and replace all sections of its pipeline manufactured by the same company that manufactured the ruptured pipe; or (ii) perform an ultrasonic ''smart'' pig of these portions of the pipeline, and repair or replace those portions as indicated by the results of the smart pig. In addition, Sinclair will pay a civil penalty of $29,000, including interest, to the Oil Spill Liability Trust Fund. Finally, Sinclair will perform a Supplemental Environmental Project involving the replacement of 1000 feet of pipe from one of Sinclair's underground pipelines which passes under Casper Creek—a navigable water within a few miles of the spill site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to, *United States* v. *Sinclair Oil Corporation,* Civil Action No. 98 CV 166B, and D.J. Ref. #90–5–1–1–4424.

The Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 -18th Street, North Tower Suite 945, Denver, Colorado,80202 and the U.S. EPA Region VIII, 999 18th Street, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington D.C. 20005, (202) 624–0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 2005. In requesting a copy, please enclose a check in the amount of $10 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 99–11267 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 1:98CV02836]

Public Comments and Response on Proposed Final Judgment, United States v. Pearson plc, Pearson Inc. and Viacom International Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the United States of America hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *Pearson, plc, Pearson Inc. and Viacom International Inc.,* Civil Action No. 1:98CV02836, filed in the United States District Court for the District of Columbia, together with the United States' response to the comments.

Copies of the comments and response are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Washington, DC 20530, telephone: (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and Constitution Avenue, NW, Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Civil Action No. 1:98CV02836
Judge: James Robertson
Filed: April 22, 1999

PLAINTIFF'S RESPONSE TO PUBLIC COMMENTS

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (1997) (''Tunney Act'') the United States hereby responds to the four public comments received regarding the proposed Final judgment in this case.

I. Background

On November 23, 1998, the United States filed the Complaint in this matter alleging that the acquisition by Pearson plc and its wholly owned subsidiary, Pearson Inc. (collectively ''Pearson'') of certain publishing businesses of Viacom International Inc. (''Viacom'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Pearson and Viacom, two of the nation's largest publishers of textbooks and other educational materials, compete head-to-head in the development, marketing and sale of comprehensive elementary school science programs and in the development, marketing and sale of textbooks used in thirty-two college

courses. The Complaint also alleges that the defendants are two of only a few firms that compete in these markets and that they account for a significant share of all sales. Pearson's acquisition of Viacom's publishing businesses was therefore likely to reduce competition and to result in higher prices for these comprehensive science programs and for college textbooks and other educational materials in these courses.

Simultaneous with the filing of the Complaint, the United States filed a Final Judgment and Stipulation signed by all the parties allowing for entry of the Final Judgment following compliance with the Tunney Act. A Competitive Impact Statement (''CIS'') was also filed with the Court and published in the **Federal Register**, along with the proposed Final Judgment, on December 21, 1998 (see 63 FR 70,422).

The proposed Final Judgment permits Pearson to acquire the publishing businesses from Viacom, which it did on November 27, 1998, but requires Pearson to divest itself of one of its two elementary school science textbook programs and fifty-five college textbooks serving thirty-two college course markets. On December 23, 1998, Pearson sold Viacom's elementary science program to Houghton Mifflin Company.

The sixty-day period for public comments expired on February 19, 1999. The United States has received four comments, copies of which are attached, from the following individuals: (1) Professor Gary Musser; (2) Professor Frederic Martini; (3) Mr. Clayton Jones; and (4) Professors Vogeli, Ginsburg and Greene. The United States has carefully considered the views expressed in these comments, but nothing in these comments has altered the United States' conclusion that the proposed Final Judgment is in the public interest. Once those comments and this Response are published in the **Federal Register**, the United States will have fully complied with the Tunney Act and will then file a motion for entry of the proposed Final Judgment.

II. Response to Public Comments

Two of the comments received by the United States were from college textbook authors who raised concerns about the divestitures required by the decree. Dr. Gary L. Musser, the co-author of a Prentice Hall textbook to be divested, wrote that he is concerned that the divestiture will have a disruptive and harmful effect on the sales of that book as well as on another of his textbooks that is not to be divested. Both books are in the process of revision and Dr. Musser believes that they benefit from being marketed together. He believes that current plans for revisions, plans to supplement his to-be-divested book with a CD/Web package, and the schedules for republication will be jeopardized if his book is sold to another publisher at this time. He urges the United States and the Court to consider revising the decree so as not to require divestiture of his book.

Dr. Frederic Martini, the author of five textbooks published by Prentice Hall, none of which is required to be divested under the Proposed Judgment, also raised concerns about the proposed divestitures. Dr. Martini believes that the acquisition is likely to have anticompetitive effects in numerous publishing markets, and believes that the divestitures will not go far enough to preserve competition and innovation and will negatively impact authors and the marketing, sale, and development of their textbooks. Specifically, Dr. Martini contends that competition among publishers—and, in particular between Pearson and Viacom—has resulted in product innovation and the development of ''hi-tech'' electronic educational materials that supplement college textbooks. He is concerned that the acquisition will lessen this product innovation and development because the competition between the Pearson and Viacom titles will be lost; he is also concerned that the acquisition will raise barriers to entry by small publishers and reduce opportunities for new textbook authors and new texts.[1]

Dr. Martini recommends revising the decree so that Pearson may retain all of the Viacom titles but must hold them separate from the rest of their operations., He would specifically prohibit the ''merging of lists and the coalescing of related divisions, such as acquisitions, editorial, marketing, sales, and technology support for the imprint titles.'' He hopes that that would allow the two companies to ''maintain their distinctive character'' and continue to develop competitive technologies. He concedes, however, that this might limit Pearson's ability to maximize economies of scale.

The United States believes that the divestiture of all the designated titles is essential to preserve competition in the markets alleged in the Complaint. The goal of the Final Judgment is to replace the competition eliminated as a result of the acquisition with one or more new viable competitors that will be capable of being in the market over the long term. To accomplish that, the proposed Final Judgment contains numerous requirements to ensure that the acquirer or acquirers of these programs and textbook titles continue as viable and effective competitors. These include provisions requiring that the acquirer have the opportunity to employ certain personnel, and provisions requiring divestiture of all tangible and intangible assets that make up each of the products. The United States must also be satisfied that the acquiring parties have the ability and intention to publish and market the divested products as viable, ongoing businesses.

Although the United States recognizes that divestiture of these college textbooks may have some short-term effect on their development and marketing, the proposed decree includes provisions designed to minimize any disruption. First, the proposed Judgment requires prompt divestitures (within the later of five months after filing of the Judgment with the Court or ten days after the expiration of the 60-day comment period) to minimize the period of uncertainty and discontinuity of ownership of the divested titles. In addition,until divestiture is completed, the proposed Judgment requires the defendants to take steps to preserve the viability and competitiveness of those title; these include requirements to maintain funding, development, promotional advertising, marketing, editorial and merchandising support, and to maintain and increase sales. Moreover, the United States believes that, absent divestiture of the titles to a new publisher, the authors of these textbooks would face a far greater risk in the longer term that their texts and ancillary materials will not be developed, promoted and revised as effectively as they otherwise would have been because their new owner now also markets a good number of their most important competitors.

Dr. Martini's proposal that Pearson be allowed to retain all of the Viacom titles but more or less permanently be required to operate various divisions separately and be prevented from merging titles and imprints will not best preserve competition in the affected college textbook markets. Divisions owned, managed by and answerable to a single owner will not maximize competition with each other. A hold-separate agreement will not alter Pearson's financial incentive and ability to allocate funding and other resources

[1] Dr. Martini states that, for anatomy and physiology—one of the college textbook courses for which divestiture of texts is required—Pearson will account for fifty to sixty percent of all textbook sales after acquisition. Based on our investigation, which included review of sales data collected by an industry reporting service, we believe that, after the proposed divestiture Pearson makes, its share of this market will be no more than it was prior to its acquisition of Viacom's titles—somewhat less than fifty percent.

among the various textbooks (or textbook divisions) that it will own in a way to maximize company profits. It also likely would not alter Pearson's incentive and ability to raise prices on titles, or reduce provision of supplemental products and services, in those markets where it accounted for a large share of sales. Such a permanent hold-separate order would also be difficult to administer and likely impossible to enforce. The Court would be hard-pressed to determine whether Pearson was promoting certain titles as fully and effectively as it would absent ownership of the other competing titles. Finally, as Dr. Martini concedes, such an arrangement might limit Pearson's opportunities to maximize economies of scale and thus raise its costs, which could result in higher prices to consumers. For these reasons, courts have long and consistently recognized that maintenance of completely independent, separately owned competing entities is the effective remedy for mergers or acquisitions that violate the antitrust laws.

In another comment received by the United States, Clayton E. Jones, Chief Executive Officer of Jones and Bartlett, an educational publisher, raised concerns that the decree will not achieve its intended results because another large competitor is likely to purchase the divested products. He states that it is necessary to ''take [the] decree one step further and allow some of the smaller players in the industry an opportunity to purchase these products'' so that the decree will achieve its objective of enhancing competition in the industry.

The proposed Final Judgment is designed to ensure that the purchaser or purchasers of the divested products will be viable and effective competitors and does not exclude—or give preference to—any kind of publisher from consideration as a purchaser. A small publisher is certainly eligible to purchase the divested products so long as the United States is satisfied that it has the ability and intention to publish and market the divested products as viable, ongoing businesses. Moreover, the United States will not approve a proposed divestiture to a publisher that is already a substantial competitor of the program or title that it seeks to acquire. Thus, Mr. Jones need not be concerned that there will be a divestiture to a large competitor that will not preserve competition in the affected markets.

Finally, the United States received a comment from three college professors, Drs. Bruce R. Vogeli, Herbert Ginsburg of Columbia University and Carole Greenes of Boston University, who stated that, although they concurred with the proposed divestitures relating to elementary school science programs, the United States should have also concluded that the acquisition lessened competition in elementary school mathematics programs and sought a divestiture of one of these programs as well. They place particular emphasis on the value that they believe competition has had in the development of innovative mathematics textbooks and point to increased concentration among publishers in this area. They urge the Court to ''require the plaintiff to revisit the proposed final settlement to show cause why relief similar to that provided for elementary school science not be required for elementary school mathematics as well.''

The United States conducted a thorough investigation of the likely impact of Pearson's proposed acquisition of the Viacom publishing businesses on numerous possible markets, including the market for the development, marketing and sale of elementary school mathematics textbooks. The investigation included the review of thousands of documents, and information from numerous industry sources, including teachers, school administrators, authors, professors and publishers. Based on that investigation, the United States concluded that the acquisition would lessen competition in violation of Section 7 of the Clayton Act with respect to elementary school science programs, and the thirty-two college textbook markets alleged in the Complaint.

In essence, the authors of this comment ask the Court to require the United States to amend its Complaint to allege an additional violation of Section 7 of the Clayton Act and to seek additional relief, or, at least, to inquire into the government's investigation and require it to explain and justify its analysis and conclusions. Such judicial review of the government's determination of which conduct to challenge or which violations to allege in the Complaint is not contemplated by the Tunney Act. The government's decision not to challenge particular conduct based on the facts and law before it at a particular time, like any other decision not to prosecute, ''involves a complicated balancing of a number of factors which are peculiarly within [the government's] expertise.'' *Heckler* v. *Chaney,* 470 U.S. 821, 831 (1985). As the United States Court of Appeals for the District of Columbia recently held, it is not the role of the Court in a Tunney Act proceeding to go beyond the Complaint ''to evaluate claims that the government did not make and to inquire as to why they were not made.'' *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1459 (D.C. Cir. 1995). Last year, the United States Court of Appeals for the District of Columbia stated that courts, in making their public interest determination:

> must examine the decree in light of the violations charged in the complaint and should withhold approval only if any of the terms appear ambiguous, if the enforcement mechanism is inadequate, if third parties will be positively injured, or if the decree otherwise makes ''a mockery of judicial power.''

Massachusetts Sch. of Law at Andover, Inc. v. *United States,* 118 F.3d 776, 783 (D.C. Cir. 1997), quoting *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1462 (D.C. Cir. 1995).

III. Conclusion

After careful consideration of these public comments, the United States has concluded that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. When those comments and this response are published in the **Federal Register**, the United States will move the Court to enter the proposed Final Judgment.

Dated: April 22, 1999.

Respectfully submitted,

John W. Poole (DC Bar #56944)

Joyce L. Bartoo (DC Bar #359264)

David C. Kully (DC Bar #448763)

Ahmed E. Taha,

Attorneys for the United States, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW., Suite 300, Washington, DC 20530, (202) 616–5943.

Attachment 1

To: Ms. M. J. Moltenbrey,
Chief Civil Taskforce, Anti-Trust Division, United States Department of Justice
Re: Forced sale of my book from Prentice-Hall

I am a co-author of two books currently published by Prentice-Hall—Mathematics for Elementary Teachers and Mathematics in Life, Society, and the World. A couple of months ago, I was notified by Prentice-Hall that the first book had to be sold to allow the purchase of Simon-Schuster by Pearson. I asked if I had any rights and was told that this was a ruling of the Department of Justice—that was it! I just found out that I do, in fact, have a chance to comment—perhaps to object and obtain a reversal in the ruling.

I understanding that there are anti-trust considerations in this case. However, there are also human and artistic considerations that you can consider. Let me share these with you.

1. We are currently in the revision process for both of my books. Prentice-Hall is

committed to publishing BOTH books and the books are scheduled for July/August publication dates so our adopters can have the most up-to-date books for their students this fall. Forcing the sale of either of these books will jeopardize this schedule. Forcing the sale of these books as a package may work to our disadvantage since there is no guarantee that both books will be published by another publisher.

2. Although my books have separate markets, there is overlap in the material and instructors who use one of my books are likely to want to use the other. When marketing, Prentice-Hall is motivated to make this connection. If my books are split, I and my co-authors will suffer because this connection will be less obvious.

3. Prentice-Hall is planning to add a CD/Web package to my Mathematics for Elementary Teachers book. This will be a creative addition to the marketplace. However, there is no guarantee another publisher will pick up these extras. In this case, instructors and their students are the ones who will be disadvantaged.

4. Prentice-Hall and Addison-Wesley both have other competing books for elementary teachers that they can sell without causing a disruption as described in items 1 through 3 above.

By allowing my two books to stay with Prentice-Hall, authors, instructors, and students benefit. I hope that you, the Department of Justice, and the court can review the uniqueness of this situation and will work to provide some justice for individuals in this case.

Sincerely,

Gary L. Musser

Attachment 2

February 6, 1999.

To: M.J. Moltenbrey,
Chief, Civil Task Force, 325 Seventh Street, Suite 300, Washington, D.C. 20530.
Cc: John Poole
Joel J. Klein
Sen. Daniel Akaka
Rep. Patsy Mink

I am a textbook author whose texts are published by Prentice Hall. My first book contract was signed in 1981, and I have been writing either part time or full-time since then. I am a member of the Authors Guild, the National Writers Union, and the Text and Academic Authors Association. As college faculty, I am also a member of the National Association of Biology Teachers, the Society for College Science Teachers, the American Physiological Society, and the Human Anatomy and Physiology Society. I am therefore well acquainted with both the process of textbook authoring and publishing and the dynamics of our educational system from a faculty member's perspective. I am writing to express my concerns about the Final Judgement issued by the Department of Justice permitting the merger of Pearson Inc. and the educational publishing units of Viacom. During the evaluation period I provided information to Mr. Poole and his associates at the DoJ, and I feel that the Judgement does not adequately address several of the problematic aspects of this merger.

The Final Judgement as stipulated will not in fact preserve competition and innovation in the market. Innovation in the textbook today is occurring most rapidly in the hi-tech electronic areas. Examples include companion web-sites, course management software, distance learning systems, computer-based testing programs, interactive tutorials and simulations, and presentational systems and software. With very few exceptions, all of these products are *given away* free when the corresponding textbook is adopted. The development, upgrading, and maintenance of these products, which is very expensive, thus represents a continual drain on corporate profits. These expenditures can only be justified on the grounds that they will increase the market share of the associated textbook. In a market with many competitors, the associated costs are high enough that each publisher tends to have specialties. Thus with 6 competing publishers, each with viable texts, each would have a full range of supplements, but each would spend extra money on developing one particularly innovative product or approach different from (or better than) what was offered by the competition. These innovations would of course be focal points for sales and marketing presentations. Meanwhile, each company would be continually looking for cost-effectives ways to match or better the strengths of the competition.

When competitors A and B merge, the new company pools resources within their disciplines. Let me give you a specific example from the discipline where I publish (anatomy and physiology). Prentice Hall had what was generally recognized as the best web-site technology and the most innovative lecture presentation software available with their texts. Addison-Wesley/Longman had great physiology simulations available with their A&P texts. PH was actively working on physiology simulations that would be competitive (and out-do) the AWL offerings, while AWL was trying to improve their web-sites and their presentational software. But now under Pearson the web-site, presentational software, and simulation programs will be shared. This has three noteworthy effects on competitiveness:

1. Prentice Hall can abandon its efforts to develop unique simulations, and AWL can stop worrying about building a better web-site or developing new presentational software.

2. The combined companies are able to offer a great web-site, good presentational software, and great simulations with any of their texts. It therefore becomes even more difficult for other publishers to compete in this market. The stakes have now been raised—a publisher must face the combined threat of both the web-site, presentational software, and simulations, whereas before it need only compete with individual offerings. The costs are so high that small publishers are priced out of the market, and over time many large publishers have been forced to cut lists to devote money and personnel to supporting an ever-smaller number of texts. The Department of Justice could of course say that this sort of thing is a benefit to consumers, since an instructor can order a good text and get a great web-site, good presentational software, and terrific simulations. But that is precisely the argument that Microsoft is using to oppose the DoJ's antitrust suit. If the DoJ feels that it is wrong to give that kind of market power to a software company, why permit it in the textbook market?

3. The authors of the individual texts published by either company lose their distinctiveness and their marketing momentum. This drastically reduces competition between PH and AWL titles. It doesn't matter to Pearson whether a particular sale is credited to PH or AWL, as long as the sale stays ''in the family.'' But it matters a great deal to the individual authors involved. I find it infuriating that projects that I have worked on for years—including the related software and web-sites—should be turned over to my competition. My texts were often the ''test cases'' for developing these products. Once the bugs were ironed out, the product was used as a template that could benefit other PH texts. All of the time and effort that I expended in evaluating and enhancing these products is essentially lost when they are handed to AWL. Furthermore, I worked with the programmers for over a year developing a CD–ROM interactive version of my text. Now that shell will also be handed over to my competition. In essence, my ability to continue to be innovative and to increase the market share of my texts has been severely compromised. Further, my interest in ''pushing the envelope'' of technology is greatly diminished since whatever I do will be immediately gifted to a major competitor.

Even after the divestiture (see comments below) PH and AWL will control 50–60% of the A&P market; my text accounts for about 25%. Prior to the merger I was competing aggressively for 75% of the market, and gaining market share rapidly against AWL. Now Pearson will compete for 40–50% of the market, with minimal (or managed) competition between my text and AWL titles. This is certainly not a demonstration of ''increased competitiveness.''

Concerning the divestiture of titles. I do not believe that eliminating the books specified will materially affect the scoper or competitive force of the combined companies. The DoJ has identified 55 titles with annual gross revenues of roughly $35 million from a combined list of approximately 3500 titles and annual gross revenues of $2.4 billion. The titles *per se* are much less important than the leverage that the combined corporation can bring to bear, and this applies even to markets that they do not dominate at present. However, the divestiture will have a serious negative impact on the authors involved. The books will be in turmoil for the next edition cycle at least—handing a textbook to another publisher is not like giving another retailer a toaster. The books are transferred without many of the factors that made them successful. Obvious examples of important factors are the editorial teams, marketing specialists, and sales representatives familiar with the product, but less obvious and equally important factors include the programming teams that developed the

supplements packages, web-sites. CD–ROMs, and so forth. Without exception the titles transferred to another publisher will lose market share; this is not due to any fault of Pearson's, it is just a fact of life. A publisher entering these new markets will have no track record with the faculty, and relationship sales are important in this industry. Further, their sales reps will be uncertain as to key features and competitive issues. Of course, by default most of the market share lost by these titles will be captured by Pearson, and this circumvents the stated goal of the divestiture.

As faculty members, textbook authors are the only people with direct experience in all areas affected by this merger—textbook writing production, marketing, and sales, as well as market dynamics, faculty concerns, and the educational system in general. It is therefore disconcerting that the issues raised by the Authors Guild, the Text and Academic Authors Association, and the National Writers Union—all of whom strongly opposed this merger—have been largely ignored. The combination of these companies will further reduce the opportunities for new authors, new texts, and new publishers. Small publishers are already unable to compete in markets where the cost of entry is so very high. Ten years ago an aspiring author in the biological sciences could approach 8 major publishers with a manuscript idea. Now that author could approach 2 or 3 (depending on the topic), and the odds are that each already has one or more titles in that market. Along with the decrease in opportunity comes a reduction in leverage and bargaining power. It has become increasingly difficult to negotiate favorable contract terms—after all, where else are you going to go?

For all of the above reasons I would like to see the Department of Justice review and revise its Judgement regarding this merger. It is probably logistically impossible to reverse the decision, as the companies are well into their integration phase. However, I would suggest that you consider adding provisions that would permit the amalgamation of ''backroom'' operations, such as inventory, accounting, purchasing, etc., but require the continued maintenance of separate imprints and competition in the market. This would involve specifically prohibiting the merging of lists and the coalescing of related divisions, such as acquisitions, editorial, marketing, sales, and technology support for the imprint titles.

This would not be particularly popular with Pearson, as it would limit their ability to maximize economies of scale, but it would be in keeping with Pearson's assurances to the FTC prior to merger approval, which indicated that the companies would remain separate and competing. It is worth noting that the consolidation process is already well underway. Technology transfers have begun as noted above, and reorganization of the sales staff and extensive merging of book lists have been scheduled for the first half of 1999.

If the DoJ's goals are the maintenance of competition and innovation, PH and AWL texts must compete with one another as well as with texts published by other companies. The two companies must therefore maintain their distinctive character, and they should continue to develop competitive technologies for web-sites, presentations, and simulations. If that were stipulated, I am not at all convinced that a divestiture list is needed, and the authors involved could be spared a lot of personal and financial distress.

If you have any questions, please feel free to contact me. With best wishes, I remain.

Sincerely,

Frederic Martini,

martini@maui.net

Attachment 3

December 28, 1998.

Ms. M.J. Moltenbrey,

Chief, Civil Task Force, U.S. Department of Justice, 325 Seventh Street, suite 300, Washington, DC 20530.

Via Fax #202–514–7300

Re: Pearson's purchase of Viacom Publishing Businesses

Dear Ms. Moltenbrey: I am writing to voice strong opposition to the proposed settlement decree dated 11/23/98.

As one of the few remaining small players in the educational publishing world, we applaud the intent of the decree, but we have serious concerns that the decree will not achieve the intended results. It is likely that the divested products will ultimately land in the hands of one of the other giants in our industry and thus the impact of your decree will be negligible.

Your press release quotes Joel I. Klein, Assistant Attorney General of the Department of Justice Antitrust Division, ''Education is an important national priority, and competition is essential to ensure that our students have the best available educational materials.'' If you truly believe this statement, then you must take your decree one step further and allow some of the smaller players in the industry an opportunity to purchase these products. Simply allowing Pearson to sell these textbooks for an estimated $40 million to one of their next largest competitors is a serious waste of everyone's time and will not fulfill your stated objective of enhancing competition in the industry.

I would welcome an opportunity to discuss this matter with you in greater detail. Thank you for your consideration.

Sincerely,

Clayton E. Jones,

Chief Executive Officer.

Attachment 4

January 19, 1999.

Mary Jean Moltenbrey,

Chief, Civil Task Force, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 300, Washington, DC 20530.

Dear Ms. Moltenbrey, Pursuant to the matter now before the United States District Court for the District of Columbia No. 1: 98–CV–02836 (Antitrust), we are writing to comment upon the proposed ''Final Judgment'' as indicated in Section V, *PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT* of the *COMPETITIVE IMPACT STATEMENT* filed in the District Court by the plaintiff's attorney, John W. Poole (Senior Trial Attorney, U.S. Department of Justice). While we concur with the consent decree's resolution of the deleterious effects upon the elementary school science textbook market of the proposed acquisition of certain Viacom International, Inc. publishing businesses by Pearson, Inc., the decree does not address similar and potentially more damaging effects upon elementary school mathematics in the United States.

As the court document states ''absent a showing of corrupt failure of government to discharge its duty'' the court can at most determine'' ''whether the settlement is within the reaches of the public interest''. It is our contention that, insofar as the mathematical education of American children is in the public interest, the absence of a competitive impact statement regarding the elementary school mathematics textbook market renders the proposed settlement *not* ''within the reaches of public interest''. The importance of this oversight is especially critical due to the fact that the national mathematics market is three times as large as that of science.

A competitive impact statement for the elementary school mathematics textbook market would be remarkably symmetric to that provided to the Court for elementary school science (Section B–1–a, b). The following is an example of what the Justice Department should have stipulated:

Basal Elementary School Mathematics Program Market

A. Description of the Market

Most elementary schools throughout the United States teach mathematics through comprehensive mathematics programs known as ''basal elementary school mathematics programs'', which provide organization and structure as well as guidance and support in how to teach the subject. Student textbooks and teacher's editions of the textbooks are the core of most basal programs, but most also include other important educational materials and services called ''ancillary'' materials consisting of student workbooks and notebooks, audio-visual aids such as charts and videotapes, and materials for mathematics exercises and activities. Basal elementary mathematics programs also often include services such as teacher training sessions.

School districts or individual schools desiring to purchase basal elementary school mathematics programs would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in the price of these programs or a reduction in the value of ancillary materials and services provided with them. For example, schools would not substitute any of the few nontraditional, alternative mathematics programs in sufficient numbers to defeat a small but significant price increase in basal elementary school mathematics programs.

B. Harm to Competition as a Consequence of the Merger

Pearson and Viacom are *two* of only *five* large publishers of basis elementary mathematics programs. They consistently have led the market, capturing a combined

share of over fifty percent of new sales over the last six years. Pearson's program is a close copy of Viacom's program but, at present, has a significantly smaller market share. Pearson and Viacom also compete to maintain and improve programs that were intended to be offered to sale throughout the United States beginning in 1999.

Pearson and Viacom's aggressive competition has led to lower prices, more and better ancillary materials and services, and improvement of product quality. The proposed acquisition would eliminate this competition and would further concentrate an already highly concentrated market.

Successful entry into the basal elementary school mathematics program market is difficult, time consuming, and costly. A publisher would need to assemble editorial, sales and training staffs to develop, test, market and provide ongoing support for the new program and would need to overcome schools' reluctance to purchase an elementary school mathematics program from firms lacking an established reputation as a experienced and reliable mathematics publisher. This complaint alleges that the transaction would likely have the following effects:

a. actual and future competition between Pearson and Viacom in the elementary school mathematics textbook market would be eliminated;

b. competition generally in the market for basal elementary school mathematics programs would be substantially lessened since it is likely that Pearson would not continue the development of new products already in progress at Silver Burdett Ginn;

c. prices for basal elementary school mathematics programs would likely increase or the ancillary materials and services would likely decline; and

d. competition in the development and improvement of basal elementary school programs would likely be substantially lessened as a result of the consolidation of Addison Wesley, Scott Foresman and Silver Burdett Ginn—all acquired or to be acquired by Pearson.

Item (d) above addresses the ''development and improvement of basic elementary school mathematics programs'' and is of special significance. Prior to Pearson's acquisition and merger of Scott Foresman and Addison Wesley Longmans, both of these distinguished publishing houses competed actively and independently with Silver Burdett Ginn and three other large firms in developing innovative mathematics textbooks for American elementary schools. As a result of Pearson's merger of Scott Foresman and Addison Wesley Longmans, six major innovators were reduced immediately to five. If the Pearson acquisition of Viacom Inc's Silver Burdett Ginn division is permitted to proceed without restriction, the original six innovators will have been reduced to four in less than four years—a 33% market contraction! Together the three independent houses that will have been merged under the Pearson, Inc. label have held elementary school children and teachers—to permit Pearson, Inc. to eliminate the most viable competition in the elementary school textbook market through acquisition and suppression?

We respectfully urge that the District Court require the plaintiff to revisit the proposed final settlement to show cause why relief similar to that provided for elementary school science not be required for elementary school mathematics as well.

Respectfully submitted:

Bruce R. Vogeli,

Clifford Brewster Upton Professor, Program in Mathematics.

Herbert Ginsburg,

Jacob Schiff Professor, Program in Psychology.

Carole Greenes,

Professor of Mathematics and Associate Dean, Boston University.

Certificate of Service

This certifies that on April 22, 1999, I caused copies of the foregoing Response to Public Comments to be served as indicated upon the parties to this action and courtesy copies to be served as indicated upon each commenter:

By hand:

Robert S. Schlossberg, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW, Washington, DC 20036–5689, Counsel for Pearson plc and Pearson, Inc.

By first class certified mail:

Wayne D. Collins, Equire, Shearman & Sterling, 599 Lexington Avenue, New York, NY 10022, Counsel for Viacom International Inc.

Mr. Clayton E. Jones, Jones and Bartlett, 40 Tall Pine Drive, Sudbury, MA 01776

Professor Gary L. Musser, 2236 Airlands Street, Las Vegas, NV 89134

Professors Vogeli Ginsburg and Greenes, c/o Professor Bruce R. Vogeli, Teachers College, Columbia University, Box 210, West 120th Street, New York, NY 10027–6696

Professor Federic Martini, 5071 Hana Highway, Haiku, HI 96708

John W. Poole.

[FR Doc. 99–11269 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

FEDERAL TRADE COMMISSION

Notice of Agreement entered into by the Government of the United States of America and the Government of Australia on Mutual Antitrust Enforcement Assistance

AGENCIES: Department of Justice and Federal Trade Commission.

ACTION: Notice.

SUMMARY: Pursuant to section 7(c) of the International Antitrust Enforcement Assistance Act (IAEAA), 15 U.S.C. 6206(c), the Attorney General, with the concurrence of the Federal Trade Commission, hereby publishes the text of an Agreement entered into on April 27, 1999, by the Government of the United States of America and the Government of Australia on Mutual Antitrust Enforcement Assistance. The Agreement is the first mutual antitrust enforcement assistance agreement entered into pursuant to the IAEAA, and will enter into force in accordance with the terms of Article XIII of the Agreement.

FOR FURTHER INFORMATION: Persons wishing to learn more about the Agreement should contact Mr. Charles S. Stark, Chief, Foreign Commerce Section, Antitrust Division, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, 202–514–2464, or Mr. Randolph Tritell, Assistant Director, International Antitrust, Bureau of Competition, Federal Trade Commission, Washington, DC 20580, 202–326–3051.

Dated: April 28, 1999.

Charles S. Stark,

Chief, Foreign Commerce Section, Antitrust Division, Department of Justice.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF AUSTRALIA ON MUTUAL ANTITRUST ENFORCEMENT ASSISTANCE

The Government of the United States of America and the Government of Australia (individually a ''Party'' or collectively the ''Parties''), desiring to improve the effectiveness of the enforcement of the antitrust laws of both countries through cooperation and mutual legal assistance on a reciprocal basis, hereby agree as follows:

Article I—Definitions

Antitrust Authority—refers, in the case of the United States, to the United States Department of Justice or the United States Federal Trade Commission. In the case of Australia, the term refers to the Australian Competition and Consumer Commission.

Antitrust Evidence—refers to information, testimony, statements, documents or copies thereof, or other things that are obtained, in anticipation of, or during the course of, an investigation or proceeding under the Parties' respective antitrust laws, or pursuant to the Parties' Mutual Assistance Legislation.

Antitrust Laws—refers, in the case of the United States, to the laws

enumerated in subsection (a) of the first section of the Clayton Act, 15 U.S.C. 12(a), and to Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, to the extent that such Section 5 applies to unfair methods of competition. In the case of Australia, the term refers to Part IV of the Trade Practices Act 1974; other provisions of that Act except Part X in so far as they relate to Part IV; Regulations made under that Act in so far as they relate to Part IV, except Regulations to the extent that they relate to Part X; and the Competition Code of the Australian States and Territories.

Central Authority—refers, in the case of the United States, to the Attorney General (or a person designated by the Attorney General), in consultation with the U.S. Federal Trade Commission. In the case of Australia, the term refers to the Australian Competition and Consumer Commission, in consultation with the Attorney General's Department.

Executing Authority—refers, in the case of the United States, to the Antitrust Authority designated to execute a particular request on behalf of a Party. In the case of Australia, the term includes the Australian Competition and Consumer Commission and the Attorney General's Department.

Mutual Assistance Legislation—refers, in the case of the United States, to the International Antitrust Enforcement Assistance Act of 1994, 15 U.S.C. 6201–6212, Public Law 103–438, 108 Stat. 4597. In the case of Australia, the term refers to the Mutual Assistance in Business Regulation Act 1992 and the Mutual Assistance in Criminal Matters Act 1987, and Regulations made pursuant to those Acts.

Person or Persons—refers to any natural person or legal entity, including corporations, unincorporated associations, partnerships, or bodies corporate existing under or authorized by the laws of either the United States, its States, or its Territories, the laws of Australia, its States, or its Territories, or the laws of other sovereign states.

Request—refers to a request for assistance under this Agreement.

Requested Party—refers to the Party from which assistance is sought under this Agreement, or which has provided such assistance.

Requesting Party—refers to the Party seeking or receiving assistance under this Agreement.

Article II—Object and Scope of Assistance

A. The Parties intend to assist one another and to cooperate on a reciprocal basis in providing or obtaining antitrust evidence that may assist in determining whether a person has violated, or is about to violate, their respective antitrust laws, or in facilitating the administration or enforcement of such antitrust laws.

B. Each Party's Antitrust Authorities shall, to the extent compatible with that Party's laws, enforcement policies, and other important interests, inform the other Party's Antitrust Authorities about activities that appear to be anticompetitive and that may be relevant to, or may warrant, enforcement activity by the other Party's Antitrust Authorities.

C. Each Party's Antitrust Authorities shall, to the extent compatible with that Party's laws, enforcement policies, and other important interests, inform the other Party's Antitrust Authorities about investigative or enforcement activities taken pursuant to assistance provided under this Agreement that may affect the important interests of the other Party.

D. Nothing in this Agreement shall require the Parties or their respective Antitrust Authorities to take any action inconsistent with their respective Mutual Assistance Legislation.

E. Assistance contemplated by this Agreement includes but is not limited to:

1. Disclosing, providing, exchanging, or discussing antitrust evidence in the possession of an Antitrust Authority;

2. Obtaining antitrust evidence at the request of an Antitrust Authority of the other Party, including

(a) Taking the testimony or statements of persons or otherwise obtaining information from persons,

(b) Obtaining documents, records, or other forms of documentary evidence,

(c) Locating or identifying persons or things, and

(d) Executing searches and seizures, and disclosing, providing, exchanging, or discussing such evidence; and

3. Providing copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies of the national government of the Requested Party.

F. Assistance may be provided whether or not the conduct underlying a request would constitute a violation of the antitrust laws of the Requested Party.

G. Nothing in this Agreement shall prevent a Party from seeking assistance from or providing assistance to the other pursuant to other agreements, treaties, arrangements, or practices, including the Agreement Between the Government of Australia and the Government of the United States of America Relating to Cooperation on Antitrust Matters of June 29, 1982, either in place of or in conjunction with assistance provided pursuant to this Agreement.

H. Except as provided by paragraphs C and D of Article VII, this Agreement shall be used solely for the purpose of mutual antitrust enforcement assistance between the Parties. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request made pursuant to this Agreement.

I. Nothing in this Agreement compels a person to provide antitrust evidence in violation of any legally applicable right or privilege.

J. Nothing in this Agreement affects the right of an Antitrust Authority of one Party to seek antitrust evidence on a voluntary basis from a person located in the territory of the other Party, nor does anything in this Agreement preclude any such person from voluntarily providing antitrust evidence to an Antitrust Authority.

Article III—Requests for Assistance

A. Requests for assistance under this Agreement shall be made by an Antitrust Authority of the Requesting Party. Such requests shall be made in writing and directed to the Central Authority of the Requested Party. With respect to the United States, the Attorney General, acting as the Central Authority, will upon receipt forward a copy of each request to the Federal Trade Commission.

B. Requests shall include, without limitation:

1. A general description of the subject matter and nature of the investigation or proceeding to which the request relates, including identification of the persons subject to the investigation or proceeding and citations to the specific antitrust laws involved giving rise to the investigation or proceeding; such description shall include information sufficient to explain how the subject matter of the request concerns a possible violation of the antitrust laws in question;

2. The purpose for which the antitrust evidence, information, or other assistance is sought and its relevance to the investigation or proceeding to which the request relates. A request by the United States shall state either that the request is not made for the purpose of any criminal proceedings or that the request is made for a purpose that includes possible criminal proceedings. In the former case, the request shall contain a written assurance that antitrust evidence obtained pursuant to the request shall not be used for the purposes of criminal proceedings,

unless such use is subsequently authorized pursuant to Article VII. In the latter case, the request shall indicate the relevant provisions of law under which criminal proceedings may be brought;

3. A description of the antitrust evidence, information, or other assistance sought, including, where applicable and to the extent necessary and possible:

(a) The identity and location of any person from whom evidence is sought, and a description of that person's relationship to the investigation or proceeding which is the subject of the request;

(b) A list of questions to be asked of a witness;

(c) A description of documentary evidence requested; and

(d) with respect to searches and seizures, a precise description of the place or person to be searched and of the antitrust evidence to be seized, and information justifying such search and seizure under the laws of the Requested Party;

4. Where applicable, a description of procedural or evidentiary requirements bearing on the manner in which the Requesting Party desires the request to be executed, which may include requirements relating to:

(a) The manner in which any testimony or statement is to be taken or recorded, including the participation of counsel;

(b) The administration of oaths;

(c) Any legal privileges that may be invoked under the law of the Requesting Party that the Requesting Party wishes the Executing Authority to respect in executing the request, together with an explanation of the desired method of taking the testimony or provision of evidence to which such privileges may apply; and

(d) The authentication of public records;

5. The desired time period for a response to the request;

6. Requirements, if any, for confidential treatment of the request or its contents; and

7. A statement disclosing whether the Requesting Party holds any proprietary interest that could benefit or otherwise be affected by assistance provided in response to the request; and

8. Any other information that may facilitate review or execution of a request.

C. Requests shall be accompanied by written assurances of the relevant Antitrust Authority that there have been no significant modifications to the confidentiality laws and procedures described in Annex A hereto.

D. An Antitrust Authority may modify or supplement a request prior to its execution if the Requested Party agrees.

Article IV—Limitations on Assistance

A. The Requested Party may deny assistance in whole or in part if that Party's Central Authority or Executing Authority, as appropriate, determine that:

1. A request is not made in accordance with the provisions of this Agreement;

2. Execution of a request would exceed the Executing Authority's reasonably available resources;

3. Execution of a request would not be authorized by the domestic law of the Requested Party;

4. Execution of a request would be contrary to the public interest of the Requested Party.

B. Before denying a request, the Central Authority or the Executing Authority of the Requested Party, as appropriate, shall consult with the Central Authority of the Requesting Party and the Antitrust Authority that made the request to determine whether assistance may be given in whole or in part, subject to specified terms and conditions.

C. If a request is denied in whole or in part, the Central Authority or the Executing Authority of the Requested Party, as appropriate, shall promptly inform the Central Authority of the Requesting Party and the Antitrust Authority that made the request and provide an explanation of the basis for denial.

Article V—Execution of Requests

A. After receiving a request, the Central Authority shall promptly provide the Requesting Party an initial response that includes, when applicable, an identification of the Executing Authority (Authorities) for the Request.

B. The Central Authority of the United States, the Attorney General of Australia, or, once designated, the Executing Authority of either Party may request additional information concerning the request or may determine that the request will be executed only subject to specified terms and conditions. Without limitation, such terms and conditions may relate to (1) the manner or timing of the execution of the request, or (2) the use or disclosure of any antitrust evidence provided. If the Requesting Party accepts assistance subject to such terms and conditions, it shall comply with them.

C. A request shall be executed in accordance with the laws of the Requested Party. The method of execution specified in the request shall be followed, unless it is prohibited by the law of the Requested Party or unless the Executing Authority otherwise concludes, after consultation with the Authority that made the request, that a different method of execution is appropriate.

D. The Executing Authority shall, to the extent permitted by the laws and other important interests of the Requested Party, facilitate the participation in the execution of a request of such officials of the Requesting Party as are specified in the request.

Article VI—Confidentiality

A. Except as otherwise provided by this paragraph and Article VII, each Party shall, to the fullest extent possible consistent with that Party's laws, maintain the confidentiality of any request and of any information communicated to it in confidence by the other Party under this Agreement. In particular:

1. The Requesting Party may ask that assistance be provided in a manner that maintains the confidentiality of a request and/or its contents. If a request cannot be executed in that manner, the Requested Party shall so inform the Requesting Party, which shall then determine the extent to which it wishes the request to be executed; and

2. Antitrust evidence obtained pursuant to this Agreement shall be kept confidential by both the Requesting Party and the Requested Party, except as provided in paragraph E of this Article and Article VII.

Each Party shall oppose, to the fullest extent possible consistent with that Party's laws, any application by a third party for disclosure of such confidential information.

B. By entering into this Agreement, each Party confirms that:

1. The confidentiality of antitrust evidence obtained under this Agreement is ensured by its national laws and procedures pertaining to the confidential treatment of such evidence, and that such laws and procedures as are set forth in Annex A to this Agreement are sufficient to provide protection that is adequate to maintain securely the confidentiality of antitrust evidence provided under this Agreement; and

2. The Antitrust Authorities designated herein are themselves subject to the confidentiality restrictions imposed by such laws and procedures.

C. Unauthorized or illegal disclosure or use of information communicated in confidence to a Party pursuant to this

Agreement shall be reported immediately to the Central Authority and the Executing Authority of the Party that provided the information; the Central Authorities of both Parties, together with the Executing Authority that provided the information, shall promptly consult on steps to minimize any harm resulting from the disclosure and to ensure that unauthorized or illegal disclosure or use of confidential information does not recur. The Executing Authority that provided the information shall give notice of such unauthorized or illegal disclosure or use to the person, if any, that provided such information to the Executing Authority.

D. Unauthorized or illegal disclosure or use of information communicated in confidence under this Agreement is a ground for termination of the Agreement by the affected Party, in accordance with the procedures set out in Article XIII.C.

E. Nothing in this Agreement shall prevent disclosure, in an action or proceeding brought by an Antitrust Authority of the Requesting Party for a violation of the antitrust laws of the Requesting Party, of antitrust evidence provided hereunder to a defendant or respondent in that action or proceeding, if such disclosure is required by the law of the Requesting Party. The Requesting Party shall notify the Central Authority of the Requested Party and the Executing Authority that provided the information at least ten days in advance of any such proposed disclosure, or, if such notice cannot be given because of a court order, then as promptly as possible.

Article VII—Limitations on Use

A. Except as provided in paragraphs C and D of this Article, antitrust evidence obtained pursuant to this Agreement shall be used or disclosed by the Requesting Party solely for the purpose of administering or enforcing the antitrust laws of the Requesting Party.

B. Antitrust evidence obtained pursuant to this Agreement may be used or disclosed by a Requesting Party to administer or enforce its antitrust laws only (1) in the investigation or proceeding specified in the request in question and (2) for the purpose stated in the request, unless the Executing Authority that provided such antitrust evidence has given its prior written consent to a different use or disclosure; when the Requested Party is Australia, such consent shall not be given until the Executing Authority has obtained any necessary approval from the Attorney General.

C. Antitrust evidence obtained pursuant to this Agreement may be used or disclosed by a Requesting Party with respect to the administration or enforcement of laws other than its antitrust laws only if (1) such use or disclosure is essential to a significant law enforcement objective and (2) the Executing Authority that provided such antitrust evidence has given its prior written consent to the proposed use or disclosure. In the case of the United States, the Executing Authority shall provide such consent only after it has made the determinations required for such consent by its mutual assistance legislation.

D. Antitrust evidence obtained pursuant to this Agreement that has been made public consistently with the terms of this Article may thereafter be used by the Requesting Party for any purpose consistent with the Parties' mutual assistance legislation.

Article VIII—Changes in Applicable Law

A. The Parties shall provide to each other prompt written notice of actions within their respective States having the effect of significantly modifying their antitrust laws or the confidentiality laws and procedures set out in Annex A to this Agreement.

B. In the event of a significant modification to a Party's antitrust laws or confidentiality laws and procedures set out in Annex A to this Agreement, the Parties shall promptly consult to determine whether this Agreement or Annex A to this Agreement should be amended.

Article IX—Taking of Testimony and Production of Documents

A. A person requested to testify and produce documents, records, or other articles pursuant to this Agreement may be compelled to appear and testify and produce such documents, records, and other articles, in accordance with the requirements of the laws of the Requested Party. Every person whose attendance is required for the purpose of giving testimony pursuant to this Agreement is entitled to such fees and allowances as may be provided for by the law of the Requested Party.

B. Upon request by the Requesting Party, the Executing Authority shall furnish information in advance about the date and place of the taking of testimony or the production of evidence pursuant to this Agreement.

C. The Executing Authority shall, to the extent permitted by the laws and other important interests of the Requested Party, permit the presence during the execution of the request of persons specified in the request, and shall, to the extent permitted by the laws and other important interests of the Requested Party, allow such persons to question the person giving the testimony or providing the evidence.

D. The Executing Authority shall, to the extent permitted by the laws of the Requested Party, comply with any instructions of the Requesting Party with respect to any claims of legal privilege, immunity, or incapacity under the laws of the Requesting Party.

E. The Executing Authority shall, to the extent permitted by the laws of the Requested Party, permit a person whose testimony is to be taken pursuant to this Article to have counsel present during the testimony.

F. A Requesting Party may ask the Requested Party to facilitate the appearance in the Requesting Party's territory of a person located in the territory of the Requested Party, for the purpose of being interviewed or giving testimony. The Requesting Party shall indicate the extent to which the person's expenses will be paid. Upon receiving such a request, the Executing Authority shall invite the person to appear before the appropriate authority in the territory of the Requesting Party. The Executing Authority shall promptly inform the Requesting Party of the person's response.

G. Antitrust evidence consisting of testimony or documentary evidence provided by the Requested Party pursuant to this Agreement shall be authenticated in accordance with the requirements of the law of the Requesting Party, in so far as such requirements would not violate the laws of the Requested Party.

Article X—Search and Seizure

A. Where a request is to be executed by means of the search and seizure of antitrust evidence, the request shall include such information as is necessary to justify such action under the laws of the Requested Party. The Central Authorities shall confer, as needed, on alternative, equally effective procedures for compelling or obtaining the antitrust evidence that is the subject of a request.

B. Upon request, every official of a Requested Party who has custody of antitrust evidence seized pursuant to this Agreement shall certify the continuity of custody, the identity of the antitrust evidence, and the integrity of its condition; the Requested Party shall furnish such certifications in the form specified by the Requesting Party.

Article XI—Return of Antitrust Evidence

At the conclusion of the investigation or proceeding specified in a request, the Central Authority or the Antitrust Authority of the Requesting Party shall return to the Central Authority or the Antitrust Authority of the Requested Party from which it obtained antitrust evidence all such evidence obtained pursuant to the execution of a request under this Agreement, along with all copies thereof, in the possession or control of the Central Authority or Antitrust Authority of the Requesting Party; provided, however, that antitrust evidence that has become evidence in the course of judicial or administrative proceedings or that has properly entered the public domain is not subject to this requirement.

Article XII—Costs

Unless otherwise agreed, the Requested Party shall pay all costs of executing a request, except for the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel to the territory of the Requested Party, pursuant to Articles IX and X, by officials of the Requesting Party.

Article XIII—Entry into Force and Termination

A. This Agreement shall enter into force upon notification by each Party to the other through diplomatic channels that it has completed its necessary internal procedures.

B. Assistance under this Agreement shall be available in investigations or proceedings under the Parties' antitrust laws concerning conduct or transactions occurring before as well as after this Agreement enters into force.

C. As stated in Article VI.D of this Agreement, a Party may unilaterally elect to terminate this Agreement upon the unauthorized or illegal disclosure or use of confidential antitrust evidence provided hereunder; provided, however, that neither Party shall make such an election until after it has consulted with the other Party, pursuant to Article VI.C, regarding steps to minimize any harm resulting from the unauthorized or illegal disclosure or use of information communicated in confidence under this Agreement, and steps to ensure that such disclosure or use does not recur. Termination shall take effect immediately upon notice or at such future date as may be determined by the terminating Party.

D. On termination of this Agreement, the Parties agree, subject to Article VI.E and Article VII, to maintain the confidentiality of any request and information communicated to them in confidence by the other Party under this Agreement prior to its termination; and to return, in accordance with the terms of Article XI, any antitrust evidence obtained from the other Party under this Agreement; provided, however, that any such request or information that has become public in the course of public judicial or administrative proceedings is not subject to this requirement.

E. In addition to the procedure set forth in paragraph C of this Article, either Party may terminate this Agreement by means of written notice through diplomatic channels. Termination shall take effect 30 days after the date of receipt of such notification.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Washington, this 27th day of April, 1999, in duplicate, in the English language.

For the Government of the the United States of America:

Janet Reno /S/

Robert Pitofsky /s/

For the Government of Australia:

Peter Costello /s/

Annex A—This Annex cites and briefly describes the confidentiality laws and procedures that would protect the confidentiality of antitrust evidence that may be provided under this Agreement. Also included are laws and procedures that provide sanctions for breaches of the confidentiality provisions described herein.

I. United States of America

A. Confidentiality Laws and Procedures

15 U.S.C. 6201–6212, International Antitrust Enforcement Assistance Act

This statute authorizes the Department of Justice (DOJ) and the Federal Trade Commission (FTC or, as used in this Part I, Commission) to enter into bilateral agreements with other countries permitting mutual assistance in the enforcement of the antitrust laws. Specifically, it permits DOJ and FTC to exchange certain otherwise confidential investigative information with foreign antitrust authorities, where this will be in the public interest of the United States and where it satisfies the important confidentiality and other safeguards outlined in the statute.

Section 6207(b) of the statute prohibits DOJ and FTC from disclosing, in violation of an antitrust mutual assistance agreement, any antitrust evidence received under such agreement, except to the extent such disclosure is required by law to be made to a defendant or respondent in an action brought by DOJ or FTC. Such antitrust evidence is exempt from other provisions of law that might otherwise be construed to require disclosure, including the Freedom of Information Act, 5 U.S.C. 552, described below.

This statute does not provide specific enforcement mechanisms for the confidentiality provision, or penalties for its breach. Other laws and regulations, however, prohibit the improper use of non-public information. See discussion in Part B, *infra*.

15 U.S.C. 1311–1314, Antitrust Civil Process Act *(applies only to DOJ)*

This statute authorizes the DOJ Antitrust Division to issue compulsory process for documents or testimony in furtherance of civil investigations. Section 1313(c) of this statute provides that, other than for use in oral depositions in furtherance of such investigations, no documents or transcripts produced pursuant to such compulsory process shall be made publicly available without the consent of the party that produced the materials. Such materials may, however, be used when necessary before any court, grand jury or federal administrative or regulatory agency in any case or proceeding, including an investigation or proceeding conducted by the FTC. Such materials may also be disclosed to Congress or to any authorized committee or subcommittee thereof.

Section 1313(e) also provides for the return, at the completion of an investigation, of original materials produced pursuant to this statute during the course of the investigation. Any requests for the return of such materials must be in writing. The Division is permitted, however, in certain circumstances, to keep copies of materials produced.

Section 1314(g) exempts documents and testimony submitted in response to compulsory process authorized by this statute from disclosure under FOIA.

This statute does not provide specific enforcement mechanisms for the confidentiality provision, or penalties for its breach. Other laws and regulations, however, prohibit the improper use of non-public information. *See* discussion in part B, *infra*.

15 U.S.C. 41–68, the Federal Trade Commission Act *(applies only to FTC)*

The confidentiality provisions of the Federal Trade Commission Act are as follows:

Section 6(f) [15 U.S.C. 46(f)] states that the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential, except that the Commission may disclose such information to officers and employees of appropriate Federal law enforcement agencies or to any officer or employee of any State law enforcement agency upon the prior certification of an officer of any such Federal or State law enforcement agency that such information will be maintained in confidence and will be used only for official law enforcement purposes.

Section 21(b) [15 U.S.C. 57b–2(b)] provides that any document, tangible thing, or transcript of oral testimony received by the Commission pursuant to compulsory process in an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, may not be made available for examination by any individual other than a duly authorized officer or employee of the Commission (including contractors and consultants) without the consent of the person who produced the document, thing, or transcript. Such materials may be used in Commission proceedings and in judicial proceedings in which the Commission is a party. Such materials may also be made available to other Federal and State law enforcement agencies upon the certification of an officer of such an agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. This section does not prevent disclosure to Congress, but the Commission is required to notify immediately the owner or provider of any such information of a request from Congress for information designated as confidential by the owner or provider.

Section 21(c) [15 U.S.C. 57b–2(c)] provides that all information reported to or otherwise obtained by the Commission which is not subject to the requirements of Section 21(b) shall be considered confidential when so marked by the person supplying the information. If the FTC determines that information may be disclosed because it is not protected by Section 6(f), it must notify the submitter of the information that the Commission intends to disclose the information (*i.e.,* place it on the public record, pursuant to Commission Rule 4.9) not less than 10 days after receipt of the notification. Upon receipt of such notification, the submitter may bring an action in United States District Court seeking to restrain disclosure, including an application for a stay of disclosure. The Commission shall not disclose the information until the court has ruled on the application for a stay.

Section 21(d) [15 U.S.C. 57b–2(d)] provides that the provisions of 21(c) shall not be construed to prohibit disclosures: (A) To Congress (with notice to the owner or provider of the information); (B) of the results of investigations or studies (without identifying information or disclosing trade secrets or any commercial or financial information obtained from any person which is privileged or confidential); (C) of relevant and material information in FTC adjudicative proceedings or judicial proceedings in which the FTC is a party, according to the FTC's rules for adjudicative proceedings or by court rules or orders; (D) to Federal agencies of disaggregated information for economic, statistical, or policymaking purposes only.

Section 21(f) [15 U.S.C. 57b–2(f)] provides that any document, tangible thing, written report or answers to questions, or transcript of oral testimony received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process or which is provided voluntarily in place of such compulsory process, shall be exempt from disclosure under FOIA.

Section 10 of the FTC Act [15 U.S.C. 50] provides for criminal penalties for the unauthorized disclosure of information obtained by the Commission; *see* the discussion in part B, *infra.*

16 C.F.R. 3.1, *et seq.*, FTC Rules of Practice for Adjudicative Proceedings *(applies only to FTC)*

Adjudicative proceedings are formal proceedings conducted under the statutes administered by the Commission which are required by statute to be determined on the record after an opportunity for an agency hearing. An adjudicative proceeding is commenced when an affirmative vote is taken by the Commission to issue a complaint. The rules provide for the respondent to answer the complaint within a specified time, for discovery, and for a hearing held before an Administrative Law Judge (ALJ) for the purpose of receiving evidence relevant and material to the Commission's complaint and the respondent's answer. The hearings are open to the public, except to the extent that an *in camera* order is entered by the ALJ or the Commission. *See* Rule 3.41(a).

Rule 3.45 [16 C.F.R. 3.45] provides for in camera treatment of documents and testimony which keeps such documents and testimony confidential and not part of the public record of the hearing. Rule 3.45(b) provides that the ALJ may order documents, testimony, or portions thereof offered into evidence, whether admitted or rejected, to be placed in camera upon a finding that their public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting their in camera treatment; only respondents, their counsel, authorized Commission personnel, and court personnel concerned with judicial review shall have access thereto. The order shall provide the date on which in camera treatment will expire.

16 C.F.R. 4.10(g), *et seq.*, FTC Rules of Practice for Adjudicative Proceedings (applies only to FTC)

Rule 4.10(g) provides that the following categories of materials obtained by the FTC may be disclosed in FTC administrative or court proceedings subject to FTC or court protective or in camera orders as appropriate: (1) Material obtained through compulsory process or voluntarily in lieu thereof, and protected by sections 21(b) and (f) of the FTC Act; (2) material designated by the submitter as confidential, and protected by section 21(c) of the FTC Act; or, (3) material that is confidential commercial or financial information protected by section 6(f) of the FTC Act. Prior to disclosure of such material in a proceeding, the submitter will be afforded an opportunity to seek a protective or in camera order. All other material obtained by the FTC may be disclosed in FTC administrative or court proceedings at the FTC's discretion except where prohibited by law.

Rule 26(c) of the Federal Rules of Civil Procedure

This rule provides that a court may grant, in civil litigation in federal court, a protective order concerning discovery, including, inter alia, that certain matters not be inquired into, or that the scope of discovery be limited to certain matters; and that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a certain way.

A court may impose sanctions for violations of protective orders entered pursuant to this rule.

Rule 6 of the Federal Rules of Criminal Procedure

This rule governs the conduct of grand jury proceedings. Subsection (e) of this rule prohibits, without the permission of a court, public disclosure of matters occurring before the grand jury by any person having knowledge of such proceedings, except witnesses, who are free to disclose their testimony.

Knowing violations of this rule are punishable as a contempt of court.

5 U.S.C. 552, Freedom of Information Act

FOIA is a statute that provides that any person has a right of access to federal agency records, except to the extent that FOIA authorizes the agencies to withhold certain records from disclosure. Of the categories of records which may be withheld under FOIA, those of primary relevance to the antitrust enforcement agencies are:

Trade secrets and commercial or financial information, obtained from a person, that is privileged or confidential (subsection 552(b)(4));

Records or information compiled for law enforcement purposes to the extent that disclosure thereof could reasonably be expected, inter alia, to interfere with enforcement proceedings or to disclose the identity of a confidential source (subsection 552(b)(7)(A) and (D));

Intra-agency and inter-agency memoranda or letters that would be routinely privileged in civil discovery, e.g., attorney work-product or attorney-client information (subsection 552(b)(5));

National defense or foreign policy information that is properly classified (subsection 552(b)(1));

Information that may be withheld on the basis of other specific statutory authority (subsection 552(b)(3)).

FOIA does not authorize withholding information from Congress.

28 C.F.R. 16.7, Procedure for Processing Requests for Disclosure of Information Subject to the Business Information Exemption to FOIA (applies only to DOJ)

This regulation specifies the procedures DOJ must follow before it can disclose, in response to a request under FOIA, any materials that may qualify for exemption from disclosure as confidential business information. The section requires that before any such disclosure can be made, DOJ provide notice to submitters of information that either: (i) has been designated as confidential business information by the submitter; or (ii) DOJ has reason to believe may constitute confidential business information. This notice is intended to enable the submitter to object to the planned disclosure and, if the submitter chooses, seek a protective order. DOJ is not required to provide notice to any submitter whose information DOJ has determined not to disclose.

This regulation does not provide specific enforcement mechanisms for the confidentiality provision, or penalties for its breach. Other laws and regulations, however, prohibit the improper use of non-public information. See discussion in part B, infra.

5 U.S.C. 552a, Privacy Act

The Privacy Act permits federal agencies to maintain ''systems of records,'' i.e., records that are retrievable by the name, social security number or other personal identifier of an individual U.S. citizen (or permanent resident alien), subject to requirements that the agencies disclose the existence of such records systems and that individuals have access to records concerning themselves. The Privacy Act, however, sets forth several exceptions to this general restriction, including one that permits, under specified circumstances, agencies to exempt investigatory material compiled for law enforcement purposes from such ''systems of records'' and, thereby, to deny access to such material.

B. Laws and Procedures Providing Sanctions for Breaches of the Confidentiality Laws and Procedures

18 U.S.C. 1905, Trade Secrets Act

This statute provides criminal penalties for unauthorized disclosure of trade secrets or confidential business information by any government employee or agent of DOJ within the meaning of the Antitrust Civil Process Act, who comes into possession or gains knowledge of such information during the course of his or her employment or official duties. Said penalties include a fine of not more than $1,000, one year's imprisonment or both, and removal from employment.

18 U.S.C. 641, Theft of Government Property, Records

This statute provides criminal penalties for the theft, embezzlement, knowing conversion, or unauthorized conveyance of any record, voucher, money, or ''thing of value'' (which, according to judicial interpretation, includes information) possessed by the United States Government. Said penalties include a fine or imprisonment of not more than 10 years, or both.

18 U.S.C. 1831 *et seq.*, Economic Espionage Act

This statute provides criminal penalties for theft of trade secrets, as that act is defined in the statute. It also provides criminal penalties for economic espionage, which the statute, in essence, defines as the theft of trade secrets to benefit a foreign power. The penalty for individuals convicted of theft of trade secrets under the statute includes a fine of not more than $500,000, or imprisonment of not more than ten years, or both, and for an organization includes a fine of not more than $5 million. The penalty for individuals convicted of economic espionage under the statute includes a fine of not more than $500,000, or imprisonment of not more than 15 years, or both, and for organizations includes a fine of not more than $10 million. Penalties also include forfeiture of property used in or derived from trade secret theft or economic espionage.

The statute specifically does not prohibit any otherwise lawful activity conducted by a governmental entity of the United States, a state, or a political subdivision of a state, nor shall it be construed to affect the otherwise lawful disclosure of information by any government employee under FOIA. The statute also preserves the confidentiality of trade secrets in court proceedings brought thereunder.

5 C.F.R. 2635.703, Office of Government Ethics—Standards of Ethical Conduct for Employees of the Executive Branch

This section prohibits the improper use of non-public information by an Executive Branch employee to further his or her own private interest or that of another person. Non-public information is information that the employee gains by reason of federal employment and that he or she knows or reasonably should know has not been made available to the general public. Section 2635.106 provides that any violation may be cause for appropriate corrective or disciplinary action pursuant to Government wide regulations or agency procedures, which action may be in addition to any action or penalty prescribed by law. These sections have been incorporated by reference in the FTC's Rules. *See* 16 C.F.R. 5.1 *et seq.*

15 U.S.C. 50 (Federal Trade Commission Act) and 16 C.F.R. 4.10(c) (*applies only to FTC*)

This section of the FTC Act (and the above-referenced Rule) provides that any officer or employee of the

Commission who shall make public any information obtained by the Commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

II. Australia

A. Confidentiality Laws and Procedures

The Trade Practices Act 1974

Section 89 outlines the procedure for seeking an authorisation from the Australian Competition and Consumer Commission (as used in this Part II, Commission) in relation to certain anti-competitive conduct, and in doing so it outlines the circumstances in which confidentiality may be claimed in relation to information so placed before the Commission and thus excluded from the public register of applications for authorisation. If the information contains particulars of a secret formula or process, cash consideration offered for shares or assets, or the current costs of manufacturing, producing or marketing goods or services, then it will be excluded from the public register. Further, if the information relates to anything else the Commission in its discretion considers to be confidential, it may exclude the information from the public register.

Where the Commission refuses a request to exclude such information from the public register on the basis of its confidential nature, the person who submitted the information may withdraw it, in which case that submission will not form part of the application for authorisation.

Section 95 requires that the Commission keep a public register of notifications, particularly in relation to conduct which amounts to exclusive dealing. (Once notification is lodged, the corporation is permitted to engage in such conduct until otherwise notified by the Commission.) The section outlines the circumstances in which confidentiality may be claimed in relation to information so placed before the Commission and thus excluded from the public register of notification. If the information contains particulars of a secret formula or process, cash consideration offered for shares or assets, or the current costs of manufacturing, producing or marketing goods or services, then it will be excluded from the public register. Further, if the information relates to anything else the Commission in its discretion considers to be confidential, it may exclude the information from the public register.

Where the Commission refuses a request to exclude such information from the public register on the basis of its confidential nature, the person who submitted the information may withdraw it, in which case that submission will not form part of the notification.

The procedures for requesting that a document be excluded from the public register on the basis of its confidential nature under sections 89(5) and 95(2) can be found in regulation 24(1) of the *Trade Practices Regulations.*

Section 106 of the *Trade Practices Act 1974* grants the Australian Competition Tribunal, where it is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the power to prohibit or restrict the publication of evidence given before it, whether in public or private, or of matters contained in documents filed or lodged with the Registrar, received in evidence by the Tribunal or placed in the records of the Tribunal.

Section 155AA of the Act provides that Commission officials must not disclose any protected Part IV information to any person except as part of the official's functions as a Commission official or when he/she is required by law to disclose the information. ''Protected Part IV information'' is defined as information relating to a matter under Part IV and which has been obtained by the Commission under section 155. Section 155 enables the Commission to require a person to answer questions, provide information or produce documents, if the Commission, the Chairperson or Deputy Chairperson has reason to believe that a person is capable of furnishing information relating to a matter that may constitute a contravention of the *Trade Practices Act.*

Section 157 of the Act, amongst other things, provides that: (a) where a corporation makes an application for authorization; or (b) where the Commission has instituted proceedings or made an application for an order against a corporation or other person, the Commission shall provide, at the request of the corporation or other person, a copy of every document furnished to or obtained by the Commission in connexion with the matter that tends to establish the case of the corporation or other person, other than documents obtained from the corporation or other person or prepared by an officer or professional adviser of the Commission. However, subsections (2) and (3) provide that, when the Commission declines to comply with such a request, a Court that is asked to order the Commission to comply may refuse to do so ''if the Court considers it inappropriate to make the order by reason that the disclosure of the contents of the document or part of the document would prejudice any person or for any other reason.''

The Freedom of Information Act of 1982

The Freedom of Information Act 1982 gives members of the public rights of access to official documents of Commonwealth Government Ministers and agencies, limited only by exceptions and exemptions necessary for the protection of the essential public interests and the private and business affairs of persons in respect of whom information is collected and held by agencies. Of the categories of documents that are exempt from disclosure under FOI, those of relevance to antitrust authorities are:

Section 33(1) operates to exempt documents, the disclosure of which would or could be reasonably expected to cause damage to the security, defence or international relations of the Commonwealth or would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organisation.

Section 36 operates to exempt documents where disclosure would disclose opinion, advice or recommendation, or consultation or deliberation relating to the deliberative processes involved in the functions of the Commission, and such disclosure would be contrary to the public interest.

Section 37 exempts documents if disclosure would, or could reasonably be expected to, prejudice the conduct of an investigation, or the enforcement or proper administration of the law. Documents are also exempt if their disclosure under this Act would, or could reasonably be expected to, endanger the life or physical safety of any person.

Section 40(1)(d) exempts documents where disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Commission.

Section 43(1)(a) exempts documents containing trade secrets.

Section 43(1)(b) exempts documents containing information having a commercial value that would, or could reasonably be expected to, be destroyed

or diminished if the information were disclosed.

Section 43(1)(c)(i) exempts documents where disclosure could be reasonably expected to unreasonably adversely affect a company in respect of its business affairs.

Section 43(1)(c)(ii) exempts documents where there is a reasonable expectation that disclosure would prejudice future supply of information to the Commission.

Section 45 exempts documents the disclosure of which would constitute a breach of confidence. This exemption relates to information communicated to the Commission in a relationship of confidence as indicated on its face or in circumstances imparting an obligation of confidentiality.

The Federal Court Act and the Federal Court Rules

Pursuant to Section 23 of the Federal Court Act and Order 15 of the Federal Court Rules, courts may, in proceedings before them, issue orders that information may not be disclosed or may be disclosed only in a certain way. In addition, Order 15 of the Federal Court Rules empowers persons seeking to avoid the production of documents subject to discovery, to rely on the claim that they are privileged from production, *e.g.* the documents are subject to legal professional privilege, or to Crown privilege. (Order 15(17) preserves the right of parties to rely on any rule of law which authorises or requires the withholding of any document on the grounds that its disclosure would be harmful to the public interest.)

The Privacy Act 1988

The Privacy Act 1988 establishes a scheme to govern the collection, storage, security, access, use and disclosure of personal information by Commonwealth agencies through a set of rules called Information Privacy Principles. This scheme is subject to prescribed exceptions which limit an agency's use or disclosure of personal information (Information Privacy Principles 10 and 11).

The Administrative Appeals Tribunal Act 1975

Section 36 of the Administrative Appeals Tribunal Act 1975 provides that, in proceedings before it, the Attorney General may certify that disclosure of a document would be contrary to the public interest, and the Tribunal must do everything to ensure that the information in the document is not disclosed other than to a member of the Tribunal.

The Administrative Decisions (Judicial Review) Act 1977

Under section 13 of the Administrative Decisions (Judicial Review) Act 1977 an application may be made to the Commission for a statement in respect of a decision setting forth, *inter alia*, the reasons for the decision, the findings on material questions of fact, and a reference to the evidence on which the findings were based. Section 13A sets out information not required to be disclosed in response to such an application, including, information as to a person's business affairs which is supplied in confidence, or if published, would reveal a trade secret.

Under section 14, the Attorney General can certify that the disclosure of information would be contrary to the public interest.

The Public Service Regulations

Regulation 35 of the Public Service Regulations prohibits an officer from disclosing information obtained in the course of official duties unless authorised to do so.

The Evidence Act 1995

Section 130 of the Evidence Act 1995 provides that a court (whether or not on the application of a person) may direct that a document relating to matters of state not be adduced as evidence on the grounds of public interest in preserving secrecy or confidentiality. Information will be taken to relate to matters of state if adducing it as evidence would, *inter alia*, prejudice the prevention, investigation or prosecution of an offence; prejudice the prevention or investigation of, or the conduct of proceedings for recovery of civil penalties brought with respect to, other contraventions of the law; or disclose the identity or existence of a confidential source of information relating to the enforcement or administration of the law.

Section 131 provides (subject to certain exceptions) that evidence is not to be adduced of communications made or documents prepared in the context of attempts to negotiate the settlement of a dispute.

The Mutual Assistance in Criminal Matters Act 1987

Section 43B of the Mutual Assistance in Criminal Matters Act 1987 outlines restrictions on use of information sent to Australia in response to a request made by the Attorney General under the Act in relation to a criminal matter. It provides that such material is not used or disclosed intentionally for any purpose other than that for which it was requested unless the Attorney General has approved otherwise.

The restriction on unauthorised use of the material is extended to inadmissibility in evidence in any proceedings other than those for which it was obtained without the Attorney General's approval. In addition, any information, document, article or thing which has itself been obtained directly or indirectly from a person as a result of unapproved use of the material received from the other country is also inadmissible in evidence in any proceedings other than those for which it was requested (or used for the purposes of any other investigation) without the Attorney General's approval.

Section 43B(4) provides a penalty of two years imprisonment for contravention of subsection (1).

Section 43C provides a penalty of two years imprisonment for intentional disclosure of the contents of a request for assistance, of the fact that a request has been made or of the fact that assistance has been granted or refused where the person has such knowledge as a result of his or her employment, unless such disclosure is necessary in the performance of his or her duties or the Attorney General has authorised such disclosure.

B. Laws and Procedures Providing Sanctions for Breaches of the Confidentiality Laws and Procedures

The Crimes Act 1914

Section 70 of the Crimes Act 1914 provides a penalty of two years imprisonment for unauthorised disclosure by a Commonwealth officer of information which the officer has a duty not to disclose.

The Privacy Act 1988

Under section 93 of the Privacy Act 1988, a confider may recover damages from a confidant in respect of a breach of confidence with respect to personal information.

The Freedom of Information Act 1982

Section 59 of the Freedom of Information Act 1982 provides that where an agency makes a decision that documents relating to the business, commercial or financial affairs of a company are not exempt documents under section 43, the company may apply to the Administrative Appeals Tribunal for a review of that decision.

Section 57 of the Freedom of Information Act 1982 provides that a person may complain to the Ombudsman concerning any action taken by an agency in the exercise of its

powers and the performance of its functions under the Act. The Ombudsman cannot overturn the decision of an agency, although recommendations can be made to that agency or the responsible minister.

[FR Doc. 99–11235 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB Emergency Approval; Sworn Statement of Refugee Applying for Admission to the United States.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. INS is requesting emergency review from OMB of this information collection to ensure compliance with the Vice President's statement that the United States begin processing refugees from Kosovar. Emergency review and approval of this ICR ensures that the Kosovar refugees are processed as expeditiously as possible. Therefore, OMB approval has been requested by April 29, 1999. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Mr. Shapiro at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until July 6, 1999. During the 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: Sworn Statement of Refugee Applying for Admission to the United States.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form G–646, Office of International Affairs, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. This form provides the grounds for admissibility to the United States as they apply to refugees. The information collected allows INS to make admissibility determinations for refugees.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 75,000 responses at 30 minutes (.50 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 37,500 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: April 29, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–11211 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1225]

RIN 1121–ZB58

National Institute of Justice Announcement of the Availability of the Solicitation for Safe School Technologies

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''Solicitation for Safe School Technologies.''

DATES: Due date for receipt of proposals is close of business, Monday, June 7, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

This solicitation seeks proposals to develop new or improved technologies and/or implement appropriate technologies in an innovative manner

into the nation's schools. Proposals should focus on the research, development, testing, evaluation, adoption, and implementation phases of new technology; or you may propose innovative modifications to existing technology.

Important themes to be addressed in proposals are: How important is the new technology to school safety? How much will the technology cost to purchase and maintain? Are there hidden costs? What are the net savings on labor? How much training is required to use or maintain the technology? And, how will courts view the technology in terms of liability and interference with personal freedoms? Proposals should address these general themes, however, it is not necessary to explicitly answer each question.

Multiple awards totaling $950,000 will be made available under this solicitation. This solicitation is not intended to fund the purchase and installation of existing commercial systems.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Solicitation for Safe School Technologies'' (refer to document no. SL000338). For World Wide Web access, connect either to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–11241 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1226]

RIN 1121–ZB59

Announcement of the Availability of the National Institute of Justice Solicitation for Video Sensing and Processing Technologies

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of Solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''Solicitation for Video Sensing and Processing Technologies.''

DATES: Due date for receipt of proposals is close of business, Friday, May 28, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

In this solicitation the National Institute of Justice seeks proposals that offer innovative and novel technology approaches that increase video sensing and processing effectiveness. Proposals must describe proposed efforts to advance video sensing and processing beyond the state-of-the-art and document your understanding of the current state-of-the-art. Possible areas of focus include officer protection and crime prevention, communication and information technology, and forensic and investigative sciences. These topics are not all inclusive.

NIJ anticipates supporting several grants under this solicitation. There is $175,000 available for funding this solicitation in FY 1999, with additional funding possible from the Safe Schools Initiative. It is anticipated that $800,000 will be available in FY 2000.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Solicitation for Video Sensing and Processing Technologies'' (refer to document no. SL000348). For World Wide Web access, connect either to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–11242 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–063)]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness (IOR).

DATES: Thursday, May 13, 1999, 12:00 p.m.–1:30 p.m. Eastern Standard Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW, Room 7B13, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the readiness of the Shuttle (STS–96) Mission (ISS assembly flight 2A.1). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: April 28, 1999.

Mathew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–11261 Filed 5–4–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

AGENCY: National Gambling Impact Study Commission.

ACTION: Notice of public meeting.

SUMMARY: At its thirteenth regular meeting the National Gambling Impact Study Commission, established under Public Law 104–169, dated August 3, 1996, will hear possible presentations from one or more subcommittees; continue its ongoing review of Commission research on economic and social gambling impacts; and deliberate on possible findings and recommendations for the Final Report.

DATES: Monday, May 17, 8:30 a.m. to 5:30 p.m. and Tuesday, May 18, 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting site will be: Federal North Holiday Inn on the Hill, 415 New Jersey Avenue, NW, Washington, DC 20001.

Written comments can be sent to the Commission at 800 North Capitol Street, NW, Suite 450, Washington, DC 20002.

STATUS: The meeting will be open to the public both days. However, the Commission may enter into executive session during their lunch period from 12:00 p.m.–1:30 p.m. on either or both days May 17, 1999 and May 18, 1999.

FOR FURTHER INFORMATION CONTACT: Craig Stevens at (202) 523–8217 or write to 800 North Capitol St., NW, Suite 450, Washington, DC 20002.

SUPPLEMENTARY INFORMATION: For a complete agenda, please contact the Commission. This information will also be faxed to all individuals on the Commission's fax list and posted on the Commission's web site, *www.ngisc.gov*.

Craig Stevens,

Communications and Logistic Coordinator.

[FR Doc. 99–11192 Filed 5–4–99; 8:45 am]

BILLING CODE 6802–ET–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 64 FR 531, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility ad clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, N.W. Room 10235, Washington, D.C. 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–306–1125 x2017.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title: National Science Foundation Grant Proposal Guide.

OMB Control Number: 3145–0058.

Summary of Collection: The mission of the National Science Foundation is to serve as a catalyst for progress through investment in science, mathematics and engineering. The agency is guided by its longstanding commitment to the highest standards of excellence in the support of discovery and learning. NSF pledges to provide the leadership and stewardship necessary to sustain and strengthen the Nation's science, mathematics, and engineering capabilities and to promote the use of those capabilities in service to society. NSF's continuing mission is set out in the preamble to the National Science Foundation Act of 1950 (Pub. L. 810507):

> ''To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense; and for other purposes.''

The information collected is used to help the Foundation fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 30,000 proposals annually for new or renewal support for research in math/science/engineering education projects and makes approximately 10,000 new awards. The Foundation exercises its authority primarily by making merit-based grants and cooperative agreements and providing other forms of assistance to individual researchers and groups, in partnership with over 2800 colleges, universities and other institutions—public and private, state, local and federal—throughout the U.S. The awards are based mainly on evaluations of proposal merit submitted to the Foundation (see OMB Clearance No. 3145–0060).

The Foundation has a continuing commitment to monitor the operations of its review and award processes to identify and address excessive reporting burdens. The Foundation also is committed to monitor and identify any real or apparent inequities based on gender, race, ethnicity, or handicap of the proposed principal investigator(s)/project director(s) or co-principal investigator(s)/co-project director(s). The collection of this information is a part of the regular submission of proposal to the Foundation. This information also is protected by the Privacy Act.

Description of Respondents: Nonprofit institutions; state, local or tribal governments; and business or other for-profit.

Number of Respondents: 30,000.

Frequency of Responses: Annually.

Total Burden Hours: The Foundation estimates that an average of 120 hours is expended for each proposal submitted. If an estimated 30,000 proposals are expected during the course of one year, these figures compute to an estimated 3,600,000 public burden hours annually.

Dated: April 30, 1999.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 99–11280 Filed 5–4–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: May 11, 1999, 8:00am–5:30pm.

Place: Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: George A. Hazelrigg, Program Director, Design and Integration Engineering Program, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Agenda: To review and evaluate Major Research Instrumentation (MRI) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 522b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 29, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–11194 Filed 5–4–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date and Time: May 12, 1999, 1:00 p.m.–5:00 p.m.

Place: Room 1175, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Dragana Brzakovic, POWRE Program, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE proposals submitted in response to the program announcement (NSF 98–160).

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 522b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: April 29, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–11195 Filed 5–4–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Co., the Connecticut Light and Power Co., the Western Massachusetts Electric Co.; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw a portion of its July 17, 1998, application for proposed amendment to Facility Operating License No. DPR–65 for the Millstone Nuclear Power Station, Unit 2, located in Waterford, CT.

The withdrawn portion of the proposed amendment would have revised the Millstone Unit 2 Technical Specifications Surveillance Requirement 4.8.1.1.2.C by deleting the words ''during shutdown'' from the first sentence, which reads ''At least once per 18 months during shutdown.''

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 12, 1998 (63 FR 43207). However, by letter dated November 10, 1998, the licensee withdrew this portion of the proposed change as discussed above.

For further details with respect to this action, see the application for amendment dated July 17, 1998, as supplemented by letter dated February 11, 1999, and the licensee's letter dated November 10, 1998, which withdrew a portion of the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, CT 06360, and the Waterford Public Library, 49 Rope Ferry Road, Waterford, CT 06385.

Dated at Rockville, Maryland, this 28th day of April 1999.

For the Nuclear Regulatory Commission.

Ronald B. Eaton,

Senior Project Manager, Section 2 Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11245 Filed 5–4–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–344]

Portland General Electric Co.; Trojan Nuclear Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. NPF–1 issued to the Portland General Electric Company (PGE or licensee) for the Trojan Nuclear Plant (TNP or the plant). The plant is located in Columbia County, Oregon.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Permanently Defueled Technical Specifications by (1) revising Subsection 4.1.1, ''Site and Exclusion Area Boundaries,'' and (2) replacing existing Figure 4.1–1 with a new Figure 4.1–1 and adding a new page to Figure 4.1–1 to reflect the access controlled (ISFSI) area.

The proposed action is in accordance with the licensee's application for amendment (LCA 242) dated February 12, 1997.

The Need for the Proposed Action

The issuance of an amendment will allow the licensee to delete the ISFSI area from the Permanently Defueled Technical Specifications. This will cause the ISFSI to be regulated under 10 CFR Part 72, which is more appropriate to its use as a dry fuel storage area.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the issuance of the amendment will not have any significant effect on accident risk and the possibility of environmental impact. The Commission has previously issued an Environmental Assessment and Finding of No Significant Impact for the Independent Spent Fuel Storage Installation at Trojan Nuclear Plant (61 FR 64378). On March 31, 1999, the Commission issued a 10 CFR Part 72 license to PGE to permit spent fuel from the plant to be placed in dry storage at an ISFSI at the facility.

The licensee does not propose any disposal of fuel by this action nor any other activities that have not already been approved by the NRC. Therefore, the proposed action does not increase the probability or consequences of any

accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Trojan Nuclear Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on April 20, 1999, the staff consulted with the Oregon State Official, Mr. Adam Bless, of the Oregon Department of Energy, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 12, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 29th day of April 1999.

For the Nuclear Regulatory Commission.

Michael T. Masnik,

Chief, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11244 Filed 5–4–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of May 3, 10, 17, and 24, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of May 3

Tuesday, May 4

9:00 a.m.
* Meeting on NRC Response to Stakeholder's Concerns (Public Meeting)

*** Please Note:** The room location for the Meeting on NRC Response to Shakeholders' Concerns, scheduled for Tuesday, May 4, is in the NRC auditorium, Bldg 2, NRC Headquarters, Rockville, Md.

2:00 p.m.
Meeting on Planning, Budgeting and Performance Management Process (PBPM) and Institutionalizing Change (Public Meeting) (Contact: Jim Blaha, 301–415–1703)

Wednesday, May 5

10:00 a.m.
Briefing on Safeguards Performance Assessment (Public Meeting)

1:30 p.m.
Discussion of Intragovernmental Issues (Closed—ex. 9b)

2:30 p.m.
Briefing on Status of Maintenance Rule (Public Meeting)

Thursday, May 6

9:30 a.m.
Briefing on Operating Reactors and Fuel Facilities (Public Meeting) (Contact Glenn Tracy, 301–415–1725)

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of May 10—Tentative

There are no meetings scheduled for week of May 10.

Week of May 17—Tentative

There are no meetings scheduled for the week of May 17.

Week of May 24—Tentative

Thursday, May 27

11:30 a.m.

Affirmation Session (Public Meeting)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 5–0 on April 26, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Shieldalloy Metallurgical Corp. (Cambridge, Ohio Facility), Docket No. 40–8948–MLA, Memorandum and Order (Denying Petition to Intervene), LBP–99–12 (Feb. 23, 1999); International Uranium (USA) Corporation Petition for Review of LBP–99–5; Aharon Ben-Haim, Ph.D., Docket No. IA–97–068, LBP–99–4, Initial Decision (Affirming Enforcement Order with Modifications) (Feb. 8, 1999); Proposed License to Export High Enriched Uranium (HEU) for Production of Medical Isotopes at the Canadian Maple Reactors; North Atlantic Energy Service Corp. (Seabrook Station, Unit 1), Docket No. 59–443, Draft Commission Memorandum and Order Terminating the Proceeding; and, Boston Edison Company and Entergy Nuclear Generation Company (Pilgrim Nuclear Power Station), Docket No. 50–293, Draft Commission Memorandum and Order Terminating the Proceeding'' (Public Meeting) be held on April 26, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smi/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operation Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@narc.gov or *dkw@nrc.gov*.

Dated: April 30, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–11364 Filed 5–3–99; 12:48 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 10, 1999, through April 23, 1999. The last biweekly notice was published on April 21, 1999 (64 FR 19554).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 4, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the

amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: April 12, 1999.

Description of amendment request: The proposed one-time technical specification (TS) change, effective through September 30, 1999, provides a Required Action and Completion Time for the Ultimate Heat Sink (UHS) in the event that service water temperature exceeds the current 95°F surveillance limit. It involves an allowance to continue operation for a period of 8 hours with the UHS at a temperature greater than the temperature limits provided in TS Limiting Condition of Operation 3.7.8, ''Ultimate Heat Sink (UHS)'' and provides an upper UHS temperature limit beyond which plant shutdown is required.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Carolina Power & Light (CP&L) Company has evaluated the proposed Technical Specification change and has concluded that it does not involve a significant hazards consideration. The conclusion is in accordance with the criteria set forth in 10 CFR 50.92. The bases for the conclusion that the proposed change does not involve a significant hazards consideration are discussed below.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components. The proposed change allows plant operation for a short period of time when the service water temperature exceeds 95°F, requires an hourly surveillance when service water temperature exceeds 95°F, provides an upper UHS temperature limit beyond which a plant shutdown is required, and specifies an expiration date beyond which the current requirements are restored. If the service water temperature is restored within the allowed time, a plant shutdown is not required. This minimizes plant transients, which reduces the probability of a reactor trip and the resulting challenges to mitigating systems. A service water temperature of up to 99°F does not increase the failure rate of systems, structures or components because the systems, structures, and components are designed for higher temperatures than at which they operate.

The Service Water (SW) System temperature is not assumed to be an initiating condition of any accident evaluated in the safety analysis report. Therefore, the allowance of a limited time for service water temperature to be in excess of 95°F does not involve an increase in the probability of an accident previously evaluated in the safety analysis report (SAR). The SW System supports operability of safety related systems used to mitigate the consequences of an accident. The service water temperature is not expected to increase significantly beyond 95°F due to the limited time allowed by the proposed change in conjunction with the generally slow rate of temperature increase experienced from thermal changes in Lake Robinson. The capability of components to perform their safety related function is not affected up to a service water temperature of 99°F with the exception of the Containment Air Recirculation Fan Coolers. The heat removal capacity of the Containment Air Recirculation Fan Coolers is not expected to be significantly reduced by a small increase in service water temperature. If heat removal is not significantly reduced, containment pressure and leakage will not be significantly increased, and the doses from containment leakage will not be significantly increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the SAR.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components. A service water temperature of up to 99°F does not introduce new failure mechanisms of systems, structures or components not already considered in the SAR because the systems, structures, and components are designed for higher temperatures than at which they operate. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will allow a small increase in service water temperature above the design basis limit for the SW System and delay by 8 hours the requirement to shutdown the plant when the service water system design limit is exceeded. There are design margins associated with systems, structures and components that are cooled by the service water system that are affected. The capability of components to perform their safety related function is not affected up to a service water temperature [of] 99°F with the exception of the Containment Air Recirculation Fan Coolers. The Containment Air Recirculation Fan Coolers remove heat from containment to mitigate containment pressure and temperature following a MSLB [main steamline break] inside containment or a Large Break LOCA [loss-of-coolant accident] inside containment. An increase in service water temperature in excess of the design limit due to hot weather conditions is expected to be small due to the limited time allowed by the proposed change in conjunction with the generally slow rate of temperature increase experienced from thermal changes in Lake Robinson. Therefore, the effect on the Containment Air

Recirculation Fan Coolers' heat removal capacity and the resulting containment pressure and temperature is expected to be small. Therefore, there is no significant reduction in margin of safety associated with this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Sheri R. Peterson.

Commonwealth Edison Company, Docket No. 50–254, Quad Cities Nuclear Power Station, Units 1, Rock Island County, Illinois

Date of amendment request: March 30, 1999.

Description of amendment request: The amendment would revise the Quad Cities Nuclear Power Station, Unit 1 Technical Specifications (TS) by changing the Surveillance Requirements (SR) 4.6.E.2 to allow a one-time extension of the 18-month requirement to pressure set test or replace one half of the Main Steam Safety Valves (MSSVs) to an interval of 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes request a one-time change to the surveillance requirement for the MSSVs and Target Rock S/RV [Safety Relief Valve]. The surveillance interval between MSSVs and Target Rock S/RV testing is not a precursor assumed in any previously analyzed accident. Therefore, the probability of a previously evaluated accident has not been increased.

The proposed extension is consistent with the ASME Code requirement to test 20% of the sample population every 24 months with all of the valves in the sample group being tested every 60 months. The proposed changes are also consistent with NUREG 1433, Revision 1, and do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. Operating experience and excellent materiel condition of the MSSVs and Target Rock S/RV support the expectation that they will continue to perform their intended function. Therefore, the consequences of a previously evaluated accident have not been increased.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No new equipment is required, nor will the MSSVs and Target Rock S/RV be operated in a different manner during the period of the extended surveillance interval. The proposed changes are consistent with NUREG 1433, Revision 1, requirements for safety valve surveillance intervals as well as the ASME Code requirements for testing safety valves. Operating experience and superior materiel condition of the MSSVs and Target Rock S/RV support the expectation that they will continue to perform their intended function. Therefore, the possibility of a new or different accident has not been increased.

Does the change involve a significant reduction in a margin of safety?

The proposed amendment represents an extension to the current TS SRs that would otherwise be provided generically by the ASME Code. The proposed changes are also consistent with NUREG–1433, Revision 1, and do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. The proposed changes have been evaluated and found to be acceptable for use at Quad Cities Nuclear Power Station based on system safety analysis requirements and operational performance. The MSSVs and Target Rock S/RV provisions continue to be adequately maintained during plant operation. The proposed changes to the MSSVs and Target Rock S/RV surveillance interval do not significantly reduce existing plant safety margins since excellent materiel condition and acceptable surveillance test results support the expectation that no significant degradation will occur over the extended interval.

The proposed changes are based on NRC accepted provisions at other operating plants that are applicable at Quad Cities Nuclear Power Station and maintain necessary levels of system or component reliability.

The proposed amendment for Quad Cities Nuclear Power Station will not reduce the availability of systems required to mitigate accident conditions.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: March 30, 1999.

Description of amendment request: This amendment request proposes to change the Technical Specifications (TSs) to allow an alternate methodology for quantifying Reactor Coolant System (RCS) leakage when the normal RCS leakage detection system is inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The current Technical Specifications require a periodic measurement of RCS leakage. The normal method for quantifying RCS leakage is to use the DWFDS [Drywell Floor Drain Sump] and DWEDS [Drywell Equipment Drain Sump] flow totalizers. The proposed TS change would allow an alternate method for quantifying RCS leakage when a flow totalizer is not available. The proposed change has no impact on the frequency for monitoring RCS leakage and would only be used for a maximum of 30 days while the normal leakage monitoring system is being restored to an operable condition. The alternate methodology for quantifying leakage has a measurement sensitivity that is consistent with the normal method. The proposed change does not impact any system structure or component used to mitigate the consequences of an accident and there will be no change in the types or significant increase in the amounts of any effluents released offsite.

Therefore this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves no physical modifications to any system, structure or component used to mitigate the consequences of an accident. The operation of the DWEDS and DWFDS are not being altered in any way that could affect their ability to function during an accident condition.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The current TS's require a periodic measurement of RCS leakage. The normal method for quantifying RCS leakage is to use

the DWFDS and DWEDS flow totalizers. The proposed technical specifications change would allow an alternate method for quantifying RCS leakage when a flow totalizer is inoperable. The proposed change has no impact on the frequency for monitoring RCS leakage and would only be used for a maximum of 30-days while the normal leakage monitoring system is being restored to an operable condition. The proposed alternate methodology for quantifying leakage has a measurement sensitivity that is consistent with the normal method.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units and, Rock Island County, Illinois

Date of amendment request: March 30, 1999.

Description of amendment request: This amendment request proposes to revise license conditions in each of the respective Operating Licenses to delete those license conditions that no longer apply, make an editorial change in the Unit 1 license, and provide clarifying information regarding the license condition concerning equalizer valve restrictions.

Basis for proposed no significant hazards consideration determination: As required by 10 FR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The initial conditions and methodologies used in the accident analyses remain unchanged. The proposed changes do not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident. Therefore, accident analyses results are not impacted.

The proposed changes delete various license conditions that have been completed, make editorial changes, and provide clarifying information. The changes are administrative. No physical or operational changes to the facility will result from the proposed changes.

Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not affect the design or operation of any system, structure, or component in the plant. The safety functions of the related structures, systems, or components are not changed in any manner, nor is the reliability of any structures , systems, or component reduced. The changes do not affect the manner by which the facility is operated and do not change any facility design feature, structure, system, or component. No new or different type of equipment will be installed.

The proposed changes delete various license conditions that have been completed, make editorial changes, and provide clarifying information. The changes are administrative. No physical or operational changes to the facility will result from the proposed changes.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in the margin of safety for the following reasons:

The proposed changes are administrative in nature and have no impact on the margin of safety of any Technical Specification. There is no impact on safety limits or limiting safety system settings. The changes do not affect any plant safety parameters or setpoints. The proposed changes delete various license conditions that have been completed, make editorial changes, and provide clarifying information. No physical or operational changes to the facility will result from the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: March 25, 1999.

Description of amendment request: The amendments would revise the Technical Specifications (TS) to redefine the ''trip setpoint'' in a number of locations as the ''nominal trip setpoint.'' The current definition results in upper-or lower-bound numerical values not to be exceeded for setpoints. This proposed new definition would permit the setpoints to be set within a tolerance range around the number specified in various tables. The TS locations affected are: Table 3.3.1–1, ''Reactor Trip System Instrumentation;'' Table 3.3.2–1, ''Engineered Safety Feature Actuation Instrumentation;'' Surveillance Requirement 3.3.5.2; Table 3.3.6–1, ''Containment Purge and Exhaust Isolation Instrumentation;'' and Limiting Condition of Operation (LCO) 3.4.12. Sections of the associated TS Bases document would also be revised to reflect the TS changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes are consistent with the current licensing basis for Catawba Nuclear Station, the setpoint methodology used to develop the Trip Setpoints, the Catawba Safety Analyses, and current station calibration procedures and practices. The Reactor Trip System and Engineered Safety Features Actuation System are not accident initiating systems; they are accident mitigating systems. Therefore, these proposed changes will have no impact on any accident probabilities. Accident consequences will not be affected, as no changes are being made to the plant which will involve a reduction in reliability of these systems. Consequently, any previous evaluations associated with accidents will not be affected by these changes.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes are consistent with the current licensing basis for Catawba Nuclear Station, the setpoint methodology used to develop the Trip Setpoints, the Catawba Safety Analyses, and current station calibration procedures and practices. No changes are being made to actual plant hardware which will result in any new accident causal mechanisms. Also, no changes are being made to the way in which the plant is being operated. Therefore, no

new accident causal mechanisms will be generated. Consequently, plant accident analyses will not be affected by these changes.

3. Does this change involve a significant reduction in a margin of safety?

No. The proposed changes are consistent with the current licensing basis for Catawba Nuclear Station, the setpoint methodology used to develop the Trip Setpoints, the Catawba Safety Analyses, and current station calibration procedures and practices. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following accident conditions. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these barriers will not be degraded by the proposed changes. Consequently, plant safety analyses will not be affected by these changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Section Chief: Richard L. Emch, Jr.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: April 9, 1999.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TSs) to add Limiting Condition for Operation (LCO) 3.0.6 and its associated bases. This change would allow equipment that has been removed from service or declared inoperable in compliance with the TS Action statement to be returned to service under administrative controls solely to perform testing required to demonstrate its operability or the operability of other equipment. The proposed change is consistent with TS 3.0.5 as discussed in NUREG–1432, Revision 1, ''Standard Technical Specifications for Combustion Engineering Plants.'' TS 3.0.2 would also be modified to reflect that TS 3.0.6 is an exception to TS 3.0.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would allow an orderly return to service of inoperable equipment. This change does not alter the functional characteristics of any plant component and does not allow any new modes of operation of any component. The accident mitigation features of the plant are not affected by the proposed amendment request. Therefore, this proposed amendment would not result in a significant change in the types or significant increase in the amounts of any effluents that may be released off site. No modifications to the plant have been proposed due to this amendment request. The proposed change would permit equipment removed from service to comply with required actions to be returned to service under administrative controls to verify the operability of the equipment being returned to service or of other related equipment. Although returning inoperable equipment to service for testing may temporarily compromise single failure criteria, administrative controls will ensure the time involved will be limited to only that required to demonstrate component or system operability. This LCO provides an acceptable method of restoring equipment to service for the sole purpose of demonstrating its operability or the operability of other related equipment. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

No modifications were made to the plant due to this amendment request. The proposed change does not alter the functional characteristics of any plant component and does not allow any new modes of operation for any component. This proposed amendment would facilitate the testing of equipment in its design configuration to demonstrate operability. The use of TS 3.0.6 would be limited to the time absolutely necessary to perform the test. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The addition of TS 3.0.6 is considered necessary to establish an allowance that is not formally recognized in the current TSs. Without this allowance, situations can arise in which certain components could not be restored to operable status without requiring a plant shutdown. It is not the intent that the TSs preclude the return to service of a component to confirm its operability. This allowance is deemed to represent a more stable, safe operation than requiring a plant shutdown to complete the restoration and confirmatory testing. The time period during which the equipment is returned to service in conflict with the requirements of the TS Action statement is limited to the time absolutely necessary to perform the indicated surveillance requirement. TS 3.0.6 does not provide time to perform any other preventive or corrective maintenance. The period of time during which the equipment is returned to service will be limited by administrative controls and is considered very small. Therefore, the probability of an accident during that time period is also very small and is considered to be insignificant. Thus, it can be concluded that the proposed change does not affect the current margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: March 9, 1999.

Description of amendment request: The proposed change would modify the Technical Specifications to increase the inservice inspection interval, and reduce the scope of volumetric and surface examinations for the reactor coolant pump flywheels.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Nuclear Regulatory Commission has provided standards in 10 CFR 50.92(c) for

determining whether a significant hazard exists due to a proposed amendment to an Operating License for a facility. A proposed amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed changes would: (1) Not involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Not create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Not involve a significant reduction in a margin of safety. The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, (DBNPS) Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions, or assumptions are affected by the proposed changes to Technical Specification Surveillance Requirement 4.4.10.1.a in the frequency and scope of volumetric and surface examinations for the Reactor Coolant Pump (RCP) motor flywheels.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because changes in the frequency and scope of volumetric and surface examinations for the RCP motor flywheels will not affect any previously evaluated accidents. Accidents associated with failure of the flywheel were not evaluated in the DBNPS Updated Safety Analysis Report (USAR). The design, fabrication, and testing of flywheels in accordance with the guidance found in NRC Regulatory Guide 1.14, ''Reactor Coolant Pump Flywheel Integrity,'' Revision 1, August 1975, minimizes the potential for flywheel failure. The proposed changes have been demonstrated to maintain conservative testing requirements for the flywheels.

2. Not create the possibility of a new or different kind of accident from any previously evaluated because changes in the frequency and scope of volumetric and surface examinations for the RCP motor flywheels will not affect the reliability of RCP motor flywheels. No new failure mode is introduced since the proposed changes do not involve a modification or change in operation of any plant systems, structures, or components.

3. Not involve a significant reduction in the margin of safety. As shown in Westinghouse Topical Report WCAP–14535A, ''Topical Report on Reactor Coolant Pump Flywheel Inspection Elimination,'' November 1996, RCP motor flywheels have been inspected for twenty years without any service induced flaws being identified. Additionally, the analyses demonstrated that the flywheels are manufactured from high quality steel, have a high fracture toughness, and have a very high flaw tolerance. The topical report indicates that the flywheels could be operated for forty years without inspection, and there would be no significant increase in the probability of failure of the flywheels. However, inspections are proposed to continue at a frequency of once every ten years as a conservative measure. Thus, the margin of safety is not reduced significantly by the proposed change in inspection frequency.

Based on the above, the Davis-Besse Nuclear Power Station has determined that the License Amendment Request does not involve a significant hazards consideration. As this License Amendment Request concerns a proposed change to the Technical Specifications that must be reviewed by the Nuclear Regulatory Commission, this License Amendment Request does not constitute an unreviewed safety question.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Anthony J. Mendiola.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 31, 1999.

Description of amendment request: The proposed change would modify Cooper Nuclear Station's technical specification administrative controls for unit staff qualifications for the shift supervisor, senior operator, licensed operator, shift technical advisor, and radiological manager.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change provides enhancement to the current requirements and clarifies the qualifications and training requirements for the shift supervisor, senior operator, licensed operator, shift technical advisor, and Radiological Manager. This provides additional assurance that these personnel are properly trained and qualified for their positions; therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will not create the possibility of a new or different kind of accident than evaluated in the Updated Safety Analysis Report (USAR). The proposed change provides enhancement to the current requirements and clarifies the qualifications and training requirements for the shift supervisor, senior operator, licensed operator, shift technical advisor, and Radiological Manager. The revised administrative controls for unit staff qualifications are an enhancement to the current requirements; therefore, the proposed change does not create the possibility of a new or different kind of accident.

The proposed change will not create a significant reduction in the margin of safety. The proposed change provides enhancement to the current requirements and clarifies the qualifications and training requirements for the shift supervisor, senior operator, licensed operator, shift technical advisor, and Radiological Manager. This provides additional assurance that these personnel are properly trained and qualified for their positions; therefore, the proposed change will not create a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: March 31, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 3.6.1.2–1, ''Allowable Leak Rates through Valves in Potential Bypass Leakage Paths,'' by adding two relief valves, with associated leak rate criteria, to be installed on the drywell equipment drain line and drywell floor drain line during the refueling outage in the spring of 2000. Specifically:

(i) For the drywell equipment drain line, the reference to the inboard isolation valve (2DER*MOV119) would be replaced with a reference to the isolation valve and its associated relief valve (2DER*MOV119 and 2DER*RV344);

(ii) For the drywell floor drain line, the reference to the inboard isolation valve (2DFR*MOV121) would be

replaced with a reference to the isolation valve and its associated relief valve (2DFR*MOV121 and 2DFR*RV228); and

(iii) A footnote for both above changes would be added to state, ''For valves 2DER*MOV 119 and 2DER*RV344, and likewise for valves 2DFR*MOV121 and 2DFR*RV228, this limit shall be the combined allowable leak rate and not the per valve allowable leak rate.''

The two relief valves would be installed to protect the drain line penetrations against overpressure, consistent with Generic Letter 96–06, ''Assurance of Equipment Operability and Containment Integrity During Design-Basis Accident Conditions.'' The allowable leak rates currently specified in TS Table 3.6.1.2–1 for the drywell equipment and drywell floor drain line penetrations will not be increased as a result of the hardware modifications or proposed TS amendment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2 [NMP2], in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will add one relief valve on the drywell equipment drain line (penetration 2DER*Z40) and one relief valve on the drywell floor drain line (penetration 2DFR*Z39). These valves will be installed on piping between the inboard containment isolation valve and the primary containment wall. These drain lines represent potential bypass leakage paths from the primary containment to the environment and are subject to maximum allowable isolation valve leak rates, as specified in Table 3.6.1.2–1 of the Technical Specifications (TS). The purpose of adding relief valves is to protect the piping between the inboard and outboard isolation valves against thermally induced overpressure under postulated accident conditions when both isolation valves close, and the fluid trapped between them may heat up and expand. The new relief valves and piping will not cause any existing plant design, operating, or testing limits to be exceeded. The relief valve installations will meet standards and specifications currently applicable to the penetrations being modified. The relief valve configuration, set pressure, and testing meet applicable NRC guidance. No different precursors or new accident initiators are introduced as the result of the proposed modification. Therefore, this proposed amendment does not involve a significant increase in the probability of an accident previously evaluated.

The existing requirements relating to allowable bypass leakage for the two penetrations affected by this modification, will not be changed. No new bypass leakage paths to the environment will be created and no new failure modes will be introduced. Should the relief valves open and fail to close, the effectiveness of the containment and other fission product barriers will not be compromised. As a result, accident dose rates will remain unchanged and within the limits of 10 CFR 50, Appendix A, General Design Criterion 19, and 10 CFR 100. None of the accident assumptions described in Section 6.2, titled ''Containment Systems'' and Chapter 15, titled ''Accident Analysis,'' of the NMP2 Updated Safety Analysis Report (USAR) is adversely affected by the proposed modifications. Therefore, this proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The isolation valves associated with penetrations 2DER*Z40 (drywell equipment drain line) and 2DFR*Z39 (drywell floor drain line) perform an accident mitigation function by isolating the containment during and after certain postulated accidents. The addition of relief valves between the inboard and outboard isolation valves will enhance the capability of the existing isolation valves to perform their function without the risk of failure due to piping overpressurization. Consistent with the guidance in Generic Letter 96–06, the consequences of a stuck-open relief valve malfunction have been evaluated and are acceptable. Should the relief valve fail to close after opening, the existing outboard isolation valve will perform its function to isolate the containment. Therefore, operation of NMP2 in accordance with this proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed installation of the relief valves will not adversely affect primary containment integrity, the maximum allowable leak rates for the affected penetrations, any other fission product barriers, or any plant safety/operational limits. The relief valves will assure that the associated isolation valves do not fail as the result of piping overpressure during and after postulated accidents, which will preserve the radiological margin of safety. Therefore, operation of NMP2 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: S. Singh Bajwa

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: March 2, 1999.

Description of amendment request: The proposed amendment would require two service water (SW) pumps and their associated strainers to be operable to declare a service water system (SWS) loop operable. The proposed amendment would also (1) modify the existing action statement to take into account one or more service water pump(s) or strainers being inoperable and (2) make changes to the appropriate Bases section.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10 CFR50.92 and has concluded that the revision does not involve any Significant Hazards Considerations (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed Technical Specification revision does not involve an SHC because the revision would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS [Technical Specification] change adds an additional AOT [allowed outage time] for one of four of the service water pumps/strainers in the SWS. The capabilities of the SWS were evaluated in order to ensure that a significant increase in the probability or consequences of the following previously evaluated accidents, LOP [loss of power], LOCA [loss-of-coolant accident] with concurrent LOP and secondary side piping break inside containment, are precluded by SWS mitigative functions. As the above DBA's [design basis accidents] are not caused by the failure of the SWS to operate, the SWS can not affect the probability of these accidents to occur.

Since both pumps/strainers in each loop are covered by the ACTION statement in the TS when inoperable (due to failure or maintenance), and the proposed ACTION statement for two inoperable service water pumps in a single loop is consistent with the

current ACTION statement, there is no impact on the capability to maintain core decay heat removal following a DBA. Further, the revised TS will improve availability of the SWS. The LCO [limiting condition for operation] and ACTION statements help ensure that the SWS, including pumps/strainers, are kept in a condition which allows it to perform all its design functions including providing core decay heat removal and the SFP [spent fuel pool] cooling. As such, there is no affect on the consequences of previously evaluated accidents.

Thus, it is concluded that the proposed revision does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The SWS is used to remove heat from the reactor plant auxiliary systems and other systems. Only one of four pumps is required to be operating during normal plant conditions. In addition, only one 100% capacity pump is required to provide the necessary flow to mitigate the consequences of a DBA. This change continues to require two pumps/strainers per loop to be operable and imposes strict controls on the AOT for the SWS pumps/strainers via the imposition of the LCO controls on the SWS. This assures that four service water pumps/strainers will always be available or the plant will be in an ACTION STATEMENT. The SWS is used to mitigate the consequences of an accident and will not cause an accident.

Thus, this proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction [in] a margin of safety.

This change will have no impact on the performance of any safety related system covered by the TS. This change explicitly defines the number of pumps/strainers required for the SWS to be considered OPERABLE and the ACTION required which specifies the AOT for inoperable components. The required flow rate for accident mitigation continues to be available to all ECCS [emergency core cooling system] components and their support systems. As such, this change does not increase the peak clad temperature for a DBA–LOCA.

The proposed Technical Specification change adds an additional AOT for one of four of the service water pumps/strainers in the SWS. Two service water pumps/strainers are required to perform the design function of the SWS; one pump to mitigate the DBA and the other to reduce the potential of the SFP boiling which could occur if a service water pump is unavailable for SFP cooling after a design basis LOCA.

The existing TS Bases states that ''The OPERABILITY of the Service Water System ensures that sufficient cooling capacity is available for continued operation of safety-related equipment during normal and accident conditions. The redundant cooling capacity of this system, assuming a single failure, is consistent with the assumptions used in the safety analyses.''

Since this change continues to control the availability of the SW pumps by placing the system in an ACTION statement with one loop out of service, then the change will continue to comply with the existing BASES requirements. Thus it is concluded that the proposed revision does not involve a significant reduction in the margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve a SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: December 24, 1998.

Description of amendment request: Revises the setpoints and limits of allowable values for loss of power (LOP) instrumentation for 4kV emergency busses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LOP instrumentation provides safety-related electrical equipment protection. No new equipment is added to the plant as a result of the proposed changes. Separation of the 4kV emergency buses from the grid is the only potential transient that previously existed based on operation of these relays. Based on the revised Voltage Regulation Study, which incorporates the effects of system improvements and additional conservatisms, there is no significant increase in the probability of this separation. The relay time delay settings are such that the relays will detect and respond to an actual sustained degradation of voltage, but will not actuate in response to normal operational voltage fluctuations. No accident initiators will be impacted by the proposed setpoint changes. All safety systems will be able to perform their safety functions. Accident mitigation is achieved by these relays by ensuring adequate voltage is maintained throughout the Class 1E electrical distribution system.

The existing allowable values and the proposed allowable values for Functions 2, 3, 4, and 5 have been analyzed and both values are acceptable for operation. During implementation of modification 96–01511 (changing of the relay setpoints), the 4kV buses could be in one of the three configurations: (a) Both sources have relays set at the existing setpoints, (b) one set of source relays with the existing old setpoints and the other set with the proposed revised setpoints, or (c) both sources have relays set at the proposed revised setpoints. Each of these configurations is acceptable because the existing and proposed values satisfy the design limits established within the setpoint calculation and the Voltage Regulation Study.

For Function[s] 4 and 5, the present TS has separate entries in Table 3.3.8.1–1, for the internal and external time delay. This proposed change will combine these internal and external time delays for simplicity. The aggregate time delay is the important parameter and it is the only time delay that is analyzed. The internal time delay minimizes the relay contact wear and reduces the number of external time delay relay actuations due to transient voltage dips. The internal time delay provides no other output functions. Therefore, there will be no impact on the Class 1E power distribution system to perform its intended design function.

Therefore, the proposed changes described above, or operation while modification 96–01511 is being implemented, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed LOP instrumentation setpoint changes will not result in any new accidents or operational transients. Separation of the 4kV emergency buses from the grid is the only potential transient that previously existed based on operation of these relays. Based on the revised Voltage Regulation Study, which incorporates the effects of system improvements and additional conservatisms, there is no significant increase in the probability of this separation, and the proposed setpoint changes would not create the possibility of a new or different kind of accident from any previously evaluated. The relay time delay settings are such that the relays will detect and respond to an actual sustained degradation of voltage, but will not actuate in response to normal operational voltage fluctuations. The proposed setpoint changes for these relays and the proposed combining

of the internal and external time delays will not become initiators of different types of accidents or transients. Additionally, since the existing and proposed allowable values for the LOP instrumentation functions are within the band established by the Voltage Regulation Study, both values are acceptable for operation during the implementation of modification 96–01511. Therefore, the possibility of a new or different kind of accident than previously evaluated is not created.

3. The proposed changes do not involve a significant reduction in a margin of safety.

All LOP instrumentation functions will continue to be carried out. The proposed setpoint and allowable value changes have been evaluated within the Voltage Regulation Study and the Plant Electrical Load Study. The relay setpoints have been established using IISCP setpoint methodology. The setpoint determination accounts for relay accuracy, potential transformer accuracy, measurement and test equipment accuracy, and margin above the design limit established within the Voltage Regulation Study. The proposed setpoint changes for these relays and the proposed combining of the internal and external time delays will not involve a significant reduction in a margin of safety. Additionally, since the existing and proposed allowable values for the LOP instrumentation functions are within the band established by the Voltage Regulation Study, both values are acceptable for operation during the implementation of modification 96–01511. Therefore, having both values during the implementation of modification 96–01511 does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for Licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: Elinor G. Adensam

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 12, 1999.

Description of amendment request: Administrative changes to correct typographic errors in Technical Specifications (TS) introduced in previous amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes correct typographical errors and are administrative only and do not impact the operation of the facility. In each case, the action of the intended TS requirements were satisfactorily completed when the change was implemented. These corrections are administrative only and have no effect on any previously evaluated accident scenario. The changes will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients, nor will they alter the operation of equipment important to safety previously evaluated.

Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes correct typographical errors and are administrative only and will not involve any physical changes to the plant SSCs [systems, structures, or components]. In each case, the action of the intended TS requirements were satisfactorily completed when the change was implemented. These corrections are administrative only and have no effect on any previously evaluated accident scenario. The proposed changes do not allow operation in any mode that is not already evaluated. The changes will not alter the operation of equipment important to safety previously evaluated.

Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes correct typographical errors and are administrative only and will not affect the manner in which the facility is operated, or change equipment or features which affect the operational characteristics of the facility. The proposed changes have no impact on any safety analysis assumptions or margins of safety.

Therefore, these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for Licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia .

Date of amendment request: January 21, 1999.

Description of amendment request: The proposed amendments would change Technical Specification Tables 3.3.6.1–1 and 3.3.6.2–1 by increasing the Allowable Values for the high radiation trip for the exhaust monitors for the reactor building and the refueling. The January 21, 1999, amendment request supercedes the July 22, 1998, amendment request which was noticed in the **Federal Register** on August 26, 1998 (63 FR 45529).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1). Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The Unit 1 and Unit 2 reactor building and refueling floor ventilation exhaust radiation monitors perform no function in preventing, or decreasing the probability of, a previously evaluated accident. The monitors are designed to monitor ventilation exhaust for indications of a release of radioactive material resulting from a design basis accident and initiate appropriate protective actions. Because the proposed changes affect only the ventilation exhaust radiation monitors, the probability of an accident previously evaluated remains the same.

The function of the reactor building and the refueling floor ventilation exhaust radiation monitors, in combination with other accident mitigation systems, is to limit fission product release during and following postulated design basis accidents. The proposed new Allowable Values for the high radiation trip will continue to ensure the offsite doses resulting from a design basis accident do not exceed the NRC-approved

licensing basis. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes increase the radiation level at which the ventilation exhaust monitors actuate; however, the manner in which their actuation logic functions and the systems that isolate or actuate as a result are unaffected by the proposed changes. Furthermore, the ventilation exhaust monitors will continue to perform their design function of limiting offsite doses to NRC-approved licensing limits at the higher Allowable Values. Therefore, the proposed changes cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The Bases for Unit 1 and Unit 2 Technical Specifications Tables 3.3.6.1–1 and 3.3.6.2–1 state that the Allowable Values for the reactor building and refueling floor ventilation exhaust radiation monitors ''are chosen to ensure radioactive releases do not exceed offsite dose limits.'' The proposed Allowable Values ensure the radiation monitors actuate at a radiation level sufficient to ensure offsite doses are within the NRC-approved licensing basis. The proposed Allowable Values comply with the margin of safety defined in the Technical Specifications Bases for the ventilation exhaust radiation monitors; therefore, the proposed changes do not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC.

NRC Section Chief: Richard L. Emch, Jr.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 30, 1999.

Description of amendment request: The licensee has proposed to relocate Technical Specification 3/4.3.3.4, ''Meteorological Instrumentation,'' and its associated Bases to the Technical Requirements Manual (TRM). Because the TRM is incorporated within the South Texas Project updated final safety analysis report (UFSAR) for the units, changes to the requirements on the meteorological instrumentation that would be relocated to the TRM would be controlled in accordance with 10 CFR 50.59.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The affected system and components [i.e., meteorological monitoring instrumentation] are not assumed as initiators of analyzed events, and are not assumed to mitigate accident or transient events. The requirements and surveillances for [this affected system] and components will be relocated from the Technical Specifications to the Technical Requirements Manual, which is incorporated in the South Texas Project UFSAR and will be maintained pursuant to 10 CFR 50.59. In addition, the Meteorological Monitoring System components are addressed in existing surveillance procedures which are also controlled by 10 CFR 50.59 and subject to the change control provisions imposed by plant administrative procedures, which endorse applicable regulations and standards. The associated changes to the Technical Specification Index are administrative. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. This change will not impose different requirements, and adequate control of information will be maintained. Furthermore, this change will not alter assumptions stated in the safety analysis or licensing basis. The associated changes to the Technical Specification Index are administrative. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

This change will not reduce a margin of safety because the change has no impact on any safety analysis assumptions. In addition, the relocated requirements and surveillances for the affected structures, systems, and components remain the same as the existing Technical Specifications. Because any future changes to these requirements or the surveillance procedures will be evaluated per the requirements of 10 CFR 50.59; there is no [significant] reduction in a margin of safety. The associated changes to the Technical Specification Index are administrative and have no potential effect on the margin of safety. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant (SQN), Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 2, 1999 (TS 98–05).

Brief description of amendments: The proposed amendments would change the SQN Operating Licenses DPR–77 (Unit 1) and DPR–79 (Unit 2) by eliminating a requirement to have an Independent Safety Engineering Group (ISEG), conditions imposed by NUREG–0737. Because of evolution through numerous reorganizations and reassignments, these license conditions are no longer necessary and the Tennessee Valley Authority (TVA, the licensee) proposes deleting them.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The possibility of occurrence or the consequences for an accident or malfunction of equipment is not increased. The ISEG function is one of ''oversight'' only.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

A possibility for an accident or malfunction of a different type than any evaluated previously in SQN's Final Safety Analysis Report is not created by the proposed elimination of the ISEG; nor is the possibility for an accident or malfunction of a different type. The ISEG function is one of ''oversight'' only.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed amendment will not involve a significant reduction in the margin of safety. The ISEG function is one of ''oversight'' only.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Sheri R. Peterson.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: February 12, 1999 (TXX–99022).

Brief description of amendments: The proposed changes would modify the steam generator tube inspection requirements and acceptance criteria to implement the 1.0-volt repair criteria for steam generator tubes affected by outer diameter stress corrosion cracking (ODSCC) according to Nuclear Regulatory Commission (NRC) Generic Letter 95–05 (''Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking'') at Comanche Peak Unit 1. Also proposed is the use of a voltage-dependent probability of detection; the methodology was originally submitted to the NRC by the Nuclear Energy Institute in 1996.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of Comanche Peak Unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Tube burst criteria are inherently satisfied during normal operating conditions due to the proximity of the tube support plate [TSP]. Test data indicates that tube burst cannot occur within the TSP, even for tubes which have 100% through-wall electric discharge machining notches, 0.75 inch long, provided that the TSP is adjacent to the notched area. Since tube to tube support plate proximity precludes tube burst during normal operating conditions, use of the criteria must retain tube integrity characteristics which maintain a margin of safety of 1.43 times the bounding faulted condition (Steam Line Break) pressure differential. As previously stated, the RG [Regulatory Guide] 1.121 criterion requiring maintenance of a safety factor of 1.43 times the Steam Line Break pressure differential on tube burst is satisfied by ¾″ diameter tubing with bobbin coil indications with signal amplitudes less than 4.7 volts, regardless of the indicated depth measurement. At the FDB [flow distribution baffle], a safety factor of 3 against the normal operating condition at power is applied. Here a voltage of 3.34 volts satisfies the burst capability recommendation.

The upper voltage repair limit (V_{URL}) will be determined prior to each outage using the most recently approved NRC database to determine the tube structural limit (V_{SL}). The structural limit is reduced by allowances for nondestructive examination (NDE) uncertainty (V_{NDE}) and growth (V_{Gr}) to establish V_{URL}. As an example, the NDE uncertainty component of 20% and a voltage growth allowance of 30% per full power year can be utilized to establish a V_{URL} of 3.13 volts for TSP indications, 2.22 volts for the FDB indications. The 20% NDE uncertainty represents a squareroot-sum-of-the-squares (SRSS) combination of probe wear uncertainty and analyst variability.

The flaw growth allowance should be an average growth rate or 30% per effective full power year, whichever is larger. The 30% growth allowance used to determine V_{URL} is conservative for the current conditions at Comanche Peak Unit 1. The average growth of the bobbin indication voltages observed at the last inspection is determined to be 0.14 volts, or 24.6% voltage growth. This value is a conservative representation of the growth trends at Comanche Peak Unit 1 as not all steam generators were inspected at end of cycle 3 and end of cycle 4, and the largest reported voltage growths represent more than one cycle of actual plant operation. The most current NRC approved database, contained in EPRI [Electric Power Research Institute] NP–7480–L, Addendum 1, was used to establish the V_{URL} values for the FDB and TSP intersections. Once approved by the NRC, the industry protocol for updating the database will be followed by TU Electric, ensuring that the most current database is utilized for all future applications of the criteria.

Also, assuming the criteria was applied at the last inspection at Comanche Peak Unit 1, using conservative growth projections as described in Reference 2 [of the February 12, 1999, application], the conditional burst probability at end of cycle 6 is determined to be 1.7×10^{-4}, which is well within the GL 95–05 reporting limit of 1×10^{-2}.

Relative to the expected leakage during accident condition loadings, it has been previously established that a postulated main Steam Line Break outside of containment but upstream of the MSIV [main steam isolation valve] represents the most limiting radiological condition relative to the plugging criteria. In support of implementation of the revised plugging limit, it will be determined whether the distribution of cracking indications at the tube support plate intersections during future cycles are projected to be such that primary to secondary leakage would result in site boundary doses within 10CFR100 guidelines and control room doses within the GDC [General Design Criterion]-19 limit. A separate calculation has determined this allowable Steam Line Break leakage limit to be 27.79 gpm in the faulted loop assuming a RCS [reactor coolant system] dose equivalent I–131 concentration of 1.0 microCi/gm. The establishment of the 27.79 gpm leak rate value is controlled by the 0 to 2 hour offsite dose at the site boundary for the accident initiated iodine spike case, not the control room dose. For this case, the site boundary thyroid dose approaches, but is bounded by, the 30 Rem limit recommended in NUREG–0800 [''Standard Review Plan'']. The methods for calculating the radiological dose consequences are also revised for this application. Rather than basing the calculated thyroid dose consequences on conversion factors from TID–14844, [''Calculation of Distance Factors for Power and Test Reactor Sites''] factors obtained from ICRP–30 [International Commission on Radiation Protection Publication 30] are used. The use of ICRP–30 dose conversion factors in this application has been previously accepted by the NRC. Although the use of ICRP–30, relative to the TID–14844, results in lower calculated thyroid doses for this application, the NRC has previously determined that the ICRP–30 factors retain adequate conservatism.

In summary, due to the methodology used to determine the maximum allowable, accident-initiated leak rate (prescribed in Section 2.b.4 of Generic Letter 95–05), the calculated radiological consequences at the EAB [exclusion area boundary] and LPZ [low population zone] are larger than previously reported for the postulated steamline break event. However, the calculated radiological consequences remain in compliance with NUREG–0800 and GDC–19. Therefore, it is concluded that the proposed changes do not result in a significant increase in the radiological consequences of an accident previously analyzed.

The removal from the FSAR [final safety analysis report] of the steamline break radiological dose consequences calculation typically identified as a ''5% failed fuel'' scenario does not affect the probability or consequences of any accident previously considered. For CPSES [Comanche Peak Steam Electric Station], no accident-induced fuel failures are predicted; therefore, consistent with NUREG–0800, this scenario is not required to be analyzed or presented in the FSAR.

In summary, because the implementation of the 1.0 volt voltage-based plugging criteria at Comanche Peak Unit 1 does not adversely affect steam generator tube integrity and implementation will be shown to result in acceptable radiological dose consequences, the proposed Technical Specification change does not result in any increase in the probability or consequences of an accident previously evaluated within the Comanche Peak FSAR.

(2) The proposed license amendment does not create the possibility of a new or different

kind of accident from any accident previously evaluated.

Implementation of the proposed steam generator tube 1.0 volt plugging limit does not introduce any significant changes to the plant design basis. Neither a single or multiple tube rupture event would be expected in a steam generator in which the plugging limit has been applied (during all plant conditions).

The bobbin probe voltage-based tube plugging criteria of 1.0 volt is supplemented by: enhanced eddy current inspection guidelines to provide consistency in voltage normalization, a 100% eddy current inspection sample size at the tube support plate elevations, and RPC [rotating pancake coil] inspection requirements for the larger indications left in service to characterize the principal degradation as ODSCC. TU Electric will implement a maximum normal operating condition primary to secondary leakage rate limit of 150 gpd (0.1 gpm—at room temperature) per steam generator to help preclude the potential for excessive leakage during all plant conditions. The 150 gpd leakage limit is more restrictive than the standard operating leakage limit (of 500 gpd) and is intended to provide additional margin to accommodate a stress corrosion crack which might grow at a greater than expected rate or unexpectedly extend outside the thickness of the tube support plate. Leakage trending capability consistent with EPRI Report TR–04788, ''PWR Primary-to-Secondary Leak Guidelines'', has been implemented at Comanche Peak Unit 1.

As steam generator tube integrity upon implementation of the 1.0 volt plugging limit continues to be maintained through in-service inspection and primary to secondary leakage monitoring, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

(3) The proposed license amendment does not involve a significant reduction in margin of safety.

The use of the voltage-based bobbin probe tube support plate elevation plugging criteria at Comanche Peak Unit 1 maintains steam generator tube integrity commensurate with the criteria of Regulatory Guide 1.121. Regulatory Guide 1.121 describes a method acceptable to the NRC staff for meeting GDCs 14, 15, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the proposed criteria, even under the worst case conditions, the occurrence of ODSCC at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The end of cycle distribution of crack indications at the tube support plate elevations is confirmed to result in acceptable primary to secondary leakage during all plant conditions and that radiological consequences are not adversely impacted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of amendment request: February 16, 1999.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) Sections 3.6, 3.9, and 3.16 and the associated Bases for those sections for Units 1 and 2. The proposed changes would consolidate the auxiliary feedwater (AFW) cross-connect requirements by relocating the electrical power requirements from Section 3.16 to Section 3.6. The proposal also would clarify the TS with regard to permitting simultaneous entry into certain conditions of operation on Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Operation of Surry Units 1 and 2 in accordance with the proposed TS change does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed TS change is administrative in nature, and station operations are not being affected. The accidents considered relative to this proposed TS change are Rupture of Main Steam Pipe, Loss of All AC Power, and Loss of Feedwater. The probability of occurrence of these accidents has been previously evaluated to support Surry TS Amendment 143/140. The NRC reviewed the PSA [probabilistic safety analysis] basis during issuance of TS Amendment 143/140 and found it acceptable. The probability of occurrence of these accidents has been recently reviewed relative to this proposed TS change. It has been concluded that the proposed TS change is consistent with the existing analyses and evaluations and, therefore, will not increase the probability of occurrence of the identified accidents.

The consequences of the accidents identified above were also previously evaluated to support Surry TS Amendment 143/140. The PSA considerations included the AFW cross-connect capability, diesel generator dependencies, various LCO [limiting condition for operation] time periods, and a HELB [high energy line break] in the vicinity of the AFW Pumps. The previous evaluation was recently reviewed relative to this proposed TS change. This review determined that the proposed TS change is consistent with the design and licensing bases supporting the existing Technical Specifications. The proposed TS change is also consistent with the existing analyses and evaluations, the consequences of which bound any potential consequences of the proposed TS change. Therefore, the proposed TS change will not increase the consequences of the identified accidents.

Criterion 2—The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility for a new or different type of accident than any previously evaluated is not created since the considerations in the PSA and evaluations performed to support TS Amendment 143/140 are not changed by the proposed administrative TS change. The proposed TS change is consistent with the design and licensing bases supporting the existing Technical Specifications. Furthermore, station operations and plant equipment are not being affected and, therefore, the proposed TS change does not create any new failure modes or accident precursors.

Criterion 3—The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed administrative change to Surry Technical Specifications clarifies the requirements (limiting conditions for operation (LCO) and action statements) relating to the Auxiliary Feedwater (AFW) cross-connect by relocating the emergency power source requirements of TSs 3.16.A.8 and 3.16.B.4 to TS 3.6. The proposed TS change does not alter the current TS requirements or bases, as well as maintains the Surry licensing and design basis. The proposed change does not affect either station operations or plant equipment, hence the availability of equipment for the mitigation of accidents is not decreased. Furthermore, the assumptions governing the accident analyses remain unchanged, and the consequences of the existing analyses and evaluations remain bounding. This is an administrative change and as such does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch, Jr.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: February 16, 1999.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) Section 4.2 for Units 1 and 2 to relax the surveillance requirements for reactor coolant pump (RCP) flywheels. The flywheels provide extended reactor coolant flow coastdown capability if electric power for the RCPs is lost. Currently, the flywheels are subjected to an inspection program that meets the requirements of NRC Regulatory Guide 1.14, Revision 1, dated August 1975. The inspections include an ultrasonic examination (UT) of areas of high stress concentration at the bore and keyway every three years, and complete UT every 10 years. The proposed change would require only a 10-year UT, based upon an analysis presented in a Westinghouse topical report (WCAP–14535A) which has been reviewed and accepted by NRC staff.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. The reduction of the inspection requirements for the reactor coolant pump flywheels, as generically approved by the NRC and technically supported by WCAP–14535A, does not significantly increase the probability of an accident previously evaluated in the safety analysis report. The results of WCAP–14535A have been reviewed and evaluated with the technical basis accepted for referencing in license applications by the NRC in their letter entitled ''Acceptance for referencing of Topical Report WCAP–14535, Topical Report on Reactor Coolant Pump Flywheel Inspection Elimination,'' dated September 12, 1996.

The proposed Technical Specification change reduces the surveillance requirements (inspection) on the RCP flywheel. There is no change in the method of plant operation or system design. The WCAP–14535A report establishes that the proposed change has a negligible affect on the probability that the flywheel will fail given that the flywheels received preservice and inservice examinations as required previously. Therefore, the proposed change does not increase the probability of occurrence or consequences of any previously analyzed accident.

b. The proposed change to reduce the inspection requirements for the RCP flywheels as generically approved by the NRC and supported by WCAP–14535A does not create the possibility of a new or different kind of accident from any accident previously evaluated in the safety analysis report.

The proposed surveillance requirements (inspection) only reduce the inspection requirements/frequency for the reactor coolant pump flywheels, and there is no change in the method of plant operation or system design.

c. The proposed change reducing the inspection of the RCP flywheels as generically approved by the NRC and supported by WCAP–14535A, does not impact the accident analysis assumptions or the basis of any Technical Specification. As previously stated, the analysis performed in the WCAP–14535A report established that the affect on flywheel failure probability was negligible given that the initial preservice and inservice inspections under the current requirements were performed. Therefore, the proposed change in surveillance (inspection) frequency does not involve a significant reduction in the margin of safety.

The analysis provided herein demonstrates that the proposed amendment to the Surry Technical Specifications does not involve a significant increase in the probability or consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident, and does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch, Jr.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: April 12, 1999 (TSCR 212).

Description of amendment request: The purpose of the proposed amendments is to update references in the Technical Specifications. The update is necessary to reflect relocation of referenced information in the Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment corrects references within the Technical Specification requirements such that they refer to the correct information in the updated Final Safety Analysis Report (FSAR). The references changed due to relocation of the information within the FSAR. The Technical Specification requirements and intent are not changed. Therefore, these changes are administrative only and do not change the design or operation of the Point Beach Nuclear Plant [PBNP]. Operation of PBNP in accordance with the proposed amendments cannot increase the probability or consequences of an accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident previously evaluated.

The proposed changes are administrative only and therefore do not materially change any requirements for the design or operation of PBNP. Therefore, operation in accordance with the proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not create a significant reduction in a margin of safety.

The proposed changes are administrative only; correcting references within the Technical Specification requirements. No requirement on the operation or design of the facility is being changed. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: George F. Dick, Jr., Acting.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the

Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: November 19, 1998.

Brief description of amendments: The amendments revised Technical Specification 3.7.6 ''Service Water (SRW) System'' to allow operation of Calvert Cliffs Unit Nos. 1 and 2 with one SRW plate and frame heat exchanger in a subsystem secured and removing one containment air cooler from service to enable the affected SRW subsystem to remain operable.

Date of issuance: April 14, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 230 and 206.

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 16, 1998 (63 FR 69333). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated April 14, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996, as supplemented May 22, 1998, September 14, 1998, January 4, 1999, and March 19, 1999.

Brief description of amendment: The amendment modified the Technical Specifications for the Brunswick Steam Electric Plant, Units 1 and 2, to extend the Allowed Outage Time for 4.16kV AC balance of plant buses and the AC electrical power distribution system load group buses.

Date of issuance: April 15, 1999.

Effective date: April 15, 1999.

Amendment Nos.: 205 and 235.

Facility Operating License Nos. DPR–71 and DPR–62: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: February 11, 1998 (63 FR 6977). The supplemental submittals of May 22, 1998, September 14, 1998, January 4, 1999, and March 19, 1999, contained clarifying information only, and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: October 14, 1998.

Brief description of amendment: The amendment modifies the acceptance criterion for Surveillance Requirement 3.4.14.2 from the setpoint value of 465 psig to the analytical limit for the residual heat removal system of 474 psig reactor coolant system pressure.

Date of issuance: April 20, 1999.

Effective date: April 20, 1999.

Amendment No. 182.

Facility Operating License No. DPR–23. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: November 4, 1998 (63 FR 59587).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1999.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: September 3, 1997, as supplemented March 13, 1998, and March 18, 1999.

Brief description of amendment: The amendment revises the technical specifications to delete snubber operability requirements, action requirements for inoperable snubbers, and snubber testing requirements. The snubber testing requirements have been relocated to the Palisades Operating Requirements Manual.

Date of issuance: April 13, 1999.

Effective date: April 13, 1999, and shall be implemented within 60 days.

Amendment No.: 185.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 8, 1998 (63 FR 17222). The March 18, 1999, submittal requested a 60-day allowance for implementation of the amendment. This change was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423–3698.

Detroit Edison Company, Docket No. 50–16, Enrico Fermi Atomic Power Plant, Unit 1, Monroe County, Michigan

Date of amendment request: July 17, 1998 (Reference NRC–98–0044).

Brief description of amendment: This amendment revises the Enrico Fermi

Atomic Power Plant, Unit 1, License to allow possession of a nominal amount of special nuclear material.

Date of issuance: April 15, 1999.

Effective date: On the date of issuance of this amendment and must be fully implemented no later than 60-calendar days from the date of issuance.

Amendment No.: 16.

Facility Operating License No. DPR–9: Amendment revised the License by adding new Part 2.B.4 to the License.

Date of initial notice in Federal Register: October 21, 1998 (63 FR 56240). The NRC's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 15, 1999, and supplemented by letter dated March 17, 1999.

Brief description of amendments: The amendments delete from the joint Technical Specifications Section 3.3.7, ''Control Room Area Ventilation System (CRAVS) Actuation Instrumentation,'' and Section 3.3.8, ''Auxiliary Building Filtered Ventilation Exhaust System (ABFVES) Actuation Instrumentation.'' These surveillance requirements are not applicable to Catawba because the sections do not reflect the design of the Catawba units.

Date of issuance: April 8, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—177; Unit 2—169.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in FEDERAL REGISTER: March 24, 1999 (64 FR 14274). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: February 18, 1999.

Brief description of amendments: The amendments revise the Technical Specifications Surveillance Requirement (SR) 3.6.16.1 regarding surveillance of reactor building access openings, SR 3.6.16.3 regarding surveillance of reactor building structural integrity, and Administrative Controls 5.5.2 regarding the Containment Leakage Rate Testing Program. The revised requirements would provide scheduling flexibility without decreasing quality and safety margin.

Date of issuance: April 9, 1999.

Effective date: As of the date of issuance, to be implemented within 30 days from the date of issuance.

Amendment Nos.: 178—Unit 1; 170—Unit 2.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 10, 1999 (64 FR 11961). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 9, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Duquesne Light Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: November 11, 1998, as supplemented February 26, 1999.

Brief description of amendment: The amendment modified License Condition 2.C(9) to allow, on a one-time only, extension of the steam generator inspection interval in Technical Specification Surveillance 4.4.5.3.b. This will allow the steam generator inspection interval to coincide with the thirteenth refueling outage or the end of 500 effective full power days, whichever occurs sooner.

Date of issuance: April 16, 1999.

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No: 221.

Facility Operating License No. DPR–66. Amendment revised the License.

Date of initial notice in Federal Register: December 2, 1998 (63 FR 66593). The February 26, 1999, letter provided additional information but did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendment request: June 28, 1996, as supplemented by letters dated February 23 and March 15, 1999.

Brief description of amendments: The amendments revise the Technical Specifications to permit the containment equipment hatch to be open during handling of irradiated fuel in containment and core alterations provided that the capability for closure is maintained.

Date of issuance: April 16, 1999.

Effective date: As of the date of issuance, and shall be implemented within 30 days of issuance.

Amendment Nos.: Unit 1—Amendment No. 195; Unit 2—Amendment No. 203.

Facility Operating License Nos. DPR–51 and NPF–6: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 14, 1996 (61 FR 42280). The February 23 and March 15, 1999, letters provided clarifying information that did not change the scope of the original application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: April 30, 1998.

Brief description of amendment: The amendment revises the single largest post-accident load capable of being supplied by the diesel generators and relocates this value to the Bases for Technical Specification (TS)

Surveillance 4.8.1.1.2.c.3. TS Surveillance 4.8.1.1.2.c.3 has been revised to refer to ''the single largest post-accident load'' rather than a specific numerical value for diesel generator load reject testing. This change is consistent with the guidance provided in NUREG–1432 , ''Improved Standard Technical Specifications for Combustion Engineering Plants.''

Date of issuance: April 21, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 204.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 21, 1998 (63 FR 56241). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 13, 1997.

Brief description of amendment: The amendment changes the Appendix A Technical Specifications (TSs) by revising TS 6.8.4.a, Primary Coolant Sources Outside Containment, to add portions of the containment vacuum relief and primary sampling systems to the list of systems included in the Primary Coolant Sources Outside Containment Program.

Date of issuance: April 21, 1999.

Effective date: The license amendment is effective as of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 150.

Facility Operating License No. NPF–38: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 25, 1998 (63 FR 9601). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: October 1, 1997, as supplemented April 23 and November 17, 1998 and February 19, 1999.

Brief description of amendment: The changes specify criteria for evaluating the growth of pit-like intergranular attack steam generator tube degradation identified in tubes in the ''B'' once-through steam generator (OTSG). Florida Power Corporation also requested to amend the Improved Technical Specifications to clarify the date by which the OTSG inservice inspection results are required to be submitted to the NRC.

Date of issuance: April 8, 1999.

Effective date: April 8, 1999.

Amendment No.: 172.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 22, 1997 (62 FR 54873). The supplemental letters dated April 23 and November 17, 1998, and February 19, 1999 did not change the original no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: September 9, 1997, as supplemented November 7 and 25, 1997, and January 20 and October 30, 1998.

Brief description of amendment: The amendment proposed to revise the Final Safety Analysis Report (FSAR) analysis of the Makeup System letdown line failure accident. The revised analysis models the event as being terminated by manual operator action to isolate the line whereas the original analysis models an automatic isolation of the break.

Date of issuance: April 13, 1999.

Effective date: April 13, 1999.

Amendment No.: 173.

Facility Operating License No. DPR–72: Amendment approves changes to the Final Safety Analysis Report.

Date of initial notice in Federal Register: September 24, 1997 (62 FR 50005). The supplemental letters dated November 7 and 25, 1997, January 20, 1998, and October 30, 1998, did not change the original proposed no significant hazards consideration determination, or expand the scope of the amendment request as originally noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: October 30, 1998, as supplemented April 7, 1999.

Brief description of amendment: Changes the Crystal River Unit 3 Technical Specifications to delete a note regarding the number of required channels for the Degrees of Subcooling function, and to subdivide the Core Exit Temperature (Backup) function into two new functions in Table 3.3.17–1, Post-Accident Monitoring Instrumentation.

Date of issuance: April 20, 1999.

Effective date: April 20, 1999.

Amendment No.: 174.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 13, 1999 (64 FR 2246). The April 7, 1999, supplement did not affect the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: May 27, 1998, as supplemented October 9, 1998.

Brief description of amendment: Deletes the requirement for operability of the safety injection tanks in Mode 4 of reactor operation.

Date of Issuance: April 8, 1999.

Effective Date: Amendment is effective within 30 days of receipt.

Amendment No.: 100.

Facility Operating License No. NPF–16: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 29, 1998 (63 FR 40556). The October 9, 1998 supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: November 25, 1998, as supplemented February 12, 1999.

Brief description of amendment: The amendment approves the proposed surveillance Technical Specifications related to the once through steam generator inservice inspections to be completed during the 13R refueling outage in fall 1999. Related TS Bases changes are also included.

Date of issuance: April 13, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 209.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 16, 1998 (63 FR 69342).

The February 12, 1999, submittal modified the request, but did not affect the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: October 15, 1998, as supplemented February 3, and February 12, 1999.

Brief description of amendment: The amendment authorizes a revision to the TMI–1 updated final safety analysis report (UFSAR) for use of revised atmospheric dispersion factors (X/Q) (obtained by utilizing recent meteorological data) in determining Chapter 14 postulated accident analysis radiological dose consequences at Technical Specification Section 5.1.1 defined exclusion area boundary (EAB) and low population zone (LPZ).

Date of issuance: April 15, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 210.

Facility Operating License No. DPR–50. Amendment authorizes changes to the UFSAR.

Date of initial notice in Federal Register: November 18, 1999 (63 FR 64117).

The February 3, and February 12, 1999, letters were within the scope of the original application and did not change the staff's no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: December 28, 1998, as supplemented March 1 and 29, 1999.

Brief description of amendment: The amendment revises Technical Specification (TS) 2.2.1, ''Limiting Safety System Settings-Reactor Trip Setpoints,'' to reflect revised loss of normal feedwater flow analyses.

Date of issuance: April 8, 1999.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 232.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 10, 1999 (64 FR 6701). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, Attn: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: January 18, 1999.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.6.1.2, ''Containment Systems—Containment Leakage,'' and also revises the related TS bases and Final Safety Analysis Report sections. The revisions relate to changes in the secondary containment bypass leakage.

Date of issuance: April 14, 1999.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 234.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 10, 1999 (64 FR 6703). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, Attn: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: February 10, 1999.

Brief description of amendment: The amendment incorporates alternative inspection requirements into Technical Specification Surveillance Requirement 3/4.4.10, ''Structural Integrity,'' for the reactor coolant pump flywheel.

Date of issuance: April 16, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 169.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 10, 1999 (64 FR 11964).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, Attn: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: February 5, 1999, as supplemented March 1, 1999.

Brief description of amendments: The amendments revise certain requirements for repair of defective steam generator tubs specified in Technical Specification 4.12, ''Steam Generator Tube Surveillance,'' based on the latest revision to a previously approved methodology.

Date of issuance: April 15, 1999.

Effective date: April 15, 1999, with full implementation within 30 days.

Amendment Nos.: 144 Unit 1—135 Unit 2.

Facility Operating License Nos. DPR–42 and DPR–60. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 10, 1999 (64 FR 11964). The March 1, 1999, supplement provided corrected Technical Specification pages. This information was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 15, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No.1, Washington County, Nebraska

Date of amendment request: March 18, 1998.

Brief description of amendment: The amendment revises Technical Specification (TS) 5.2.f and TS 5.11.2 to change the title of ''Shift Supervisor'' to ''Shift Manager.''

Date of issuance: April 15, 1999.

Effective date: April 15, 1999.

Amendment No.: 190.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 8, 1998 (63 FR 17227).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: May 16, 1996.

Brief description of amendment: The amendment revises requirements for Plant Operating Review Committee review of fire protection program and procedure changes.

Date of issuance: April 12, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 252.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 3, 1996 (61 FR 34895).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: December 16, 1998, as supplemented March 22, 1999.

Brief description of amendment: This amendment revised Technical Specification (TS) Surveillance Requirements 4.8.1.1.2 and 4.8.1.1.3, Table 4.8.1.1.2–1, and the associated Bases. These changes removed the emergency diesel generator accelerated testing and special reporting requirements from the TSs in accordance with the guidance provided in Generic Letter 94–01.

Date of issuance: April 14, 1999.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 119.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 13, 1999 (64 FR 2251).

The supplemental letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: June 12, 1998, as supplemented July 23, 1998 and September 8, 1998.

Brief description of amendment: The amendment revises Technical Specification (TS) Limiting Condition for Operation Sections 3.7.1.1, 3.7.1.2, and 3.7.1.3. Specifically, the changes revise the Ultimate Heat Sink limits for river water temperature, in order to increase operational flexibility. In addition, the Station Service Water System (SSWS) and Safety Auxiliaries Cooling System (SACS) TS Action Statements have been revised to provide additional restrictions on continued plant operation. These revisions provide more explicit TS direction for plant operation under limiting SSWS/SACS configurations.

Date of issuance: April 19, 1999.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 120.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 1, 1999 (63 FR 35995) The July 23, 1998, and September 8, 1998, supplements provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 1999.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: September 18, 1998, as supplemented by letter dated February 5, 1999.

Brief description of amendment: The amendment revises Virgil C. Summer Nuclear Station Technical Specifications to permit use of the BEACON system. BEACON is a core power distribution monitoring and support system based on a three-dimensional nodal code.

Date of issuance: April 9, 1999.

Effective date: April 9, 1999.

Amendment No.: 142.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: November 18, 1998 (63 FR 64121).

The February 5, 1999, submittal contained clarifying information only, and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 9, 1999.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: January 24, 1997.

Brief description of amendments: The amendments revised Surveillance Requirement (SR) 3.8.1.9 to Technical Specification 3.8.1, ''AC Sources—Operating,'' to more accurately reflect test conditions and plant design requirements.

Date of issuance: April 9, 1999.

Effective date: April 9, 1999, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 2–151; Unit 3–143.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 11, 1998 (63 FR 6997).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 9, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: January 20, 1999.

Brief description of amendments: The amendments revise the descriptive details of Technical Specification 4.7.1.2.1.a, regarding performance testing of the Auxiliary Feedwater (AFW) pumps, to more closely adhere to NUREG–1431, ''Improved Standard Technical Specifications for Westinghouse Plants.'' This involves relocating the surveillance-required numerical values for the AFW pump performance test discharge pressure and flow rate to the South Texas Project Updated Final Safety Analysis Report.

Date of issuance: April 16, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—Amendment No. 105; Unit 2—Amendment No. 92.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 24, 1999 (64 FR 9201).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: January 26, 1999.

Brief description of amendments: The amendments revise part of the inservice inspection requirements for the reactor coolant pump flywheel from an in-place ultrasonic volumetric examination of the areas of higher stress concentration at the bore and keyway at approximately 3-year intervals and a surface examination of all exposed surfaces and complete ultrasonic volumetric examination at approximately 10-year intervals to ultrasonic examination over the volume from the inner bore of the flywheel to the circle of one-half the outer radius once every 10 years.

Date of issuance: April 16, 1999.

Effective date: April 16, 1999, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 1—Amendment No. 106; Unit 2—Amendment No. 93.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 10, 1999 (64 FR 11968).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 30, 1998.

Brief description of amendments: Revises Units 1 and 2 Technical Specification (TS) Section 3/4.4.5, ''Steam Generator'' Surveillance Requirements. The future installation of the new Delta 94 steam generators at the South Texas Project, Units 1 and 2 necessitates changes to the steam generator tube sample selection and inspection requirements; inservice inspection frequencies; acceptance criteria; and inspection reporting requirements.

Date of issuance: April 19, 1999.

Effective date: April 19, 1999, to be implemented following the replacement of Unit 1 Model E steam generators with Model delta94 steam generators and prior to Unit 1 operation with the delta94 steam generators installed.

Amendment Nos.: Unit 1—Amendment No. 107; Unit 2—Amendment No. 94.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 4, 1998 (63 FR 59595).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 6, 1997, as supplemented by letters dated September 4 and 18, 1997, December 9, 1997, and February 4, 1999.

Brief description of amendments: The amendments revise Technical Specification (TS) Table 2.2–1 and TS 3/4.2.5 to allow the reactor coolant system total flow rate to be determined using cold leg elbow tap differential pressure measurements.

Date of issuance: April 19, 1999.

Effective date: As of its date of issuance to be implemented within 7 days of issuance.

Amendment Nos.: Unit 1—Amendment No. 108; Unit 2—Amendment No. 95.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 14, 1997 (62 FR 43556).

The September 4 and 18, 1997, December 9, 1997, and February 4, 1999, letters provided clarifying information that did not change the original application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendments: August 27, 1998, supplemented by letter dated March 19, 1999 (TS 98–04).

Brief description of amendments: The amendments change the Technical Specifications (TS) for Sequoyah Nuclear Plant, Unit 2 reactor by adding a sentence at the end of TS Section 5.3 authorizing installation of a limited number of lead test assemblies containing downblended uranium in accordance with Topical Report BAW–2328.

Date of issuance: April 12, 1999.

Effective date: April 12, 1999.

Amendment Nos.: 234.

Facility Operating License No. DPR–79: The amendment revises the TS.

Date of initial notice in Federal Register: March 10, 1999 (64 FR 11969). The supplemental letter of March 19, 1999 did not change the initial proposed no significant hazards condition determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 12, 1999.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: June 29, 1998, as supplemented by letter dated February 19, 1999.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.7.1.7 operability requirements to require four atmospheric steam dump (ASD) lines to be operable. Other changes were made to TS 3.7.1.7 to address action statements and surveillance requirements for the four ASD lines.

Date of issuance: April 20, 1999.

Effective date: April 20, 1999, to be implemented within 30 days from the date of issuance.

Amendment No.: 131.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 9, 1998 (63 FR 48271).

The February 19, 1999, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Elmer Ellis Library, University of Missouri, Columbia, Missouri 65201.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: May 28, 1998, as supplemented December 11, 1998.

Brief description of amendments: These amendments revise Technical Specifications (TS) to provide a specific numerical setting for reactor trip, reactor coolant pump trip, and auxiliary feedwater initiation on a loss of power to the 4 kilovolt (kV) buses. Changes to the bases for the affected TS sections are also being made.

Date of issuance: April 23, 1999.

Effective date: April 23, 1999.

Amendment Nos.: Unit 1–189; Unit 2–194.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 15, 1998 (63 FR 38208).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 23, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Dated at Rockville, Maryland, this 28th day of April 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11119 Filed 5–4–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

DCI Telecommunication, Inc., File No. 500–1; Order of Suspension of Trading

May 3, 1999.

It appears to the Securities and Exchange Commission (''Commission'') that there is a lack of current and accurate information concerning the securities of DCI Telecommunications, Inc. (''DCI'') because of questions regarding the accuracy and adequacy of DCI's financial statements, specifically, DCI's apparent inflation of revenues by accounting for one of more business combinations as a pooling of interests.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of DCI.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in DCI securities is suspended for the period from 9:30 a.m. EST, May 3, 1999 through 11:59 p.m. EST, on May 14, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11335 Filed 5–3–99; 11:26 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3176]

State of North Carolina

Duplin and Jones Counties and the contiguous counties of Carteret, Craven, Lenoir, Onslow, Pender, Sampson, and Wayne in the State of North Carolina constitute a disaster area as a result of damages caused by severe storms and tornadoes that occurred on April 14, 1999. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on June 25, 1999 and for economic injury until the close of business on January 26, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 317612 for physical damage and 9C6600 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 26, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–11236 Filed 5–4–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 3033]

Shipping Coordinating Committee, Maritime Safety Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 10:00 A.M. on Thursday, May 13, 1999, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC. The purpose of this meeting will be to finalize preparations for the 71st Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for May 19–28, 1999, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

a. Adoption of amendments to the Safety of Life at Sea (SOLAS) Convention;

b. Bulk carrier safety;

c. Role of the human element;

d. Formal safety assessment;

e. Unsafe practices associated with the trafficking or transport of migrants by sea; and

f. Reports of seven subcommittees—Fire protection; Training and watchkeeping; Stability, load lines and fishing vessel safety; Dangerous goods, solid cargoes and containers; Ship design and equipment; Flag State implementation; and Bulk liquids and gases.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (G–MS), U.S. Coast Guard, 2100 2nd Street, SW, Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2970.

Dated: April 28, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–11281 Filed 5–4–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice No. 3034]

Shipping Coordinating Committee, International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m., on Monday, May 17, 1999, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The purpose of this meeting is to report on the results of the Seventy Ninth Session of the International Maritime Organization Legal Committee (LEG 79), held April 19–23, 1999 in London.

This SHC meeting will address the following topics: the draft IMO Guidelines on Shipowners' Responsibilities in Respect of Maritime Claims; the draft Protocol to the Athens Convention relating to passenger claims; a draft convention regarding bunker fuel spills; and a draft convention regarding wreck removal.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information, or to submit views in advance of the meeting, please contact Captain Malcolm J. Williams, Jr., or Lieutenant William G. Rospars, U.S. Coast Guard, Office of Maritime and International Law (G–LMI), 2100 Second Street, S.W., Washington, D.C. 20593–0001; telephone (202) 267–1527; fax (202) 267–4496.

Dated: April 29, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–11282 Filed 5–4–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

The Federal Aviation Administration (FAA) Communications/Surveillance Operational Implementation Team (C/SOIT) Hosted Forum on the Operational Implementation of Satellite Communications, Surface Movement Surveillance Systems, and Data Link Technologies for Aviation Applications in the National Airspace System (NAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA C/SOIT will be hosting a public forum to discuss the FAA's data link and surface movement surveillance systems. This meeting will be held in response to aviation industry requests to the FAA Administrator. Formal presentations will be provided followed by a question and answer session. In subsequent days, working group sessions will be held to discuss such topics as Controller-Pilot Data Link Communications, High Frequency Data Link, Human Factors, Flight Information

Services and Satellite Communications. Those who plan to attend are invited to submit proposed discussion topics. Requests to make presentations to the assembled forum should be made to the **FOR FURTHER INFORMATION CONTACT** listed.

DATES: June 1–4, 9 a.m.–5 p.m.

ADDRESSES: Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Registration and submission of suggested discussion topics may be made to Ms. Dottie Wilkins, telephone (202) 484–2535, fax (202) 484–1510 or email at *dottie.ctr.wilkins@faa.gov*.

SUPPLEMENTARY INFORMATION: Open to the aviation industry with attendance limited to space available. Participants are requested to register their intent to attend this meeting by May 10, 1999. Names, affiliations, addresses, telephone and facsimile numbers should be sent to the **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, D.C. on April 30, 1999.

Donald W. Streeter,

C/SOIT Co-Chairman.

[FR Doc. 99–11296 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

The Federal Aviation Administration (FAA) Satellite Operational Implementation Team (SOIT) hosted forum on the capabilities of the Global Position System (GPS)/Wide Area Augmentation System (WAAS) and Local Area Augmentation System (LAAS)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

Name: FAA SOIT Forum on GPS/WAAS/LAAS Capabilities.

Time and date: 9 a.m.—5 p.m., May 17–18, 1999.

Place: The Holiday Inn Fair Oaks Hotel, 11787 Lee Jackson Memorial Highway, Fairfax, Virginia 22033.

Status: Open to the aviation industry with attendance limited to space available.

Purpose: The FAA SOIT will be hosting a public forum to discuss the FAA's GPS approvals and WAAS/LAAS operational implementation plans. This meeting will be held in conjunction with a regularly scheduled meeting of the FAA SOIT and in response to aviation industry requests to the FAA Administrator. Formal presentations by the FAA will be followed by a question and answer session. Those planning to attend are invited to submit proposed discussion topics.

Registration: Participants are requested to register their intent to attend this meeting by May 3, 1999. Names, affiliations, telephone and facsimile numbers should be sent to the point of contact listed below.

Point of contact: Registgration and submission of suggested discussion topics may be made to Mr. Steven Albers, phone (202) 267–7301, fax (202) 267–5086, or email at steven.CTR.albers@faa.gov.

Issued in Washington, D.C., on March 22, 1999.

Hank Cabler,

SOIT Co-Chairman.

[FR Doc. 99–11293 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 99–04–C–00–DSM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Des Moines International Airport, Des Moines, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Des Moines International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 4, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William F. Flannery, Aviation Director, at the following address: City of Des Moines, 5800 Fleur Drive, Suite 201, Des Moines, IA 50321.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Des Moines, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Des Moines International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulation (14 CFR Part 158).

On April 8, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Des Moines, Iowa, was not substantially complete within the requirements of section 158.25 of Part 158. The City of Des Moines submitted supplemental information on April 16, 1999, to complete the application. The FAA will approve or disapprove the supplemental application, in whole or in part, no later than August 18, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June, 2005.

Proposed charge expiration date: February, 2006.

Total estimated PFC revenue: $1,850,000.

Brief description of proposed project: Storm water detention facility.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Des Moines International Airport.

Issued in Kansas City, Missouri on April 20, 1999.

George A. Hendon,

Manager, Airports Division Central Region.

[FR Doc. 99–11292 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lafourche Parish, Louisiana

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 a proposed highway project in Lafourche Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: William C. Farr, Program Operations

Manager, Federal Highway Administration, P.O. Box 3929 (Room 255), Baton Rouge, Louisiana, 70821, Telephone: (225) 389–0465, Facsimile: (225) 389–0758.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Louisiana Department of Transportation and Development (LDOTD), will prepare an Environmental Impact Statement (EIS) on a proposal to construct a new highway facility on current or new alignment. The proposed project, known locally as the LA 1 Improvements from Golden Meadow to Port Fourchon, is generally located in the present LA 1 corridor from Golden Meadow, Louisiana to Port Fourchon, Louisiana. The roadway includes several alternates based on the number of navigable bridges needed for various alignments. The approximate length of the project is 29 kilometers (18 miles).

The proposed improvements would improve the capacity, reliability, and safety of the existing LA 1 and increase regional access to Port Fourchon for persons, businesses and industry in the region. It is a part of the National Highway System and would improve access to the vitally important deep-water port of Port Fourchon on the coast of Louisiana.

The northern terminus of the proposed project will be the southern end of route LA 3235 and the southern terminus will be Port Fourchon.

Alternatives to be considered are:

(1) The ''Do-nothing'' Alternative, where the current and existing LA 1 is repaired and maintained in its present location, capacity, and character.

(2) The ''Build'' Alternative, considering several different alignments, roadway type and control of access.

An agency scoping meeting will be held at a time and place to be determined at a later date. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, state, and local agencies and to private organizations, including conservation groups and groups of individuals who have expressed interest in the project in the past. At least one public informational meeting will be held in the project area that will be affected. In addition, a Public Hearing will be held. Public notice will be given of the time and place of the public informational meeting(s) and the Public Hearing. The draft EIS will be available for public and agency review and comment prior to the Public Hearing.

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 April 28, 1999.

William A. Sussmann,

Division Administrator, FHWA, Baton Rouge, Louisiana.

[FR Doc 99–11227 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5200; Notice 2]

Capacity of Texas, Inc.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 105

For the reasons expressed in this notice, we are granting the application by Capacity of Texas, Inc., of Longview, Texas (''Capacity''), for a temporary exemption from the anti-lock requirements of Motor Vehicle Safety Standard No. 105 *Hydraulic and Electric Brake Systems* that became effective March 1, 1999. Capacity applied for an exemption on the basis that ''compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.'' 49 CFR 555.6(a).

We published a notice of receipt of the application on March 10, 1999, and afforded an opportunity for comment (64 FR 11979). We received one comment on the application, from the National Truck Equipment Association (NTEA), which supported it.

The discussion that follows recapitulates Capacity's arguments and is based on information contained in the company's application.

Why Capacity Needs a Temporary Exemption

S5.5 of Standard No. 105 requires any motor vehicle with a gross vehicle weight rating (GVWR) greater than 10,000 pounds, except for a vehicle that has a speed attainable in 2 miles of not more than 33 mph, to be equipped with an antilock brake system if it is manufactured on and after March 1, 1999. Capacity manufactures bus chassis that it provides to World Trans, Inc., of Hutchinson, Kansas, for completion. However, with respect to the buses that will be covered by the exemption, if granted, Capacity has informed us that, pursuant to the option granted the manufacturer of an incomplete vehicle by 49 CFR 568.7(a), it is assuming the responsibilities of the final-stage manufacturer (World Trans). As such, Capacity will certify that the completed buses comply with all applicable Federal motor vehicle safety standards, and provide notification and remedy if required.

Why Compliance Would Cause Capacity Substantial Economic Hardship

Capacity produces a limited quantity (100 or less yearly) bus chassis for World Trans, and, as discussed more fully below, has been unable to find a vendor who is willing to provide antilock controllers. Therefore, if Capacity is not granted an exemption, it will have to withdraw the chassis from production, and World Trans's bus production will be diminished. This will cause both Capacity and World Trans to lose income in each of the three years for which an exemption has been requested. Capacity's projected net income for its fiscal year ending October 31, 1998, was $2,631,018. Its projected net income for the year ending October 31, 1999, is $2,286,617 if an exemption is granted, and $1,945,087 if it is not. Thus, net income would be reduced by $341,530 in the absence of an exemption covering production from March 1–October 31, 1999.

How Capacity Has Tried To Comply With the Standard in Good Faith

Capacity contacted four different brake component suppliers. Its search for an anti-lock controller began with Lucas/Varity (formerly Kelsey-Hayes) because of its longtime association with Ford Motor Company and the fact that the bus chassis uses a common Dana drive axle with many Ford light duty trucks. But the company was told that no development could be approached until Capacity could guarantee a purchase order in the range of 10,000 controllers.

Capacity next approached Eaton-Bosch, and found that it is currently producing hydraulic anti-lock brake systems for vehicles up to 12,000 lbs GVWR. Although the company is developing a system for vehicles up to 20,000 lbs GVWR, the system won't be finalized until 2001.

The third vendor that Capacity approached was ITT Automotive-Teves,

which expects to have a system ready for installation on vehicles up to 20,000 lbs GVWR by the fourth quarter of 1999. The company told Capacity that it will take a minimum of one winter test season to assure that the controller can be adapted to a vehicle. Thus, Capacity does not foresee that it can use this system and comply before the Fall of 2000.

Finally, Capacity consulted Rockwell/Meritor-Wabco System. This company has a controller that ''can be fine tuned on a vehicle to meet different dynamic characteristics.'' However, ''even if this system proves out, it appears that a year's testing will be required to adapt it to our bus chassis.''

Why Exempting Capacity Would Be Consistent With the Public Interest and Objectives of Motor Vehicle Safety

Capacity argued that an exemption would be in the public interest and consistent with traffic safety objectives because

many of these vehicles end up serving small cities and rural transit districts. These customers have limited budgets so the availability of an economical low floor bus allows them to prove fee service in areas where large buses are too costly to operate. The low floor feature of this vehicle allows the finished bus to readily serve the handicapped community.

In addition, ''these buses operate in shuttle and light transit operations where high speed stops aren't commonly experienced.'' Capacity believes that rushing an anti-lock system into production might present a risk to safety.

Our Findings and Decision

At the moment, Capacity's net income is larger than many low-volume manufacturers who apply for temporary exemptions. However, in the absence of an exemption, Capacity will not be able to generate revenues by providing ''100 or less yearly'' bus chassis for its customer, World Trans until such time as it is able to produce a conforming bus. This raises the possibility that World Trans would look elsewhere for bus chassis and that Capacity would permanently lose World Trans as a customer. In the absence of an exemption, it is logical to assume that Capacity would attempt to reduce its expenses by a reduction in its work force. As discussed earlier, the brake component suppliers contacted by Capacity have been unable to help the company comply by March 1, 1999, the effective date of the anti-lock requirement. Lucas/Varity does not appear interested in producing an anti-lock controller in small quantities. Eaton-Bosch does not anticipate having a suitable controller until 2001. ITT Automotive Teves does not appear able to provide a reliable controller before late in 2000. Rockwell/Meritor-Wabco System may have a suitable controller, but if so, ''a year's testing will be required to adapt it to [the Capacity] bus chassis.'' It appears that two of the three suppliers may have a usable anti-lock controller that could be installed were a two-year exemption provided.

A two-year exemption would also be consistent with our views that exemptions must be sparingly given to buses because they are motor vehicles which may carry hundreds of passengers daily. Some of Capacity's buses, it appears, will operate in environments where high speed stops are not commonly experienced. Although we do not know how many passengers these buses are designed to carry, they appear to be smaller than big-city transit buses even though their GVWR is greater than 10,000 pounds.

It is in the public interest to facilitate the availability of relatively inexpensive buses whose size and price are appropriate for the small city and rural district transit markets in which they are sold and operated. In its comment in support of the application, NTEA stated that denial of the exemption request would also hurt the communities that need ''these specialized vehicles.'' NTEA also commented that ''the features of this bus also allow it to serve the handicapped community.''

For these reasons, we find that compliance with S5.5 of Motor Vehicle Safety Standard No. 105 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further find that a temporary exemption would be consistent with the public interest and the objectives of motor vehicle safety.

Accordingly, Capacity of Texas, Inc., is hereby granted NHTSA Temporary Exemption No. 99–5 from S5.5 of 49 CFR 571.105 Standard No. 105 Hydraulic and Electric Brake Systems, expiring April 1, 2001.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: April 30, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–11302 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–5210 Notice 1]

Ford Motor Co.; Receipt of Application for Determination of Inconsequential Non-Compliance

Ford Motor Company (''Ford''), of Dearborn, Michigan has applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 ''Motor Vehicle Safety'' for a noncompliance with 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205, ''Glazing Materials,'' on the basis that the noncompliance is inconsequential to motor vehicle safety. Ford has filed a report of noncompliance pursuant to 49 CFR part 573 ''Defects and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

Description of the Noncompliance

Certain Ford Contour, Mercury Mystique, Ford Econoline, Ford Ranger and Mazda B series (manufactured by Ford) vehicles were equipped with windshields which were not marked with the symbol ''AS1'' per the requirements of S6 of Federal Motor Vehicle Safety Standard (FMVSS) 205, which incorporates the requirements of section 6 of ANSI Z26.1 (American National Standard Institute, Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways—1977). The noncompliant windshields meet all performance requirements of FMVSS 205 and ANSI Z26.1.

Number of Vehicles

Three hundred eighty-two thousand nine hundred (382,900) vehicles manufactured between June 11, 1997 and September 25, 1998, are believed to contain the noncompliance. Approximately 8,400 of these were Mazda B Series vehicles.

Supporting Information as Submitted by Ford

The windshields, while produced without the AS1 mark, contain all other markings required by FMVSS 205 and ANSI Z26.1 including the manufacturer's trademark, DOT number, and model number. The model number identifies the glazing material as laminated safety glass, AS1. In addition,

the trademark includes the word ''Laminated'' and also includes an aftermarket National Auto Glass Specification number that identifies the vehicles for which the windshield is designed. With the windshield markings provided, a customer is highly unlikely to encounter any problems obtaining the appropriate replacement windshield should that need arise.

This marking failure first occurred on the Contour/Mystique and was precipitated by a production change to remove the windshield shade band. In the setup for the production of clear windshields, the AS1 mark was inadvertently omitted when trademark information was provided to a supplier. The same band was subsequently deleted on the other noncompliant vehicles, resulting in those windshields also being produced without the mark.

The stated purposes of FMVSS 205 are to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collections. Because the windshields fully meet all of the applicable performance requirements, the absence of the AS1 mark has no effect upon the ability of the windshield glazing to satisfy these stated purposes and thus perform in the manner intended by FMVSS 205. Neither Ford nor Mazda is aware of any complaints of crashes or injuries related to this condition.

Though not a safety concern, to preclude any potential customer difficulty during vehicle inspections in states where glazing markings are checked during the state inspection process, Ford and Mazda, beginning in January 1999, are providing letters to the approximately 87,500 affected owners in those states (i.e., California, Maine, Maryland, Missouri, New Jersey, New York, Oklahoma, Utah, Vermont, and West Virginia). These letters will identify the condition, certify that the windshields fully meet all other marking requirements and all performance requirements of FMVSS 205, and indicate that state authorities responsible for vehicle inspections have been notified of this condition. These letters also indicate that Ford and Mazda will apply the AS1 marking on any noncompliant windshield in these states if the owner requests the marking be applied. In addition, Ford and Mazda will advise dealers in these states, through the year 2001, to mark the windshields that do not have the AS1 mark when the vehicle is brought in for a regular service, regardless of whether the marking has been requested by the owner. Based on Ford's past experience with such programs, the company believes that this will result in the majority of the windshields in these states being marked. Also, coincident with the owner letters, a letter will be sent to the appropriate authority in the above identified states providing any explanation of the condition, certification that the windshields fully meet all other marking requirements and all performance requirements of FMVSS 205, and a listing of vehicle VIN numbers of all affected vehicles registered in that state.

Interested persons are invited to submit written data, views and arguments on the petition of Ford, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, National Highway Traffic Safety Administration, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 4, 1999.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on: April 29, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–11258 Filed 5–04–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5607; Notice 1]

Qvale Automotive Group SrL; Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

We are asking your views on the application by Qvale Automotive Group, SrL of Modena, Italy (''Qvale''), for an exemption until March 31, 2001, from the automatic restraint requirements of Motor Vehicle Safety Standard No. 208 Occupant Protection Systems. Qvale has applied on the basis that ''compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.'' 49 CFR 555.6(a).

We are publishing this notice of receipt of the application in accordance with our regulations on temporary exemptions. This action does not represent any judgment by us about the merits of the application. The discussion that follows is based on information contained in Qvale's application.

Why Qvale Needs a Temporary Exemption

Qvale is an Italian corporation, formed in January 1998. It is controlled by an American corporation owned by the Qvale family of San Francisco, California, which was also formed in January 1998. The American corporation does business as DeTomaso Automobiles, Ltd.

DeTomaso Modena SpA, a small manufacturer of automobiles which produces less than 100 motor vehicles a year, developed a convertible passenger car, the Bigua, but was financially unable to produce it. Qvale has obtained the worldwide rights to manufacture and sell the Bigua under the name DeTomaso Mangusta. As of March 1999, Qvale had invested more than $7,000,000 in the Mangusta project, and anticipates an additional investment of $3,000,000 by the time production begins in September 1999.

When the project began in early 1998, Qvale expected that a Ford Mustang air bag system could be easily integrated into the Mangusta, because DeTomaso Modena had anticipated that the U.S. would be the primary market for the car. However, it has developed that significant re-engineering will be required to incorporate an automatic restraint system that complies with S4.1.5.3 of Standard No. 208. Qvale believes that it will be able to manufacture a conforming car beginning in May 2000, but says that it needs an exemption so that it may sell the Mangusta in the United States, beginning in November 1999, to generate funds under its business plan. It has asked to be exempted through March 31, 2001, to allow for unforeseen problems during development. The applicant intends to retrofit exempted vehicles with air bag systems when they become available. It anticipates sales of 200–250 Mangustas under the exemption.

Why Compliance Would Cause Qvale Substantial Economic Hardship

Neither Qvale nor its American parent has had any income or sales since their

inception in January 1998. Qvale had a net loss of $685,000 for 1998, with a negative cash flow of $511,000. If an exemption is not granted and U.S. sales do not begin until May-June 2000, the company anticipates total net losses of approximately $4,800,000 in 1999 with a total negative cash flow of over $3,000,000. Even with an exemption that would permit U.S. sales to begin in November 1999, Qvale expects a net loss for 1999 of $4,124,025 and a negative cash flow of $2,502,025. In fact, even with an exemption, Qvale anticipates net losses through at least 2001 though the cash flow would become positive in 2000 and increase slightly in 2001.

Qvale's U.S. parent has already hired a sales and distribution staff, and would suffer losses of $1,800,000 if it cannot begin sales of the Mangusta in November 1999.

How Qvale Has Tried To Comply With the Standard in Good Faith

Qvale's production plan involves the use of the 4.6L Ford Cobra V–8 engine as well as a significant number of Ford parts including the air bag system. Ford's parts division, Visteon, is the prime subcontractor responsible for the interior and air bags. Isis Automotive, an engineering company in the United Kingdom, has been chosen as the safety engineering project manager.

It was anticipated that the Ford air bag system could be integrated into the Mangusta but the final and chassis engineering that had continued during the Fall of 1998 indicated otherwise. Visteon found it necessary to redesign the dashboard, including the passenger side air bag door in order to make the Mangusta commercially viable, but is not able to furnish the redesigned interior parts until the Summer of 1999. Without these parts, an air bag system cannot be properly tested. In addition, the construction of 10 pre-production prototypes necessary for safety testing has been delayed until July 1999 because of problems with the prototype manufacturer (an outside supplier) and ongoing design changes. Finally additional time is needed to organize the supplier and engineering personnel and resources necessary for the air bag system development work (e.g., laboratory testing and sensor calibration).

Because of these factors, Qvale's plans to incorporate an air bag system have been delayed from September 1999 to May or June 2000.

Why Exempting Qvale Would Be Consistent With the Public Interest and Objectives of Motor Vehicle Safety

Qvale believes that the small number of vehicles that will be produced under an exemption will have no discernable effect upon safety. It intends to equip all of its U.S. vehicles with manual three point belts, and will meet the injury criteria specified in S4.1.5.3 when tested with belted dummies. The company will affix a label to the instrument panel informing occupants of the exemption and the need to fasten their safety belts. Qvale plans to re-engineer its air bag system so that it may be installed as a retrofit in exempted vehicles. Mangustas will comply with all other applicable Federal motor vehicle safety standards.

In Qvale's opinion, an exemption would permit the availability in the U.S. of the Mangusta's ''high technology, light weight TRM composite body.'' The success of the project will have a beneficial effect upon Visteon, a division of Ford Motor Company, as well as employment elsewhere in the U.S. of sales and service personnel.

How To Comment on Qvale's Application

If you would like to comment on Qvale's application, send two copies of your comments, in writing, to: Docket Management, National Highway Traffic Safety Administration, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590, in care of the docket and notice number shown at the top of this document.

We shall consider all comments received before the close of business on the comment closing date stated below. To the extent possible, we shall also consider comments filed after the closing date. You may examine the docket in Room PL–401, both before and after that date, between 10 a.m. and 5 p.m.

When we have reached a decision, we shall publish it in the **Federal Register**.

Comment closing date: May 25, 1999.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: April 30, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–11301 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33725 (Sub–No. 1)]

CSX Transportation, Inc.—Trackage Rights Exemption—Consolidated Rail Corporation

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33725 to permit the trackage rights to expire on the Split Date (as described in this decision) or June 30, 1999, whichever occurs first, in accordance with the agreement of the parties.[1]

As noted by CSXT, this trackage rights arrangement is intended to be only temporary. The Conrail trackage that is the subject of the trackage rights is to be allocated to Conrail's subsidiary, New York Central Lines LLC, and operated by CSXT, after what is referred to as the ''Split Date,'' or the date of the division of Conrail's assets, as authorized by the Board in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc., and Consolidated Rail Corporation,* STB Finance Docket No. 33388 (STB served July 23, 1998). CSXT states that it expects the Split Date to occur on June 1, 1999. The parties intend for the trackage rights to terminate on the Split Date, but if the Split Date does not occur before June 30, 1999, the parties' agreement provides for termination of the trackage rights on June 30, 1999.

Under a separate agreement, CSXT is leasing approximately 18,850 feet of track in Conrail's Hillery Yard for storage of railroad cars.

[1] On March 12, 1999, CSX Transportation, Inc. (CSXT) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by Consolidated Rail Corporation (Conrail) to grant temporary overhead trackage rights to CSXT, to operate its trains, locomotives, cars and equipment with CSXT's own crews, over: (1) Conrail's Olin Running Track between the Conrail/CSXT connection at milepost 0.5± and milepost 0.0±; and (2) Conrail's Pekin Running Track between milepost 0.0± and the limits of trackage being leased by CSXT at the connection to Conrail's Hillery Yard at milepost 1.85± in Danville, IL, a distance of approximately 1.9 miles, including necessary head and tail room. *See CSX Transportation, Inc.—Trackage Rights Exemption—Consolidated Rail Corporation,* STB Finance Docket No. 33725 (STB served Apr. 1, 1999). The trackage rights operations under the exemption became effective on March 19, 1999, and are subject to standard labor protective conditions.

DATES: This exemption will be effective on June 1, 1999. Petitions to reopen must be filed by May 25, 1999.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33725 (Sub-No. 1) must be filed with the Office of the Secretary, Surface Transportation Board, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, N.W., Washington, DC 20006. Telephone: (202) 289–4357. (Assistance for the hearing impaired is available through TDD services (202) 565–1695.)

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: April 28, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–11254 Filed 5–04–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

[No. 981–0158]

Notice Inviting Applications to the Presidential Awards for Excellence in Microenterprise Development

AGENCY: Community Development Financial Institutions Fund, Department of Treasury

ACTION: Notice inviting applications.

SUMMARY: The Presidential Awards for Excellence in Microenterprise Development (''Presidential Awards'') is a non-monetary awards program created as one of the commitments made by the United States at the United Nations Fourth World Conference on Women held in Beijing, China in September 1995. As the key community development finance initiative of the Administration, the Community Development Financial Institutions Fund (''Fund'') of the U.S. Department of Treasury was selected to administer the Presidential Awards Program. The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et. seq.*) created the Fund to promote economic revitalization and community development through investment in community development financial institutions. This Notice provides guidance on the Presidential Awards program requirements, selection criteria and how to obtain an application packet.

DATES: Applications may be submitted at any time after Wednesday, May 5, 1999. The deadline for receipt of an application is 5:00 p.m. EST, August 3, 1999. Applications received in the office of the Fund after that date and time will be returned to the sender. Applications sent electronically or by facsimile will not be accepted.

ADDRESSES: Applications shall be sent to: Community Development Financial Institutions Fund, U.S. Department of Treasury, 601 Thirteenth Street, N.W., Suite 200 South, Washington DC 20005.

FOR FURTHER INFORMATION CONTACT: Awards Manager, Community Development Financial Institutions Fund, U.S. Department of Treasury, 601 Thirteenth Street, N.W., Suite 200 South, Washington DC 20005, (202) 622–8662. (This is not a toll free number.) If you have any questions about this Notice or the application packet, you may call or write to the Fund at the above telephone number or address, or you may send questions via facsimile to (202) 622–7754. To request an application packet, please send by facsimile a written request which includes the name of the requester, the organization, mailing address, telephone number and facsimile number. Requests for an application packet should be sent by facsimile to (202) 622–7754.

SUPPLEMENTARY INFORMATION:

I. Background

The Presidential Awards for Excellence in Microenterprise Development (''Presidential Awards'') are an annual non-monetary awards program created to recognize the important and growing role of microenterprises within the economy of the United States. In the past decade, the number of microenterprises and microentrepreneurs has grown significantly, as well as the number of community development organizations that have worked to facilitate the growth and development of this microenterprise industry. A microenterprise is a sole proprietorship, partnership, family business or an incorporated entity that has no more than five employees, does not generally have access to the commercial banking sector, and can utilize a loan of $25,000 or less. The Presidential Awards reflect a national commitment to advance the role that microenterprise development plays in enhancing entrepreneurial opportunities for all Americans, particularly women, low-income people, and others that have had difficulty gaining access to the financial services industry and the economic mainstream. By recognizing outstanding microenterprise development and support organizations, the Presidential Awards' mission is to advance an understanding of ''best practices'' in the field of microenterprise development and bring wider public attention to the important successes of microenterprise development in the United States. Awards are available in different categories designed to reflect the diverse activities, purposes and challenges faced by the microenterprise industry. Each award category utilizes a rigorous set of evaluation criteria designed to recognize programs and organizations which define the cutting edge of the microenterprise industry.

II. Definitions

(a) *Low-Income* means having an income that is at or below 80 percent of the area median family income.

(b) *Microenterprise Development Organization* (MDO) means a ''practitioner'' organization that works directly with Microentrepreneurs and meets three tests, primary purpose, domestic program, and program activities.

(i) *Primary Purpose*. The organization must have a primary purpose of promoting microenterprise development. An applicant will be considered to have such a primary purpose if it:

(A) Has been in operation for at least two complete calendar or fiscal years;

(B) Made at least one Micro Loan to a Microenterprise within the past 12 months; and

(C) Has principally targeted its efforts to activities that support Microentrepreneurs. Such activity targeting may be evaluated by the number of Microentrepreneurs served, number of Micro Loans made, the total dollar amount of Micro Loans made, or other criteria deemed appropriate by the Fund. The primary purpose requirement will be applied to the applicant as a whole or an affiliate, division or a discrete program of a larger organization, as deemed appropriate by the Fund.

(ii) *Domestic Program*. The organization must exclusively serve or have a program that exclusively serves individuals who are residents of the United States, including the District of Columbia, or any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(iii) *Program Activities*. The organization must currently provide the following services to Microentrepreneurs:

(A) Access to Micro Loans, directly or through a formal partnership, as evidenced by a written agreement or letter of understanding, with another organization; and

(B) Access to training, counseling or technical assistance, directly or through a formal partnership, as evidenced by a written agreement or letter of understanding, with another organization. Such training, counseling or technical assistance must provide assistance to Microentrepreneurs for the purpose of enhancing business planning, marketing, management, financial management, or other aspects of developing a successful business.

(c) *Microenterprise Support Organization* (MSO) means an entity that does not work directly with Microentrepreneurs as its principal activity, but supports the efforts of MDOs through financial or technical assistance, research or other activities. An MSO must:

(i) Have been in operation for at least two complete calendar or fiscal years; and

(ii) Either provide financial or technical assistance directly to MDOs; or

(iii) Make contributions indirectly to the microenterprise field through research or other activities that enhance the knowledge, capacity, or visibility of the field;

(iv) Not provide services directly to Microentrepreneurs as its principal line of business; and

(v) Serve MDOs (or others engaged in microenterprise development) that exclusively serve or have a program that exclusively serves individuals who are residents of the United States, including the District of Columbia, or any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(d) *Micro Loan* means a loan made for business purposes to a Microentrepreneur in a principal amount which does not exceed $25,000. A loan for business purposes does not include a loan made for the purpose of the acquisition, construction, or rehabilitation of real estate.

(e) *Microenterprise* means a sole proprietorship, partnership, family business, or an incorporated entity that has five or fewer employees including the owner(s), does not generally have access to the commercial banking sector, and can utilize a loan of $25,000 or less.

(f) *Microentrepreneur* means the owner of a Microenterprise or an individual seeking to establish a Microenterprise.

(g) *Poverty* means the state or condition of being poor as defined by the U.S. Bureau of the Census.

III. Award Categories

Five categories of Presidential Awards for Excellence in Microenterprise Development are available. The award categories are intended to embrace the diverse activities and purposes of microenterprise development and the key opportunities and challenges faced by the microenterprise field. The Presidential Awards seek to advance the field of microenterprise development in the United States by recognizing excellent programs and sharing the lessons learned by these organizations with the microenterprise field, policy makers, funders, and other key partners. Up to two awards may be made in each award category. Applicants may apply under only one primary award category each year. The primary award categories are as follows: Access to Capital, Developing Entrepreneurial Skills, Poverty Alleviation, and Public or Private Support for Microenterprise Development. To apply for an award under one of the primary award categories, an applicant must complete the appropriate award category application contained in the application packet. Applicants under any one of the primary award categories may also elect to be considered for an award under the Program Innovation award category. The Program Innovation award category is considered a ''floating'' award that may be given to no more than two applicants in any one or more primary award categories. However, an applicant may only receive an award in one award category in a given year. Specifically, an applicant may not receive an award:

(a) In more than one primary award category; or

(b) In both a primary award category and the Program Innovation award category in the same year.

To be considered for a Program Innovation award, each applicant should complete the Program Innovation portion of the primary award category application in which it is seeking an award. The following are descriptions of the primary award categories and the Program Innovation award category:

(a) The *Excellence in Providing Access to Capital* award category recognizes MDOs that have achieved outstanding success in increasing the availability of credit to Microentrepreneurs through the provision of Micro Loans or Micro Loan guarantees.

(b) The *Excellence in Developing Entrepreneurial Skills* award category recognizes MDOs that have demonstrated effectiveness in building entrepreneurial skills through the provision of training, technical assistance or other skill development activities that help develop successful Microentrepreneurs.

(c) The *Excellence in Poverty Alleviation* award category recognizes MDOs that have developed effective and innovative strategies or methods of alleviating poverty and/or improving the well-being of Low-Income individuals through the development of Microentrepreneurs. Applicants in this category need not work exclusively with Low-Income clients. However, this category is intended to recognize programs that target a significant portion of their efforts to serve Low-Income clients.

(d) The *Excellence in Public or Private Support for Microenterprise Development* award category recognizes outstanding MSOs that have provided significant or innovative support to MDOs or to the development of the microenterprise field.

(e) The *Excellence in Program Innovation* award category recognizes MDOs and MSOs that reflect the next level of development for the Microenterprise field and/or a new strategy for addressing a challenge, problem or issue of significant concern to the field.

IV. Eligibility

The eligibility requirements of the Presidential Awards are established by each award category. MDOs are eligible for an award under the following categories: Access to Capital, Developing Entrepreneurial Skills, Poverty Alleviation, and Program Innovation. MSOs are eligible for an award under the following categories: Public or Private Support for Microenterprise Development and Program Innovation. If an applicant has previously received an award in a specific award category, such applicant is ineligible to apply for an award in the

same category for a period of three years following the receipt of an award (for example, a 1998 award winner in a category cannot apply for an award in that same category until the year 2002). Departments, agencies or instrumentalities of the United States are not eligible to apply for a Presidential Award.

V. Selection Process and Criteria

Winners of the Presidential Awards will be selected through a competitive application and review process. The Fund will select applicants to receive Presidential Awards, but will be assisted by a team of experts in the microenterprise field from both inside and outside the Federal Government. Each award category has a set of selection criteria that will be used to evaluate the extent of an applicant's achievement of excellence. Successful applicants must demonstrate both qualitatively and quantitatively their effectiveness and/or excellence under the selection criteria.

The Presidential Awards application packet includes application forms and questions that are tailored to each primary award category. The following are the selection criteria for each award category:

(a) The *Excellence in Providing Access to Capital* award selection criteria are: scope and scale, impact, program design effectiveness, quality, sustainability, financial health and organizational structure, adaptability, and leadership.

(b) The *Excellence in Developing Entrepreneurial Skills* award selection criteria are: scope, scale, impact, program design effectiveness, financial health and organizational structure, adaptability, and leadership.

(c) The *Excellence in Poverty Alleviation* award selection criteria are: scope and scale, impact, program design effectiveness, extent of targeting, financial health and organizational structure, adaptability, and leadership.

(d) The *Excellence in Public or Private Support for Microenterprise Development* award selection criteria are: scope and scale, impact, program design effectiveness, commitment, financial health and organizational structure, adaptability, and leadership.

(e) The *Excellence in Program Innovation* category specific criteria are: creativity and relevance to the industry.

Authority: Pub. L. 103–325, 108 Stat. 2166, 2189 (12 U.S.C. 4703); chapter X, Pub. L. 104–19, 109 Stat. 237 (12 U.S.C. 4703 note).

Dated: April 30, 1999

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 99–11300 Filed 5–4–99; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 1028

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1028, Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.

DATES: Written comments should be received on or before July 6, 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: Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.

OMB Number: 1545–0058.

Form Number: 1028.

Abstract: Farmers' cooperatives must file Form 1028 to apply for exemption from Federal income tax as being organizations described in Internal Revenue Code section 521. The information on Form 1028 provides the basis for determining whether the applicants are exempt.

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: 50.

Estimated Time Per Respondent: 50 hours, 54 minutes.

Estimated Total Annual Burden Hours: 2,545.

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: April 29, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–11290 Filed 5–4–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 5309

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5309, Application for Determination of Employee Stock Ownership Plan.

DATES: Written comments should be received on or before July 6, 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: Application for Determination of Employee Stock Ownership Plan.

OMB Number: 1545–0284.

Form Number: 5309.

Abstract: Internal Revenue Code section 404(a) allows employers an income tax deduction for contributions to their qualified deferred compensation plans. Form 5309 is used to request an IRS determination letter about whether the plan is qualified under Code section 409 or 4975(e)(7).

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: 462.

Estimated Time Per Respondent: 10 hours, 6 minutes.

Estimated Total Annual Burden Hours: 4,666.

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: April 28, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–11291 Filed 5–4–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Approved Motor Fuel Distribution Terminals

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of issuance of Terminal Control Numbers for approved motor fuel terminals.

SUMMARY: Internal Revenue Service (IRS) developed and is publishing in this issue of the **Federal Register**, Terminal Control Numbers (TCN) to clearly communicate to the motor fuel industry and other interested parties such as state excise taxing authorities, the motor fuel terminal facilities that meet the definitions of Internal Revenue Code Section 4081 and the regulations thereunder. The IRS intends to use the terminal numbers to coordinate dyed fuel compliance activities and in the future, excise fuel information reporting systems. IRS encourages states to adopt and use the numbers for motor fuel information reporting where appropriate. This list is published under the authority of Internal Revenue Code Section 6103(k)(7).

What Is a Terminal Control Number (TCN)?

A terminal control number is a number that identifies an approved terminal in the bulk transfer/terminal system. A taxable fuel registrant (Letter of Registration for Tax Free Transactions with a suffix code -S-) will be issued a TCN for each physical location. Only one TCN will be assigned per terminal location per terminal operator.

What Is an Approved Terminal?

Approved motor fuel terminals, as defined by Internal Revenue Code Section 4081 and the regulations thereunder, receive taxable fuel via a pipeline, ship, or barge, deliver taxable fuel across a rack or other non-bulk delivery system and are operated by a terminal operator who is properly registered in good standing with the IRS. Only those taxpayers who are registered with the IRS on Registration for Tax-Free Transactions—Form 637 (637 Registration) with a suffix code of ''S'' may operate an approved terminal. Each TCN identifies a unique physical location in the bulk transport/delivery system and is therefore independent of the registered operator.

When Does a Terminal Operator Need to Notify IRS of Changes?

A terminal operator must notify the IRS for any of the following changes:

—terminal ownership or operator changes; or

—a new terminal is opened; or

—a terminal ceases operation.

How Should Notification Be Made?

Notify the IRS District Office where the Form 637 is issued of the change and by FAX the IRS TCN Coordinator at:

Internal Revenue Service OP:E:Ex Unit 35
Attn: TCN Coordinator (606) 292-5093 FAX

Changes to the terminal status or other information will be published by the Excise Program Office in the IRS Headquarters Office. Notification is required in order to retain approved status of the terminal and 637 Registration. Failure to notify of changes may lead to suspension or revocation of the approved status of the terminal or 637 Registration of the terminal operator. Changes or suspensions of approved status will be published as needed.

If you have any questions regarding the approved terminals or the listing, you may contact: Terminal Control Number Coordinator—Barbara Ruggles at (606) 292–2758 or Mary Burwell at (202) 622–4379 (not toll-free numbers).

Dated: April 27, 1999.

Thomas R. Hull,

National Director, Specialty Taxes.

TCN	Terminal Name	Address	City	State	Zip
T-92-AK-4500	Chevron Anchorage	459 W Bluff Rd	Anchorage	AK	99501
T-92-AK-4501	MAPCO Alaska Anchorage	1076 Ocean Dock Road	Anchorage	AK	99501
T-92-AK-4502	Equilon Enterprises LLC	1601 Tidewater	Anchorage	AK	99501
T-92-AK-4503	MAPCO Alaska North Pole	1150 H & H Lane	North Pole	AK	99705
T-92-AK-4504	Tesora-Anchorage	1522 Anchorage Port Rd	Anchorage	AK	99501
T-92-AK-4505	Tesoro Alaska Petroleum Co	Mile 22.5 Kenai Spur Road	Kenai	AK	99611
T-63-AL-2300	Amoco Oil Birmingham	1600 Mims Ave. Southwest	Birmingham	AL	35211
T-63-AL-2301	Chevron Birmingham	2400 28th St Southwest	Birmingham	AL	35211
T-63-AL-2302	CITGO Birmingham	2200 25th St Southwest	Birmingham	AL	35211
T-63-AL-2303	Crown Central Birmingham	2500 Nabors Road	Birmingham	AL	35211
T-63-AL-2304	Southeast Terminal Montgomery	Hwy 31 North	Montgomery	AL	36108
T-63-AL-2305	B P Oil Co Birmingham	1600 Mims Ave SW	Birmingham	AL	35211
T-63-AL-2306	MAPLLC Birmingham	2704 28th St Southwest	Birmingham	AL	35211
T-63-AL-2307	Phillips 66 Birmingham	2635 Balsam Avenue	Birmingham	AL	35211
T-63-AL-2308	Motiva Enterprises LLC	2601 Wilson Road	Birmingham	AL	35221-1352
T-63-AL-2309	Southern Facilities Birmingham	2400 Nabors Road	Birmingham	AL	35211
T-63-AL-2310	Motiva Enterprises LLC	2529 28th Street SW	Birmingham	AL	35211
T-63-AL-2312	Louis Dreyfus Birmingham	1600 Mims Ave SW	Birmingham	AL	35211
T-63-AL-2314	Amoco Oil Mobile	Hwy. 90 and 98	Mobile	AL	36601
T-63-AL-2315	Coastal Fuels Mobile	PO Box 1423	Mobile	AL	36633
T-63-AL-2316	Coastal Mobile Chickasaw	200 Viaduct Rd	Chickasaw	AL	36611
T-63-AL-2322	Amoco Oil Montgomery	3560 Well Rd	Montgomery	AL	36108
T-63-AL-2323	Chevron USA Montgomery	200 Hunter Loop Road	Montgomery	AL	31608
T-63-AL-2324	B P Oil Mongtomery	Access Highway 31 North	Montgomery	AL	36108
T-63-AL-2325	MAPLLC Montgomery	320 Hunter Loop Rural Rt 6	Montgomery	AL	36125-0395
T-63-AL-2326	S T Services Montgomery	520 Hunter Loop Road	Montgomery	AL	36108-1827
T-63-AL-2327	Southern Facilities Montgomery	420 Hunter Loop Road	Montgomery	AL	36108
T-63-AL-2329	Hunt Refining Co	1855 Fairlawn RD	Tuscaloosa	AL	35401
T-63-AL-2330	S T Services Moundville	2nd Ave	Moundville	AL	35474
T-63-AL-2333	Murphy Oil USA - Oxford	2625 Highway 78 East	Anniston	AL	36201
T-63-AL-2334	Shell Chemical Co. - Saraland	400 Industrial Parkway	Saraland	AL	36571
T-63-AL-2335	Murphy Sheffield	136 Blackwell Road	Sheffield	AL	35660
T-63-AL-2336	BP OIL MOBILE	101 Bay Bridge Rd	Mobile	AL	36610
T-72-AL-2337	Dixie Pipeline Opelika	5565 Hwy 51 S	Opelika	AL	36801
T-72-AL-2338	EOTT Energy Corp - Mobile	Magazine Point	Mobile	AL	36610
T-72-AL-2339	Midstream Fuel Service-Mobile	Hwy 90/98 Blakeley Island	Mobile	AL	36618
T-72-AL-2340	Radcliff Economy Marine-Mobile	5 South Water St Extension	Mobile	AL	36652
T-72-AL-2341	SouthEast Terminals	Highway 31 North	Montgomery	AL	36108
T-72-AL-2343	Allied Energy Corporation	2700 Ishkooda Wenonah Rd.	Birmingham	AL	35211
T-72-AL-2344	Goodway Refining, LLC	315 Belleville Av.	Brewton	AL	36427
T-71-AR-2451	Lion Oil El Dorado	1000 McHenry	El Dorado	AR	71730
T-71-AR-2452	TEPPCO El Dorado	4021 Calion Hwy.	El Dorado	AR	71730
T-71-AR-2453	Williams Pipe Line Fort Smith	8101 Hwy 71	Fort Smith	AR	72903
T-71-AR-2454	TEPPCO Helena	826 Old Highway	Helena	AR	72342
T-71-AR-2456	Transmontaigne N. Little Rock	2725 Central Airport Rd	North Little Rock	AR	72117
T-71-AR-2457	Exxon USA North Little Rock	2724 Central Airport Rd	North Little Rock	AR	72117
T-71-AR-2458	La Gloria Oil N Little Rock	2626 Central Airport Road	North Little Rock	AR	72117
T-71-AR-2459	Transmontaigne Little Rock	3222 Central Airport Rd	North Little Rock	AR	72117
T-71-AR-2460	Cross Oil Refining& Mktg. Inc.	484 E. 6th Street	Smackover	AR	71762
T-71-AR-2463	Truman Arnold West Memphis	South of 8th Street	West Memphis	AR	72303
T-71-AR-2464	Arkansas Terminaling & Trading	2207 Central Airport Rd.	North Little Rock	AR	72117
T-71-AR-2467	Razorback Terminaling	2801 West Hwy 102 Rt 2	Rogers	AR	72756
T-86-AZ-4300	Caljet Phoenix	125 N 53rd Ave	Phoenix	AZ	85043
T-86-AZ-4301	Chevron USA Phoenix	5110 West Madison	Phoenix	AZ	85043
T-86-AZ-4303	Pro Petroleum Phoenix	408 S 43rd Avenue	Phoenix	AZ	85043
T-86-AZ-4304	SFPP LP Phoenix	49 North 53rd Ave Van Buren	Phoenix	AZ	85043
T-86-AZ-4305	Mobil Oil Phoenix	24 South 51st Ave	Phoenix	AZ	85043
T-86-AZ-4306	Equilon Enterprises LLC	5525 West Van Buren	Phoenix	AZ	85043
T-86-AZ-4307	Tosco Corporation	10 South 51st Avenue	Phoenix	AZ	85043
T-86-AZ-4308	Chevron Products - Tucson	3865 East Refinery Way	Tucson	AZ	85713
T-86-AZ-4309	S T Services Tucson	3605 South Dodge	Tucson	AZ	85713-5421
T-86-AZ-4310	SFPP LP Tucson	3841 East Refinery Way	Tucson	AZ	85713
T-86-AZ-4312	Equilon Enterprises LLC	3735 South Dodge Boulevard	Tucson	AZ	85713
T-86-AZ-4313	ARCO Phoenix	5333 W Van Buren St	Phoenix	AZ	85043
T-33-CA-4750	Mobil Oil Atwood	1477 Jefferson	Anaheim	CA	92806
T-33-CA-4751	GATX Tank Storage	2000 East Sepulveda Blvd	Carson	CA	90810-1995
T-33-CA-4752	Tosco Corporation Wilmington	1660 W Anaheim St	Wilmington	CA	90744
T-33-CA-4753	ARCO Colton	2395 S Riverside Avenue	Bloomington	CA	92316-2931
T-33-CA-4754	Mobil Oil Colton	2305 S Riverside Avenue	Bloomington	CA	92316
T-33-CA-4755	Calnev Pipe Line Colton	2051 West Slover Avenue	Colton	CA	92324
T-33-CA-4756	Chevron USA Colton	2297 South Riverside Avenue	Bloomington	CA	92316
T-33-CA-4757	SFPP LP Colton	2359 South Riverside Avenue	Bloomington	CA	92316

TCN	Terminal Name	Address	City	State	Zip
T-33-CA-4758	Equilon Enterprises LLC	2307 Riverside Ave.	Colton	CA	92316
T-33-CA-4759	Equilon Enterprises LLC	2237 So. Riverside Avenue	Bloomington	CA	92316
T-33-CA-4760	Tosco Refining Colton	271 E Slover Avenue	Rialto	CA	92376
T-33-CA-4761	Calnev Pipe Line Daggett	34277 Daggett-Yermo Road	Daggett	CA	92327
T-33-CA-4762	S T Services Imperial	349 Aten Road	Imperial	CA	92251-9786
T-33-CA-4763	SFPP LP Imperial	345 W Aten Road	Imperial	CA	92251
T-33-CA-4764	ARCO Long Beach	5905 Paramount Ave	Long Beach	CA	90805
T-33-CA-4766	Toscos Corporation Bloomington	2301 S Riverside	Bloomington	CA	92316
T-33-CA-4767	Petro-Diamond Terminal Company	1920 Lugger Way	Long Beach	CA	90813-2634
T-33-CA-4768	Equilon Enterprises LLC	1926 E. Pacific Coast Hwy	Wilmington	CA	90744
T-33-CA-4769	ARCO Carson	2149 E Sepulreda Blvd	Carson	CA	90749
T-33-CA-4770	Equilon Enterprises LLC	2101 E. Pacific Coast Hwy	Wilmington	CA	90744
T-33-CA-4771	Chevron USA Huntington Beach	17881 Gothard St	Huntington Beach	CA	92647
T-33-CA-4772	SFPP LP Orange	1350 North Main Street	Orange	CA	92667
T-33-CA-4773	Chevron USA San Diego	2351 East Harbor Drive	San Diego	CA	92113
T-33-CA-4774	Pacific Southwest San Diego	4370 LaJolla Village Drive	San Diego	CA	92113
T-33-CA-4776	SFPP LP San Diego	9950 San Diego Mission Road	San Diego	CA	92108
T-33-CA-4777	Equilon Enterprises LLC	9950 San Diego Mission Blvd.	San Diego	CA	92108
T-33-CA-4778	Equilon Enterprises LLC	9966 San Diego Mission Rd.	San Diego	CA	92108
T-33-CA-4779	Chemoil Long Beach	2365 E Sepulveda Blvd	Long Beach	CA	90810
T-33-CA-4782	ARCO San Diego	2295 E Harbor Drive	San Diego	CA	92113
T-33-CA-4783	Mobil Oil San Diego	9950 San Diego Mission Rd	San Diego	CA	92108
T-33-CA-4784	ARCO Signal Hill	2350 Hathaway Drive	Signal Hill	CA	90806
T-33-CA-4785	Equilon Enterprises LLC	2457 Redondo Ave.	Signal Hill	CA	90806
T-33-CA-4786	Mobil Oil Torrance	3700 West 190th Street	Torrance	CA	90509
T-33-CA-4789	Ultramar Inc Wilmington	2402 E Anaheim St	Wilmington	CA	90744
T-33-CA-4790	UNOCAL San Diego	2750 Murphy Canyon Rd	San Diego	CA	92123
T-68-CA-4600	SFPP LP Chico	2570 Hegan Lane	Chico	CA	95927
T-68-CA-4601	Equilon Enterprises LLC	2590 Hegan Lane	Chico	CA	95928
T-68-CA-4603	Exxon USA Benicia	3410 East Second Street	Benicia	CA	94510
T-68-CA-4604	Chevron USA Banta	22888 S Kasson Rd	Tracy	CA	95376
T-68-CA-4605	Shore Terminals LLC	90 San Pablo Ave	Crockett	CA	94525
T-68-CA-4606	Chevron USA Eureka	3400 Christie Street	Eureka	CA	95501
T-68-CA-4607	Chevron USA Avon	611 Solano Way	Martinez	CA	94553
T-68-CA-4609	ARCO Stockton Terminal	2700 West Washington St	Stockton	CA	95203
T-68-CA-4610	Equilon Enterprises LLC	1801 Marina Vista	Martinez	CA	94553
T-68-CA-4611	Tosco Refining Martinez	Solano Way & Waterfront RD	Martinez	CA	94553
T-68-CA-4612	ARCO Sacramento	1701 S River Rd	West Sacramento	CA	95691
T-68-CA-4613	SFPP LP Rancho Cordova	2901 Bradshaw Rd	Rancho Cordova	CA	95741
T-68-CA-4614	ARCO Richmond	1306 Canal Blvd	Richmond	CA	94807
T-68-CA-4616	Chevron Richmond	155 Castro St	Richmond	CA	94802
T-68-CA-4617	Tosco Corporation Richmond	1300 Canal Blvd	Richmond	CA	94804
T-68-CA-4619	IMTT Richmond-CA	100 Cutting Blvd.	Richmond	CA	94804
T-68-CA-4621	Chevron USA Sacramento	2420 Front Street	Sacramento	CA	95818
T-68-CA-4622	Equilon Enterprises LLC	1509 South River Road	West Sacramento	CA	95691
T-68-CA-4624	Tosco Refining Sacramento	76 Broadway	Sacramento	CA	95818
T-68-CA-4625	Tosco Refining Stockton	3505 Navy Drive	Stockton	CA	95203
T-68-CA-4626	S T Services Stockton	2941 Navy Drive	Stockton	CA	95206-1149
T-68-CA-4628	Equilon Enterprises LLC	3515 Navy Dirve	Stockton	CA	95203
T-68-CA-4629	Tesoro Refining Mktg Stockton	3003 Navy Drive	Stockton	CA	95205
T-77-CA-4650	Chevron Products Co.	1020 Berryessa Road	San Jose	CA	95133
T-77-CA-4651	Kinder Morgan Energy Partners LP	4149 South Maple Avenue	Fresno	CA	93725
T-77-CA-4652	Kinder Morgan Energy Partners LP	2150 Kruse Avenue	San Jose	CA	95131
T-77-CA-4653	Equilon Enterprises LLC	2165 O'Toole Ave.	San Jose	CA	95131
T-77-CA-4654	Equilon Enterprises LLC	3284 North Ventura Ave.	Ventura	CA	93001
T-77-CA-4655	Kern Oil & Refining Co.	7724 East Panama Lane	Bakersfield	CA	93307
T-77-CA-4657	Equilon Enterprises LLC	2436 Fruitvale Avenue	Bakersfield	CA	93302
T-77-CA-4658	Tesoro Marine Services, Inc.	141 West Hueneme Road	Pt. Hueneme	CA	93041
T-77-CA-4661	Golden Bear Oil Specialties	1134 Manor	Oildale	CA	93308
T-77-CA-4664	San Joaquin Refining Co., Inc.	3542 Shell St.	Bakersfield	CA	93308
T-94-CA-4700	SFPP LP Brisbane	950 Tunnel Av.	Brisbane	CA	94005
T-94-CA-4703	Equilon Enterprises LLC	135 North Access Road	So San Francisco	CA	94080
T-94-CA-4705	Time Oil Company - Richmond	488 Wright Ave.	Richmond	CA	94802
T-95-CA-4800	Chevron USA El Segundo	302 West El Segundo Blvd	El Segundo	CA	90245
T-95-CA-4802	Golden West Santa Fe Springs	13415 Carmenita Road	Santa Fe Springs	CA	90670
T-95-CA-4803	Toscos S. Broadway Los Angeles	13500 South Broadway	Los Angeles	CA	90061
T-95-CA-4804	Equilon Enterprises LLC	8100 Haskell Ave.	Van Nuys	CA	91406
T-95-CA-4805	Mobil Oil Vernon	2709 East 37th Street	Vernon	CA	90058
T-95-CA-4806	Toscos Center Street LA	501 N Center St	Los Angeles	CA	90012
T-95-CA-4807	ARCO Vinvale Terminal	8601 S Garfield Ave	South Gate	CA	90280
T-95-CA-4808	Paramount Petroleum	14700 Downey Avenue	Paramount	CA	90723
T-95-CA-4809	Equilon Enterprises LLC	2015 Long Beach Ave	Los Angeles	CA	90058

TCN	Terminal Name	Address	City	State	Zip
T-95-CA-4810	Chevron USA Van Nuys	15359 Oxnard Street	Van Nuys	CA	91411
T-95-CA-4811	Chevron USA Montebella	601 South Vail Avenue	Montebella	CA	90640
T-84-CO-4100	Chase Pipeline Aurora	15000 E. Smith Rd.	Aurora	CO	80011
T-84-CO-4101	Colorado Refining Denver	5800 Brighton Boulevard	Commerce City	CO	80022
T-84-CO-4102	Conoco Denver	5575 Brighton Boulevard	Commerce City	CO	80022
T-84-CO-4103	Diamond Shamrock Denver	3601 East 56th Street	Commerce City	CO	80022
T-84-CO-4104	Phillips 66 Commerce City	3960 East 56th Avenue	Commerce City	CO	80022
T-84-CO-4105	Kaneb PipeLine Dupont	8160 Krameria	DuPont	CO	80024
T-84-CO-4106	Kaneb PipeLine Fountain	1004 S. Sante Fe	Fountain	CO	80817
T-84-CO-4107	Landmark Petroleum Fruita	1493 Hwy 6 & 50	Fruita	CO	81521
T-84-CO-4108	Diamond Colorado Springs	7810 Drennan	Colorado Springs	CO	80925
T-84-CO-4109	Sinclair Pipeline Henderson	8581 East 96th Ave	Henderson	CO	80640
T-06-CT-1250	Hoffman Fuel Co. of Bridgeport	156 East Washington Ave	Bridgeport	CT	06604
T-06-CT-1251	Sprague Energy Stamford	10 Water St	Stamford	CT	06902
T-06-CT-1252	CITGO Rocky Hill	109 Dividend Road	Rocky Hill	CT	06067
T-06-CT-1253	Motiva Enterprises LLC	211 Riverside Drive	East Hartford	CT	06108
T-06-CT-1254	Northeast Petroleum New Haven	481 East Shore Parkway	New Haven	CT	06512
T-06-CT-1255	Amerada Hess - Groton	443 Eastern Point Road	Groton	CT	06340
T-06-CT-1256	Motiva Enterprises LLC	250 Eagles Nest Rd.	Bridgeport	CT	06607
T-06-CT-1257	Amerada Hess - New Haven	100 River Street	New Haven	CT	06513
T-06-CT-1258	New Haven Terminal Inc	100 Waterfront St	New Haven	CT	06512
T-06-CT-1259	Amerada Hess - Wethersfield	50 Burbank Road	Wethersfield	CT	06109-9998
T-06-CT-1261	Getty Terminal New Haven	85 Forbes Avenue	New Haven	CT	06512
T-06-CT-1262	Gulf Oil LP - New Haven	500 Waterfront Street	New Haven	CT	06512
T-06-CT-1263	Mobil Oil New Haven	134 Forbes Avenue	New Haven	CT	06512
T-06-CT-1264	Gateway Terminal New Haven	400 Waterfront St	New Haven	CT	06512
T-06-CT-1265	Wyatt Energy, Inc.	85 East Street	New Haven	CT	06536
T-06-CT-1268	Hoffman Fuel Co. of Stamford	100 Southfield Avenue	Stamford	CT	06902
T-06-CT-1270	Northeast Petroleum - Wethersfield	80 Burbank Road	Wethersfield	CT	06109
T-06-CT-1272	Devine Bros. Inc. - Norwalk	38 Commerce St	Norwalk	CT	06850
T-06-CT-1274	Wyatt Energy Incorporated	280 Waterfront St	New Haven	CT	06512
T-06-CT-1277	Sprague Energy	247 Riverside Dr.	East Hartford	CT	06902
T-06-CT-1279	Inland Fuel Terminal	154 Admiral St.	Bridgeport	CT	06605
T-06-CT-1280	B & B Petroleum Inc.	32 Brownstone Ave	Portland	CT	06480
T-06-CT-1281	Hall & Muska, Inc.	152 Broad Brook Rd	Broad Brook	CT	06016
T-06-CT-1282	Anthony Troisno & Sons, Inc.	777 Enfield St.	Enfield	CT	06082
T-06-CT-1284	Port Oil	248 Brownstone Ave.	Portland	CT	06480
T-06-CT-1285	Heating Oil Partners LP	410 Bank St.	New London	CT	06320
T-06-CT-1286	NORAA Enterprises, Inc.	1351 Main Street	East Hartford	CT	06109
T-52-MD-1553	S T Services - Washington	401 Farragut Street NE	Washington	DC	20111-6319
T-52-MD-1564	S T Services Washington (M St)	1333 M St SE	Washington	DC	20003-3706
T-51-DE-1600	Motiva Enterprises LLC	River Rd and J Street	Delaware City	DE	19706
T-51-DE-1601	Blades Terminal-Peninsula Oil	Blades Causeway	Blades	DE	19973
T-51-DE-1603	Wilco Inc, Peninsula Oil Co	Blades Causeway	Seaford	DE	19973
T-52-MD-1572	The Sico Company	1050 Christiana Ave.	Wilmington	DE	19801
T-59-FL-2100	Murphy Oil USA Tampa	1306 Ingram Ave	Tampa	FL	33605
T-59-FL-2101	Louis Dreyfus Tampa	1523 Port Avenue	Tampa	FL	33605-6745
T-59-FL-2102	Amerada Hess - Jacksonville	2617 Heckscher Drive	Jacksonville	FL	32226
T-59-FL-2103	Amoco Oil Jacksonville	2054 Heckscher Drive	Jacksonville	FL	32226
T-59-FL-2104	Chevron Products Company	3117 Talleyrand Avenue	Jacksonville	FL	32206
T-59-FL-2105	Coastal Fuels Jacksonville	3425 Talleyrand Avenue	Jacksonville	FL	32206
T-59-FL-2106	B P Oil Jacksonville	12101 Heckscher Dr	Jacksonville	FL	32218-6038
T-59-FL-2107	Amerada Hess - Tampa	504 N 19th Street	Tampa	FL	33605
T-59-FL-2108	Koch Refining Jacksonville	1974 Talleyrand Avenue	Jacksonville	FL	32239-0905
T-59-FL-2109	Petroleum Fuel Jacksonville	1961 E Adams St	Jacksonville	FL	32202
T-59-FL-2112	S T Services Jacksonville	6531 Evergreen Avenue	Jacksonville	FL	32208-4911
T-59-FL-2113	Kerr-McGee Jacksonville	2470 Talleyrand Blvd	Jacksonville	FL	32206
T-59-FL-2114	CITGO - Niceville	904 Bayshore Drive	Niceville	FL	32578
T-59-FL-2115	Murphy Oil Freeport	424 Madison St	Freeport	FL	32439
T-59-FL-2116	Chevron USA Product Co	525 West Beach Drive	Panama City	FL	32402
T-59-FL-2117	CITGO Panama City	122 S Center Ave	Panama City	FL	32401
T-59-FL-2118	Coastal Fuels Pensacola	640 S Barracks St	Pensacola	FL	32501
T-59-FL-2119	Radcliff/Economy-Pensacola	3100 Barrancas Avenue	Pensacola	FL	32507
T-59-FL-2120	Louis Dreyfus Pensacola	511 South Clubb St	Pensacola	FL	32501
T-59-FL-2122	Coastal Fuels Point Manatee	804 N Dock St	Palmetto	FL	34220
T-59-FL-2123	GATX Terminals Port Tampa	2101 GATX Drive	Tampa	FL	33605-6863
T-59-FL-2124	Motiva Enterprises LLC	6500 Commerce St	Port Tampa	FL	33616
T-59-FL-2125	Murphy Oil St Marks	585 Port Leon Drive	St Marks	FL	32355
T-59-FL-2127	TOC Terminals St Marks	815 Port Leon Drive	St Marks	FL	32355
T-59-FL-2129	GATX Terminal Taft (CFPL)	9919 Orange Avenue	Orlando	FL	32824-8466
T-59-FL-2130	Amoco Oil Tampa	848 McCloskey Boulevard	Tampa	FL	33605-6716
T-59-FL-2131	Chevron USA Tampa	5500 Commerce Street	Tampa	FL	33616

TCN	Terminal Name	Address	City	State	Zip
T-59-FL-2133	CITGO Tampa	801 McCloskey Blvd	Tampa	FL	33605
T-59-FL-2136	MAPLLC Oil Tampa	425 South 20th Street	Tampa	FL	33605-6025
T-59-FL-2138	Coastal Fuels Cape Canaveral	10 Tanker Turn Rd.	Cape Canaveral	FL	32920
T-65-FL-2150	Coastal Fuels Port Everglades	2401 Eisenhower Blvd	Fort Lauderdale	FL	33316
T-65-FL-2151	S T Services Homestead	13195 S W 288th Street	Homestead	FL	33033-2012
T-65-FL-2152	Amoco Oil Port Everglades	1180 Spangler Road	Port Everglades	FL	33316
T-65-FL-2153	Chevron USA Port Everglades	1400 SE 24th St	Fort Lauderdale	FL	33335
T-65-FL-2154	Motiva Enterprises LLC	1500 SE 26 St	Fort Lauderdale	FL	33316
T-65-FL-2156	Amerada Hess - Port Everglades	1501 SE 20th St.	Fort Lauderdale	FL	33316
T-65-FL-2157	CITGO Port Everglades	800 SE 28th Street	Fort Lauderdale	FL	33316
T-65-FL-2160	MAPLLC Oil Port Everglades	1601 SE 20th St	Fort Lauderdale	FL	33316
T-65-FL-2161	Mobil Oil Port Everglades	1150 Spangler Blvd	Fort Lauderdale	FL	33316
T-65-FL-2163	Motiva Enterprises LLC	909 S.E. 24 St.	Fort Lauderdale	FL	33316
T-65-FL-2164	Motiva Enterprises LLC	1200 SE 28th St	Port Everglades	FL	33316
T-65-FL-2165	Louis Dreyfus Port Everglades	2701 SE 14th Ave	Fort Lauderdale	FL	33316
T-58-GA-2500	Phillips Pipeline Albany	1603 W Oakridge Dr	Albany	GA	31707
T-58-GA-2501	Williams Energy Ventures-Alban	1722 W Oakridge Dr	Albany	GA	31707
T-58-GA-2502	Louis Dreyfus Albany	1162 Gillionville Rd	Albany	GA	31707
T-58-GA-2504	S T Services Augusta	209 Sand Bar Ferry Road	Augusta	GA	30901-1849
T-58-GA-2505	Louis Dreyfus Americus	Plains Road Highway 280 West	Americus	GA	31709
T-58-GA-2506	Chevron USA Athens	3460 Jefferson Road	Athens	GA	30607
T-58-GA-2508	Louis Dreyfus Athens	3450 Jefferson Road	Athens	GA	30607
T-58-GA-2510	Motiva Enterprises LLC	4127 Winter Chapel Rd.	Doraville	GA	30360
T-58-GA-2511	Louis Dreyfus Atlanta	3132 Parrott Avenue Northwest	Atlanta	GA	30318
T-58-GA-2514	Motiva Enterprises LLC	803 East Shotwell St.	Bainbridge	GA	31717
T-58-GA-2515	Louis Dreyfus Bainbridge	1909 East Shotwell Street	Bainbridge	GA	31717
T-58-GA-2516	Stratus Petroleum Blakely	Hwy 62 W & Chattahoochee Rd	Blakely	GA	31723
T-58-GA-2517	S T Services Bremen	870 Alabama Avenue	Bremen	GA	30110-2306
T-58-GA-2518	S T Services Brunswick	211 Newcastle Street NW	Atlanta	GA	31520-8571
T-58-GA-2519	Fina Oil & Chemical Atlanta	2970 Parrott Avenue	Atlanta	GA	30318
T-58-GA-2520	Chevron USA Columbus	5131 Miller Road	Columbus	GA	31908
T-58-GA-2521	Crown Central Columbus	4840 Miller Rd	Columbus	GA	31904
T-58-GA-2522	ITAPCO Inc Columbus	5225 Miller Road	Columbus	GA	31904
T-58-GA-2523	MAPLLC Oil Columbus	5030 Miller Road	Columbus	GA	31909-5561
T-58-GA-2524	S T Services Columbus	800 Lumpkin Boulevard	Columbus	GA	31901-3130
T-58-GA-2525	Amerada Hess - Doraville	2836 Woodwin Road	Doraville	GA	30362
T-58-GA-2526	Amoco Doraville Peachtree	6430 New Peachtree Road	Doraville	GA	30340
T-58-GA-2527	Motiva Enterprises LLC	4201 Winters Chappel Rd.	Doraville	GA	30340
T-58-GA-2528	Chevron USA Doraville	4026 Winters Chapel Road	Doraville	GA	30362
T-58-GA-2529	CITGO Doraville	3877 Flowers Drive	Doraville	GA	30362
T-58-GA-2531	Motiva Enterprises LLC	4143 Winters Chapel Rd	Doraville	GA	30360
T-58-GA-2532	MAPLLC Oil Doraville	6293 New Peachtree Road	Doraville	GA	30341-1211
T-58-GA-2533	William Energy Ventures, Inc.	4149 Winters Chapel Road	Doraville	GA	30360
T-58-GA-2534	Amoco Doraville Chapel	4064 Winters Chapel Rd	Doraville	GA	30340
T-58-GA-2535	Southern Facilities Doraville	2797 Woodwin Road	Doraville	GA	30360
T-58-GA-2537	Louis Dreyfus Griffin	643B East McIntosh Road	Griffin	GA	30223
T-58-GA-2538	Chevron USA Macon	2476 Allen Road	Macon	GA	31206
T-58-GA-2541	MAPLLC Oil Macon	2445 Allen Road	Macon	GA	31206-6301
T-58-GA-2542	S T Services Macon	6225 Hawkinsville Road	Macon	GA	31216-5849
T-58-GA-2543	Southern Facilities Macon	2505 Allen Road	Macon	GA	31206
T-58-GA-2544	Louis Dreyfus Macon	5041 Forsyth Rd.	Macon	GA	31210
T-58-GA-2545	MAPLLC Oil Powder Springs	3895 Anderson Farm Road NW	Powder Springs	GA	30073
T-58-GA-2547	Louis Dreyfus Southeast	2671 Calhoun Road	Rome	GA	30161
T-58-GA-2548	S T Services Savannah	2 Walstrom Road	Savannah	GA	31404-1033
T-58-GA-2550	Colonial Terminal, Inc.	101 North Lathrop Ave	Savannah	GA	31415
T-58-GA-2551	Paktank Corp Savannah Term	Georgia Ports Garden City	Savannah	GA	31418
T-99-HI-4551	Equilon Enterprises LLC	91-119 Hanua Street	Oahu	HI	96706
T-99-HI-4552	Chevron USA Hilo	666 Kalanianaole Avenue	Hilo	HI	96720
T-99-HI-4553	Chevron USA Honolulu	933 North Nimitz Highway	Honolulu	HI	96817
T-99-HI-4554	Chevron USA Kahului	100A Hobron Avenue	Kahului	HI	96732
T-99-HI-4555	Chevron USA Port Allen	A & B Road, Port Allen	Eleele	HI	96705
T-99-HI-4556	Tosco Refining Co.	411 Pacific St	Honolulu	HI	96814
T-99-HI-4557	Equilon Enterprises LLC	789 N. Nimitz Hwy.	Honolulu	HI	96817
T-99-HI-4558	Equilon Enterprises LLC	661 Kalanianaole Ave.	Hilo	HI	96720
T-99-HI-4560	Equilon Enterprises LLC	999 Kalanianaole Ave.	Hilo	HI	96720
T-99-HI-4561	Tesoro Hawaii Corporation	701 Kalanianaole Street	Hilo	HI	96720
T-99-HI-4562	Equilon Enterprises LLC	3145 Waapa Rd.	Lihue	HI	96766
T-99-HI-4563	Tesoro Hawaii Corporation	140 H Hobron Ave	Kahului	HI	96732
T-99-HI-4566	Equilon Enterprises LLC	60 Habron Ave.	Kahului	HI	96732
T-99-HI-4567	Tosco Kawaihae	No. 1 Kawaihae Road	Kamuela	HI	96743
T-99-HI-4568	Tesoro Hawaii Corporation	2 Sand Island Access Rd.	Honolulu	HI	96819
T-42-IA-3450	Amoco Oil Bettendorf	75 South 31st Street	Bettendorf	IA	52722

TCN	Terminal Name	Address	City	State	Zip
T-42-IA-3451	Koch Refining Bettendorf	4100 Elm St	Bettendorf	IA	52722
T-42-IA-3452	Phillips Pipeline Company	2925 Depot Street	Bettendorf	IA	52722
T-42-IA-3453	Williams Pipe Line Sioux South	3701 South Lewis Blvd	Sioux City	IA	51106
T-42-IA-3454	Amoco Oil Council Bluffs	829 East South Bridge Rd	Council Bluffs	IA	51501
T-42-IA-3455	National Coop Council Bluffs	825 East South Omaha Bridge Rd	Council Bluffs	IA	51502
T-42-IA-3456	Amoco Oil Des Moines	1501 Northwest 86th Street	Des Moines	IA	50325
T-42-IA-3457	Williams Pipe Line Des Moines	2503 Southeast 43rd Street	Des Moines	IA	50317
T-42-IA-3458	Amoco Oil Dubuque	15437 Olde Highway Rd.	Dubuque	IA	52001
T-42-IA-3460	Williams Pipe Line Dubuque	8038 St Joe's Prairie Rd	Dubuque	IA	52003
T-42-IA-3461	Williams Pipe Line Fort Dodge	6 miles from Ft Dodge	Duncombe	IA	50532
T-42-IA-3462	Sinclair Pipeline Fort Madison	2010 35th St.	Fort Madison	IA	52627
T-42-IA-3463	Williams Pipe Line Iowa City	912 First Avenue	Coralville	IA	52241
T-42-IA-3464	Kaneb Pipe Line Le Mars	US Hwy 75/7 Miles N of LeMars	Le Mars	IA	51031
T-42-IA-3465	Williams Pipe Line Mason City	2810 East Main	Clear Lake	IA	50428
T-42-IA-3466	Kaneb Pipe Line Milford	1 mile W of Milford & Hwy 71	Milford	IA	51351
T-42-IA-3467	Williams Pipe Line Milford	RT #1	Milford	IA	51351
T-42-IA-3468	Amoco Oil North Liberty	2092 Hwy. 965 NE	North Liberty	IA	52317
T-42-IA-3469	Amoco Oil Ottumwa	Three miles west on US 34	Ottumwa	IA	52501
T-42-IA-3470	Heartland Pleasant Hill	4500 Vandalia	Pleasant Hill	IA	50317
T-42-IA-3471	CITGO - Bettendorf	312 South Bellingham Street	Bettendorf	IA	52722
T-42-IA-3472	Kaneb Pipeline Rock Rapids	State Hwy 9	Rock Rapids	IA	51246
T-42-IA-3473	Williams Pipe Line Sioux City	4300 41st Street	Sioux City	IA	51108
T-42-IA-3474	Williams Pipe Line Waterloo	5360 Eldora Rd	Waterloo	IA	50701
T-82-ID-4150	Boise Idaho Terminal	321 North Curtis Road	Boise	ID	83707
T-82-ID-4151	Northwest Terminaling Boise	201 N. Phillips Rd.	Boise	ID	83704
T-82-ID-4152	Flying J - Boise	70 North Philipi Road	Boise	ID	83706
T-82-ID-4155	Amoco Oil Burley	421 East Highway 81	Burley	ID	83318
T-82-ID-4157	Burley Products Terminal	425 East Hwy 81 PO Box 233	Burley	ID	83318
T-82-ID-4159	Chevron Pipeline Pocatello	1189 Tank Farm Rd.	Pocatello	ID	83201
T-36-IL-3300	Clark Refining and Marketing Inc.	131st & Homan Avenue	Blue Island	IL	60406
T-36-IL-3301	Amoco Oil Des Plaines	2201 South Elmhurst Rd	Des Plaines	IL	60018
T-36-IL-3302	Amoco Oil Forest View	4811 South Harlem Avenue	Forest View	IL	60402
T-36-IL-3303	Amoco Oil Company - Rochelle	100 East Standard Oil Road	Rochelle	IL	61068
T-36-IL-3304	CITGO Mt Prospect	2316 Terminal Drive	Arlington Heights	IL	60005
T-36-IL-3305	GATX Terminals Argo	8500 West 68th Street	Argo	IL	60501-0409
T-36-IL-3306	Clark Refining & Marketing Co. Rockford.	1511 South Meridian Rd	Rockford	IL	61102
T-36-IL-3307	Marathon Mt Prospect	3231 Busse Road	Arlington Heights	IL	60005-4610
T-36-IL-3308	MAPLLC Oil Rockford	7312 Cunningham Road	Rockford	IL	61102
T-36-IL-3309	MAPLLC Willow Springs	7600 LaGrange Road	Willow Springs	IL	60480-1551
T-36-IL-3310	S T Services - Blue Island	3210 West 131st Street	Blue Island	IL	60406-2364
T-36-IL-3311	Mobil Oil Des Plaines	2312 Terminal Drive	Des Plaines	IL	60005
T-36-IL-3312	Petroleum Fuel Forest View	4801 South Harlem	Forest View	IL	60402
T-36-IL-3313	Phillips Pipeline Company - Kankakee	275 North 2760 West Road	Kankakee	IL	60901
T-36-IL-3314	S T Services - Peru	2830 West Market Street	Peru	IL	61354-3456
T-36-IL-3315	Equilon Enterprises LLC	8600 West 71st. Street	Bedford Park	IL	60501
T-36-IL-3316	Equilon Enterprises LLC	1605 E. Algonquin Road	Des Plaines	IL	60005
T-36-IL-3317	CITGO Petroleum Corp. - Lemont	135th & New Avenue	Lemont	IL	60439
T-36-IL-3318	CITGO - Des Plaines	2304 Terminal Drive	Des Plaines	IL	60056
T-36-IL-3319	Williams Pipe Line - Amboy	1222 U S Route 30	Amboy	IL	61310
T-36-IL-3320	Williams Pipeline Franklin	10601 Franklin Avenue	Franklin Park	IL	60131
T-36-IL-3322	Shell Des Plaines Terminal	1000 Terminal Drive	Arlington Heights	IL	60005
T-36-IL-3373	Clark Refining & Marketing Co. - Blue Is.	Kedzie Ave. & 131st	Blue Island	IL	60406
T-36-IL-3375	Mobil Oil Corporation - Lockport	1290 High Road	Lockport	IL	60441
T-37-IL-3351	Amoco Oil Wood River	335 South Old St Louis Rd	Wood River	IL	62095
T-37-IL-3352	Clark Refining and Marketing - Peoria	7022 South Cilco Lane	Bartonville	IL	61607
T-37-IL-3353	Conoco Wood River	Route 3	Hartford	IL	62048
T-37-IL-3354	Hartford Wood River	900 North Delmar	Hartford	IL	62048
T-37-IL-3355	Hicks OIls & Hicks Gas Inc	1118 Wesley Road	Creve Coeur	IL	61610-3870
T-37-IL-3356	Clark Refining - Hartford	South Side Hawthorne	Hartford	IL	62048
T-37-IL-3358	MAPLLC Champaign	511 S. Staley Road	Champaign	IL	61821
T-37-IL-3360	MAPLLC Robinson	Rural Route One	Robinson	IL	62454
T-37-IL-3361	La Gloria Oil Norris City	Rural Route 2	Norris City	IL	62869
T-37-IL-3362	Petroleum Fuel Granite City	2801 Rock Road	Granite City	IL	62040
T-37-IL-3364	Meioco Terminal	Rt 49 South	Ashkum	IL	60911
T-37-IL-3365	Phillips 66 Decatur	266 E Shafer	Forsyth	IL	62535
T-37-IL-3366	Phillips Petroleum E St Louis	3300 Mississippi Ave	Cahokia	IL	62206
T-37-IL-3367	S T Services - Chillicothe	20206 North State Rd, Rt 29	Chillicothe	IL	61523-9718
T-37-IL-3368	Equilon Enterprises LLC	Route 45 N. R.R. 3	Effingham	IL	62401
T-37-IL-3369	Equilon Enterprises LLC	600 E. Lincoln Memorial Pky	Harristown	IL	62537
T-37-IL-3371	Williams Pipe Line Heyworth	Rural Route Two	Heyworth	IL	61745

TCN	Terminal Name	Address	City	State	Zip
T-37-IL-3372	Williams Pipe Line Menard Cty	Rural Route Three	Petersburg	IL	62675
T-43-IL-3729	Center Terminal Co - Hartford	1402 S Delmare	Hartford	IL	62048-0065
T-35-IN-3201	Amoco Oil Brookston	11555 South IN 43	Brookston	IN	47923-0236
T-35-IN-3202	Clark Rfg-Hammond	1020 141st St	Hammond	IN	46320
T-35-IN-3203	Amoco Oil Granger	12694 Adams Rd	Granger	IN	46530
T-35-IN-3204	Amoco Oil Indianpolis	2500 N Tibbs Avenue	Indianapolis	IN	46222
T-35-IN-3205	Amoco Oil Whiting	2530 Indianapolis Blvd.	Whiting	IN	46394
T-35-IN-3206	MAPLLC Clarksvile	214 Center Street	Clarksville	IN	47124
T-35-IN-3207	MAPLLC Evansville	2500 Broadway	Evansville	IN	47712
T-35-IN-3208	MAPLLC Huntington	4648 N. Meridian Road	Huntington	IN	46750
T-35-IN-3209	CITGO East Chicago	2500 East Chicago Ave	East Chicago	IN	46312
T-35-IN-3210	CITGO Huntington	4393 N Meridian Rd US 24	Huntington	IN	46750
T-35-IN-3211	Gladieux T & M Huntington	4757 US 24 E	Huntington	IN	46750
T-35-IN-3212	Kentuckiana Terminal	20 Jackson St	New Albany	IN	47150
T-35-IN-3213	Transmontaigne Terminaling Inc	2630 Broadway	Evansville	IN	47712
T-35-IN-3214	CountryMark - Mount Vernon	1200 Refinery Road	Mount Vernon	IN	47620
T-35-IN-3215	Crown Central Petro - Clermont	9323 West 30th	Clermont	IN	46234
T-35-IN-3216	Crown Central Petro - Seymour	9780 N US Hwy 31	Seymour	IN	47274
T-35-IN-3217	Clark Rfg Clermont	10470 E County Rd, 300 North	Clermont	IN	46234
T-35-IN-3218	MAPLLC Hammond	4206 Columbia Avenue	Hammond	IN	46327
T-35-IN-3219	MAPLLC Indianapolis	4955 Robison Rd	Indianapolis	IN	46268-1040
T-35-IN-3220	MAPLLC Mount Vernon	Old State Rd #69 South	Mount Vernon	IN	47620
T-35-IN-3221	MAPLLC Muncie	2100 East State Road 28	Muncie	IN	47303-4773
T-35-IN-3222	MAPLLC Speedway	1304 Olin Ave	Indianapolis	IN	46222-3294
T-35-IN-3224	Mobil Oil Hammond	1527 141th Street	Hammond	IN	46327
T-35-IN-3225	Phillips 66 East Chicago	400 East Columbus Dr	East Chicago	IN	46312
T-35-IN-3226	Phillips 66 Clermont	3230 N Raceway Road	Indiapolis	IN	46234
T-35-IN-3227	S T Services Clermont	3350 N Raceway Rd	Indianapolis	IN	46234-1163
T-35-IN-3228	Equilon Enterprises LLC	2400 Michigan St.	Hammond	IN	46320
T-35-IN-3229	Equilon Enterprises LLC	2000 E. State Rd. 28	Muncie	IN	47302
T-35-IN-3230	Equilon Enterprises LLC	5405 W. 9th St.	Zionsville	IN	46268
T-35-IN-3231	Sun Huntington	4691 N Meridian St	Huntington	IN	46750
T-35-IN-3232	TEPPCO Princeton	Highway 64 West	Oakland City	IN	47660
T-35-IN-3233	Center Terminal Co-Indianapoli	10833 East County Rd 300 North	Indianapolis	IN	46234
T-35-IN-3234	Lassus Bros Huntington	4413 North Meridian Rd	Huntington	IN	46750
T-35-IN-3235	CountryMark Jolietville	17710 Mule Barn	Westfield	IN	46074
T-35-IN-3236	CountryMark - Peru	Highway 24 West	Peru	IN	46970
T-35-IN-3237	CountryMark Switz City	State Road 54 East	Switz City	IN	47465
T-35-IN-3238	Transmontaigne Terminaling Inc.	10700 E County Rd 300N	Indianapolis (CL)	IN	46234
T-35-IN-3242	Safety-Kleen Oil Recovery Co.	601 Riley Road	East Chicago	IN	46312-1638
T-35-IN-3243	Conrail Inc.-Avon Diesel Term	491 S. County Road 800 E.	Plainfield	IN	46168
T-35-IN-3244	Indiana Harbor Belt Railroad	2721 - 161st St.	Hammond	IN	46323
T-35-IN-3245	Conrail Inc.- Elkhart Terminal	2600 W. Lusher Rd	Elkhart	IN	46516
T-35-IN-3246	Transmontaigne - South Bend	20630 W. Ireland Rd.	South Bend	IN	46614
T-43-KS-3672	Phillips Pipeline Co. - Kansas City	2029 Fairfax Trafficway	Kansas City	KS	66115
T-48-KS-3651	Farmland Ind Coffeyville	North & Linden Streets	Coffeyville	KS	67337
T-48-KS-3652	Kaneb Pipe Line Concordia	Route 1	Delphos	KS	67436
T-48-KS-3654	Equilon Enterprises LLC	South Haverhill Road	El Dorado	KS	67042
T-48-KS-3655	Chase Pipeline Great Bend	Hwys 56 & 156 4 mi east of GB	Great Bend	KS	67530
T-48-KS-3656	Kaneb Pipe Line Hutchison	3300 East Avenue G	Hutchison	KS	67501
T-48-KS-3658	Sinclair Pipeline Kansas City	3401 Fairbanks Avenue	Kansas City	KS	66106
T-48-KS-3659	Williams Pipeline Kansas City	401 East Donovan Road	Kansas City	KS	66115
T-48-KS-3660	National Coop McPherson	2000 South Main Street	McPherson	KS	67460
T-48-KS-3661	Williams Pipe Line Olathe	13745 W 135th St	Olathe	KS	66062
T-48-KS-3662	Farmland Phillipsburg	Hwy 183 N	Phillipsburg	KS	67661
T-48-KS-3663	S T Services Salina	2137 W Old Hwy 40	Salina	KS	67401-9798
T-48-KS-3664	Chase Pipeline Scott City	Junction Highways 83 & 4	Scott City	KS	67871
T-48-KS-3665	Williams Pipe Line Topeka	US Hwy 75 RFD 1	Wakarusa	KS	66546
T-48-KS-3666	Amoco Oil Valley Center	7452 N Meridian	Valley Center	KS	67147-0376
T-48-KS-3667	Williams Pipe Line Wathena	Rt. 2 Box 112	Wathena	KS	66090
T-48-KS-3669	Williams Pipe Line-Wichita	1100 East 21st Street	Wichita	KS	67214
T-48-KS-3670	Conoco Wichita	8001 Oak Knoll Road	Wichita	KS	67207
T-48-KS-3671	Phillips Pipeline Wichita	2400 East 37th Street North	Wichita	KS	67219
T-61-KY-3261	B P Oil Bromley	409 River Road	Bromley	KY	41016
T-61-KY-3262	MAPLLC Catlettsburg	Old St Rt 23	Catlettsburg	KY	41129
T-61-KY-3263	MAPLLC Covington	230 East 33rd Street	Covington	KY	41015
T-61-KY-3264	Transmontaigne - Greater Cincinnati	700 River Road	Covington	KY	41017
T-61-KY-3265	Henderson Terminaling	2321 Old Geneva Road	Henderson	KY	42420
T-61-KY-3266	MAPLLC Lexington	1770 Old Frankfort Pike	Lexington	KY	40504
T-61-KY-3267	Chevron USA Lexington	1750 Old Frankfort Pike	Lexington	KY	40504
T-61-KY-3268	MAPLLC Louisville	4510 Algonquin Parkway	Louisville	KY	40211
T-61-KY-3269	B P Oil Louisville	1500 SW Parkway & Gibson Lane	Louisville	KY	40211

TCN	Terminal Name	Address	City	State	Zip
T-61-KY-3270	Chevron USA Louisville	4401 Bells Lane	Louisville	KY	40211
T-61-KY-3271	TransMontaigne - Louisville	4510 Bells Lane	Louisville	KY	40211
T-61-KY-3272	MAPLLC Oil Louisville	3920 Kramers Lane	Louisville	KY	40216-4651
T-61-KY-3273	Sun Louisville	7800 Cane Run Road	Louisville	KY	40258
T-61-KY-3274	CITGO - Louisville	4724 Camp Ground Road	Louisville	KY	40216
T-61-KY-3276	MAPLLC Paducah	Highway 62 & MAPLLC Rd.	Paducah	KY	42003
T-61-KY-3278	TransMontaigne Terminal - Paducah	233 Elizabeth St	Paducah	KY	42001
T-61-KY-3279	Transmontaigne-Henderson.	2633 Sunset Lane	Henderson	KY	42420
T-61-KY-3280	Southern States Coorperative	150 Coast Guard Lane	Owensboro	KY	42302-0000
T-61-KY-3281	Somerset Refinery - Somerset	600 Monticello Street	Somerset	KY	42502-0000
T-61-KY-3283	Transmontaigne - Owensboro	900 Pleasant Valley Road	Owensboro	KY	42302-0000
T-61-KY-3284	Transmontaigne - Riverway	1350 South 3rd Street	Paducah	KY	42003
T-62-KY-2244	Transmontainge - Paducah	2000 So. 4th St.	Paducah	KY	42003
T-72-LA-2350	B P Oil Alliance		Alliance	LA	
T-72-LA-2351	Chevron USA Arcadia	Highway 80 East	Arcadia	LA	71001
T-72-LA-2353	Exxon Co USA Arcadia	Highway 80 East	Arcadia	LA	71001
T-72-LA-2357	Chevron USA Baton Rouge	1315 Mengel Road	East Baton Rouge	LA	70807
T-72-LA-2358	Exxon USA Baton Rouge	3329 Scenic Highway	Baton Rouge	LA	70805
T-72-LA-2359	Petroleum Fuel Baton Rouge	995 Earnest Wilson Road	Port Allen	LA	70767
T-72-LA-2360	Mobil Oil Chalmette	1700 Paris Rd Gate 50	Chalmette	LA	70043
T-72-LA-2361	Motiva Enterprises LLC	Louisiana Street	Covent	LA	70723
T-72-LA-2363	MAPLLC Oil Garyville	Highway 61	Garyville	LA	70051
T-72-LA-2365	Motiva Enterprises LLC	143 Firehouse Dr.	Kenner	LA	70062
T-72-LA-2366	Valero Refining Co. - Louisiana	Highway 105 South	Krotz Springs	LA	70750
T-72-LA-2367	Calcasieu Lake Charles	West End of Tank Farm Road	Lake Charles	LA	70606
T-72-LA-2368	CITGO Lake Charles	Cities Serv Hwy & LA Hwy 108	Lake Charles	LA	70601
T-72-LA-2371	Murphy Oil USA Meraux	2501 East St Bernard Hwy	Meraux	LA	70075
T-72-LA-2372	Mobil Oil Morgan City	1000 Young's Road	Morgan City	LA	70380
T-72-LA-2373	Texaco - Marrero	Barataria & River Road	Marrero	LA	70072
T-72-LA-2374	GATX Terminals Norco	1601 River Road	Norco	LA	70079
T-72-LA-2375	Chevron USA Opelousas	Highway 182 South	Opelousas	LA	70571
T-72-LA-2376	Placid Refining Co Port Allen	1940 Louisiana Hwy One North	Port Allen	LA	70767
T-72-LA-2378	Pennzoil Product Co Shreveport	3333 Midway PO Box 3099	Shreveport	LA	71133-3099
T-72-LA-2381	Conoco Westlake	1980 Old Spanish Trail	Westlake	LA	70669
T-72-LA-2382	Paktank Corp Westwego	106 Bridge City Avenue	Bridge City	LA	70094
T-72-LA-2383	Phibro Marine Fuels	7168 Shrimpers Row	Dulac	LA	70353
T-72-LA-2384	Phibro Marine Fuel Gretna	1125 Fourth St	Gretna	LA	70058
T-72-LA-2386	Goldline Refinery	11499 Plant Road	Jennings	LA	70546
T-72-LA-2388	Calvmet Lubricants-Cotton Vall	U. S. Hwy 371 South	Cotton Valley	LA	71018
T-72-LA-2389	Calvmet Lubricants-Princeton	10234 Hwy 157	Princeton	LA	71067-9172
T-72-LA-2390	ST Services Westwego	660 La Bauve Drive	Westwego	LA	70094-3632
T-72-LA-2391	Petro-United Term Sunshine	1725 Highway 75	Sunshine	LA	70780
T-72-LA-2392	Petron, Inc.	R.T. 2, Box 238A	Jonesville	LA	71343
T-72-LA-2393	Sunshine Oil and Storage, Inc.	486 Highway 165	Monroe	LA	71202
T-04-MA-1151	L E Belcher Springfield	615 St James Ave	Springfield	MA	01109
T-04-MA-1152	Chelsea Terminal L/P	11 Broadway	Chelsea	MA	02150
T-04-MA-1153	Gulf Oil Ltd Partnership Chelsea	123 Eastern Ave.	Chelsea	MA	02150
T-04-MA-1154	Mobil Oil East Boston	467 Chelsea Street	E. Boston	MA	02128
T-04-MA-1155	CITGO East Braintree	385 Quincy Ave	Braintree	MA	02184
T-04-MA-1156	Exxon USA Everett	52 Beachum Street	Everett	MA	02149
T-04-MA-1160	Irving Oil Terminals, Inc.	41 Lee Burbank Highway	Revere	MA	02151
T-04-MA-1161	Global Petroleum Corp.	222 Lee Burbank Hwy	Revere	MA	02151
T-04-MA-1162	Global Petroleum Revere	140 Lee Burbank Hwy	Revere	MA	02151
T-04-MA-1163	Cargill, Inc.	25 Derby Street	Salem	MA	01970
T-04-MA-1164	Cargill, Inc.	3 Coast Guard Road	Sandwich	MA	02563
T-04-MA-1165	Coastal Oil NE South Boston	900 E First Street	South Boston	MA	02128
T-04-MA-1166	Global Petroleum	Rocus St.	Springfield	MA	01101
T-04-MA-1168	Mobil Oil Springfield	145 Albany Street	Springfield	MA	01105
T-04-MA-1172	Global Petroleum Corp	30 Pine St.	Bedford	MA	02740
T-04-MA-1173	Harbor Fuel Oil Corp	15 Sparks Ave	Nantucket	MA	02554
T-04-MA-1174	Pride Convenience Inc.	246 Cottage St.	Springfield	MA	01101
T-04-MA-1175	R M Packer Co. Inc	Beach Rd.	Vineyard Haven	MA	02568
T-04-MA-1176	Sprague Energy Corp	728 Southern Artery	Quincy	MA	02169
T-04-MA-1177	Springfield Terminals Inc	86 Robbins Road	Springfield	MA	01101
T-04-MA-1179	Wyatt Energy Inc	1053 Page Blvd	Springfield	MA	01104-1697
T-04-MA-1180	Sprague Energy - Quincy	740 Washington St.	Quincy	MA	02170
T-04-MA-1181	Ultlramar Energy, Inc.	60 Hannon St.	Springfield	MA	01101-2710
T-52-MD-1550	Amerada Hess - Baltimore	6200 Pennington Avenue	Baltimore	MD	21226
T-52-MD-1551	Amoco Oil Baltimore	801 East Ordance Rd	Curtis Bay	MD	21226
T-52-MD-1552	TOSCO/Bayway - Baltimore	2155 Northbridge Ave	Baltimore	MD	21226
T-52-MD-1554	Petroleum Fuel & Terminal N	5101 Erdman Avenue	Baltimore	MD	21205
T-52-MD-1558	Shell Oil Co. West	3445 Fairfield Road	Baltimore	MD	21226

TCN	Terminal Name	Address	City	State	Zip
T-52-MD-1559	Petroleum Fuel and Terminal S	1622 South Clinton Street	Baltimore	MD	21224
T-52-MD-1560	S T Services Baltimore	1800 Frankfurst Avenue	Baltimore	MD	21226-1024
T-52-MD-1561	Motiva Enterprises LLC	2400 Petrolia Ave.	Baltimore	MD	21226
T-52-MD-1562	Motiva Enterprises LLC	2201 Southport Ave.	Baltimore	MD	21226
T-52-MD-1563	Stratus Petroleum Baltimore	3100 Vera Street	Baltimore	MD	21226
T-52-MD-1565	S T Services - Piney Point	17877 Piney Point Road	Piney Point	MD	20674
T-52-MD-1567	Cato Oil Salisbury	1030 Marine Road	Salisbury	MD	21801-1030
T-52-MD-1568	Maritank Maryland Inc.	1134 Marine Road	Salisbury	MD	21801
T-52-MD-1570	S T Services Andrews AFB	c/o 89th Supply Squadron/LGSS	Andrews AFB	MD	20331-5010
T-52-MD-1571	Delmarva Oil Co.	Fitzwater St. Extended	Salisbury	MD	21803
T-01-ME-1000	Mobil Oil Bangor	730 Lower Main Street	Bangor	ME	04401
T-01-ME-1001	Koch Fuels South Portland	5 Central Avenue	South Portland	ME	04106
T-01-ME-1002	Coldbrook Energy, Inc.	809 Main Road No	Hampden	ME	04444
T-01-ME-1003	Sprague Energy So. Portland	59 Main Street	South Portland	ME	04106
T-01-ME-1004	Mobil Oil Portland	170 Lincoln Street	South Portland	ME	04106
T-01-ME-1006	Irving Oil Searsport	Station Ave	Searsport	ME	04974
T-01-ME-1008	Gulf Oil South Portland	175 Front St	South Portland	ME	04106
T-01-ME-1009	Cargill Inc.	One Clarks Road	South Portland	ME	04106
T-01-ME-1010	Motiva Enterprises LLC	102 Mechanic Street	South Portland	ME	04106-2828
T-01-ME-1011	Webber Oil Bangor	700 Main St	Bangor	ME	04401
T-01-ME-1012	Webber Tanks Buckport	Drawer CC River Road	Bucksport	ME	04416
T-01-ME-1013	Webber Tanks Brewer	225 South Main	Brewer	ME	04412
T-38-MI-3001	Amoco Oil Cheyboygan	311 Coast Guard Drive	Cheyboygan	MI	49721
T-38-MI-3004	Amoco Oil Napoleon	6777 Brooklyn Road	Napoleon	MI	49261
T-38-MI-3005	Amoco Oil River Rouge	205 Marion Street	River Rouge	MI	48218
T-38-MI-3006	Amoco Oil Taylor	8625 South Inkster Rd.	Taylor	MI	48180-2114
T-38-MI-3007	B P Oil Taylor	24801 Ecorse Rd	Taylor	MI	48180
T-38-MI-3008	CITGO Ferrysburg	524 Third Street	Ferrysburg	MI	49409
T-38-MI-3009	CITGO Jackson	2001 Morrill Rd	Jackson	MI	49201
T-38-MI-3010	CITGO Niles	2233 South Third	Niles	MI	49120
T-38-MI-3011	MAPLLC Niles	2140 South Third St.	Niles	MI	49120
T-38-MI-3012	Cousins Petroleum Taylor	7965 Holland	Taylor	MI	48180
T-38-MI-3013	Equilon Enterprises LLC	17806 North Shore Dr.	Ferrysburg	MI	49409
T-38-MI-3015	MAPLLC Detroit	12700 Toronto St.	Detroit	MI	48217
T-38-MI-3016	MAPLLC Flint	6065 North Dort Highway	Mt. Morris	MI	48458
T-38-MI-3017	MAPLLC Jackson	2090 Morrill Rd	Jackson	MI	49201-8238
T-38-MI-3019	MAPLLC Oil Niles	2216 South Third Street	Niles	MI	49120-4010
T-38-MI-3020	MAPLLC N. Muskegon	3005 Holton Rd	North Muskegon	MI	49445-2513
T-38-MI-3022	Mobil Oil Flint	G5340 North Dort Highway	Flint	MI	48505
T-38-MI-3023	Mobil Oil Niles	2150 South Third Street	Niles	MI	49120
T-38-MI-3024	Mobil Oil Woodhaven	20755 West Road	Woodhaven	MI	48183
T-38-MI-3025	Equilon Enterprises LLC	700 Deacon	Detroit	MI	48217
T-38-MI-3027	Equilon Enterprises LLC	2103 Morrill Rd.	Jackson	MI	49201
T-38-MI-3028	Equilon Enterprises LLC	325.5 Fulkerson Rd.	Niles	MI	49120
T-38-MI-3029	Sun Company Inc - Owosso	4004 West Main Rd	Owosso	MI	48867
T-38-MI-3030	Sun River Rouge	500 South Dix Avenue	Detroit	MI	48217
T-38-MI-3031	Total Petroleum Alma	1925 East Superior St	Alma	MI	48802
T-38-MI-3032	Total Petroleum Bay City	1806 Marquette	Bay City	MI	48706
T-38-MI-3033	Total Petroleum Lansing	6300 West Grand River	Lansing	MI	48906
T-38-MI-3034	Total Petroleum Romulus	28001 Citrin Drive	Romulus	MI	48174
T-38-MI-3035	Total Petroleum Traverse City	13544 W Bayshore Dr	Traverse City	MI	49684
T-38-MI-3036	CITGO - Bay City	5011 Wilder Road	Bay City	MI	48706
T-38-MI-3037	Leemon Oil Co., Inc.	29120 Wick Road	Romulus	MI	48174
T-38-MI-3039	Delta Fuels Of Michigan	40600 Grand River	Novi	MI	48374
T-38-MI-3041	Quality Oil Company	630 Ottawa Avenue	Holland	MI	49423
T-38-MI-3042	MAPLLC Detroit	22970 Ecorse Road	Taylor	MI	48180
T-38-MI-3043	Clark Oil Compant - Marshall	12451 Old US 27	Marshall	MI	49068
T-38-MI-3044	Clark Refinery & Marketing - Taylor	8000 S Beech Daly Rd	Taylor	MI	48180
T-41-MN-3400	Amoco Oil Moorhead	1101 Southeast Main	Moorhead	MN	56560
T-41-MN-3401	Amoco Oil Sauk Centre	1 Mile W on County Rd 72	Sauk Centre	MN	56378
T-41-MN-3402	Amoco Oil Spring Valley	2 Miles East of U S 16	Spring Valley	MN	55975
T-41-MN-3403	Amoco Oil Twin Cities	2288 West County Road C	Roseville	MN	55113
T-41-MN-3404	MAPLLC Refinery St. Paul	100 West Third Street	St. Paul Park	MN	55071
T-41-MN-3405	Conoco Wrenshall	10 Broadway Street	Wrenshall	MN	55797
T-41-MN-3406	Erickson Petroleum Newport	50 21st St	Newport	MN	55055
T-41-MN-3407	Koch Pine Bend	Junction Highways 52 & 55	St Paul	MN	55164-0596
T-41-MN-3410	Murphy Oil-Esko	5746 Old Hwy 61	Esko	MN	55733
T-41-MN-3412	Williams Pipe Line Alexandria	709 3rd Ave W	Alexandria	MN	56308
T-41-MN-3413	Williams Pipe Line Mankato	Rural Route Nine	Mankato	MN	56001
T-41-MN-3414	Williams Pipe Line Marshall	Route Four	Marshall	MN	56258
T-41-MN-3415	Williams Pipe Line Roseville	2451 W County Rd C	Roseville	MN	55113
T-41-MN-3416	Williams Pipe Line Rochester	1331 Hwy 42 SE	Eyota	MN	55934

TCN	Terminal Name	Address	City	State	Zip
T-43-MO-3700	Conoco Belle	Highway 28 South	Belle	MO	65013
T-43-MO-3701	JD Streett St Louis	3800 S 1st St	St Louis	MO	63118
T-43-MO-3702	Texon LP	19905 St. Hwy. 114	Dexter	MO	63841
T-43-MO-3703	Ayers Oil Company - Canton	Fourth & Grant	Canton	MO	63435
T-43-MO-3704	Transmontaigne Terminaling Inc.	1400 S Giboney	Cape Girardeau	MO	63701-0704
T-43-MO-3705	TEPPCO Cape Girardeau	Rural Route 2, Hwy N	Scott City	MO	63780
T-43-MO-3706	Sinclair Pipeline Carrollton	S Main & 24 Business Route	Carrollton	MO	64633
T-43-MO-3707	Williams Pipeline Carthage	18195 County Rd. 138	Jasper	MO	64755
T-43-MO-3708	Williams Pipeline Columbia	5531 South Hwy 63	Columbia	MO	65201
T-43-MO-3709	Phillips 66 Jefferson City	2116 Idlewood	Jefferson City	MO	65109
T-43-MO-3710	Conoco Kansas City	6699 NW Riverpark Drive	Parkville	MO	64152
T-43-MO-3712	Sinclair Pipeline Mexico	Highway 54 East	Mexico	MO	65265
T-43-MO-3713	Conoco Mount Vernon	Rt. 2 Box 115	Mount Vernon	MO	65712
T-43-MO-3715	Sinclair Pipeline New Madrid	211 Water Street	New Madrid	MO	63869
T-43-MO-3716	Williams Pipeline Palmyra	6 mi North on Highway 61	Palmyra	MO	63461
T-43-MO-3718	Williams Pipeline Springfield	3132 S. State Hwy MM	Brookline	MO	65619
T-43-MO-3719	J D Street River Plant	1 River Road	St Louis	MO	63125
T-43-MO-3720	Amoco Oil Sugar Creek	1000 North Sterling	Sugar Creek	MO	64054-0507
T-43-MO-3721	Williams Pipeline St Charles	4695 South Service Road	St Peter	MO	63376
T-43-MO-3725	Equilon Enterprises LLC	239 E. Prairie St.	St. Louis	MO	63147
T-43-MO-3726	Clark Rfg St Louis	4070 South First Street	St Louis	MO	63118
T-43-MO-3727	Transmontaign Terminaling Inc.	15376 Hwy 96	Mount Vernon	MO	65712
T-43-MO-3728	Sinclair Oil Corp - Carrollton	RR4, Box 48	Carrollton	MO	64633-0000
T-64-MS-2400	Munro Petroleum Biloxi	540 Bayview Avenue	Biloxi	MS	39533
T-64-MS-2401	Chevron USA Collins	Old Highway 49 South	Collins	MS	39428
T-64-MS-2402	Exxon USA Collins	31 Kola Road	Collins	MS	39428
T-64-MS-2403	B P Oil Collins	First Avenue South	Collins	MS	39428
T-64-MS-2404	Motiva Enterprises LLC	49 So. & Kola Rd.	Collins	MS	39428
T-64-MS-2405	Louis Dreyfus Collins	First Avenue South	Collins	MS	39428
T-64-MS-2406	Greenville Republic Terminal	310 Walthall Street	Greenville	MS	38701
T-64-MS-2408	Transmontainge Terminaling - Greenville.	208 Short Clay Street	Greenville	MS	38701
T-64-MS-2409	Southland Oil Lumberton	5 Mi North of Lumberton Hwy 11	Lumberton	MS	39455
T-64-MS-2410	Amoco Oil Meridan	181 65th Avenue	Meridian	MS	39307
T-64-MS-2412	CITGO Meridian	180 65th Avenue	Meridian	MS	39305
T-64-MS-2413	B P Oil Meridian	1401 65th Ave S	Meridian	MS	39307
T-64-MS-2414	Motiva Enterprises LLC	6540 N. Frontage Rd.	Meridian	MS	39301
T-64-MS-2415	Louis Dreyfus Meridian	1401 65th Ave S	Meridian	MS	39307
T-64-MS-2416	Chevron USA Pascagola	Industrial Road State Hwy 611	Pascagoula	MS	39568-1300
T-64-MS-2417	Amerada Hess - Purvis	US Hwy. 11	Purvis	MS	39475
T-64-MS-2418	Southland Oil Sandersville	2 mi N on Hwy 11 PO Drawer A	Sandersville	MS	39477
T-64-MS-2419	CITGO Vicksburg	1585 Haining Rd	Vicksburg	MS	39180
T-72-MS-2421	Delta Terminal - Greenville	2181 Harbor Front	Greenville	MS	38701
T-72-MS-2422	Meiko Terminal	20096 Norm Connell Drive	Aberdeen	MS	39730
T-81-MT-4000	Conoco Billings	23rd & Fourth Ave South	Billings	MT	59107
T-81-MT-4001	Conoco Bozeman	316 West Griffin Drive	Bozeman	MT	59715
T-81-MT-4002	Conoco Great Falls	1401 52nd N	Great Falls	MT	59405
T-81-MT-4003	Conoco Helena	3180 Highway 12 East	Helena	MT	59601
T-81-MT-4004	Conoco Missoula	3330 Raser Drive	Missoula	MT	59802
T-81-MT-4005	CENEX Laurel	P O Box 909	Laurel	MT	59044
T-81-MT-4006	CENEX Glendive	P O Box 240	Glendive	MT	59330
T-81-MT-4007	Exxon USA Billings	Lockwood Frontage Rd	Billings	MT	59101
T-81-MT-4008	Exxon USA Bozeman	220 West Griffin Drive	Bozeman	MT	59715
T-81-MT-4009	Exxon USA Helena	3120 Highway 12 Eaast	Helena	MT	59601
T-81-MT-4010	Exxon USA Missoula	3350 Raser Drive	Missoula	MT	59801
T-81-MT-4011	Montana Refining Great Falls	1900 10th Street	Great Falls	MT	59403
T-56-NC-2000	Exxon USA Charlotte	6801 Freedom Dr	Charlotte	NC	28208-0082
T-56-NC-2001	CITGO Charlotte	7600 Mount Holly Road	Charlotte	NC	28214
T-56-NC-2002	MAPLLC Oil Charlotte	8035 Mt. Holly Rd	Paw Creek	NC	28130
T-56-NC-2003	Crown Central Charlotte	7720 Mount Holly Road	Paw Creek	NC	28130-0078
T-56-NC-2004	Phillips Pipeline Co	502 Tom Sadler Road	Paw Creek	NC	28130-0066
T-56-NC-2005	Motiva Enterprises LLC	6851 Freedom Dr.	Charlotte	NC	28214
T-56-NC-2006	Southern Facilities - Paw Creek	7145 Mount Holly Road	Paw Creek	NC	28130-0094
T-56-NC-2007	Motiva Enterprises LLC	410 Tom Sadler Rd.	Paw Creek	NC	28130-0088
T-56-NC-2008	Southeast Terminal - Charlotte	7401 Old Mount Holly Road	Paw Creek	NC	28214
T-56-NC-2009	Motiva Enterprises LLC	992 Shaw Mill Road	Fayetteville	NC	28303
T-56-NC-2010	Amerada Hess - Greensboro	6907B West Market Street	Greensboro	NC	27409
T-56-NC-2011	Amoco Oil Greensboro	7109 West Market Street	Greensboro	NC	27409
T-56-NC-2012	MAPLLC Greensboro	6311 Burnt Poplar Road	Greensboro	NC	27409
T-56-NC-2014	Exxon USA Greensboro	6907 West Market Street	Greensboro	NC	27409
T-56-NC-2015	Triad Terminal	6376 Burnt Poplar Rd	Greensboro	NC	27409
T-56-NC-2018	Triad Terminal Selma	2200 Oil Terminal Rd	Selma	NC	27576

TCN	Terminal Name	Address	City	State	Zip
T-56-NC-2019	Apex Oil Co - Greensboro	6900 West Market St	Greensboro	NC	27409
T-56-NC-2020	Williams Energy Ventures-Green	115 Chimney Rock Road	Greensboro	NC	27409-9661
T-56-NC-2021	Motiva Enterprises LLC	101 S. Chimney Rock Rd.	Greensboro	NC	27419
T-56-NC-2022	Louis Dreyfus Greensboro	6801 West Market Street	Greensboro	NC	27409
T-56-NC-2023	Amerada Hess - Paw Creek	7615 Old Mount Holly Road	Paw Creek	NC	28214
T-56-NC-2024	Amoco Oil Paw Creek	7924 Mt. Holly Rd	Paw Creek	NC	28130-0071
T-56-NC-2025	Crown Central Selma	2999 W Oak St	Selma	NC	27576
T-56-NC-2026	Valero Marketing & Supply - Paw Creek.	7325 Old Mount Holly Road	Paw Creek	NC	28130-0866
T-56-NC-2027	Motiva Enterprises LLC	2232 Ten-Ten. Road	Apex	NC	27502
T-56-NC-2028	Amerada Hess - Selma	West State Road 1929	Selma	NC	27576
T-56-NC-2029	B P Oil Selma	Buffalo Road	Selma	NC	27576
T-56-NC-2030	CITGO Selma	State Hwy 1003 and Oak St Ext	Selma	NC	27576
T-56-NC-2031	Exxon USA Selma	2555 West Oak Street	Selma	NC	27576
T-56-NC-2033	Valero Marketing & Supply Co. - Selma.	4383 Buffaloe Road	Selma	NC	27576
T-56-NC-2034	Phillips Petro Selma	4086 Buffalo Road	Selma	NC	27576
T-56-NC-2036	Williams Energy Ventures-Selma	4414 Buffalow Road	Selma	NC	27576
T-56-NC-2037	Amerada Hess - Wilmington	1312 S Front St.	Wilmington	NC	28401
T-56-NC-2039	CTI of North Carolina Inc	1002 S Front Street	Wilmington	NC	28402
T-56-NC-2041	Koch Refining N Wilmington	3325 River Road	Wilmington	NC	28412
T-56-NC-2042	Koch Refining S Wilmington	3334 River Rd	Wilmington	NC	28412
T-56-NC-2043	Apex Oil Co. - Wilmington	3314 River Road	Wilmington	NC	28403
T-45-ND-3500	Williams Pipeline Grand Forks	3930 Gateway Drive	Grand Forks	ND	58203
T-45-ND-3501	Williams Pipe Line Fargo	902 Main Avenue East	West Fargo	ND	58078
T-45-ND-3502	Amoco Oil Jamestown	10 Mi West on I-94 Stand Spur	Jamestown	ND	58401
T-45-ND-3503	Kaneb Pipe Line Jamestown	3790 Hwy 281 SE	Jamestown	ND	58401
T-45-ND-3504	CENEX Minot	700 Second Street SW	Minot	ND	58701
T-45-ND-3505	Amoco Oil Mandan		Mandan	ND	58554-5000
T-47-NE-3600	Kaneb Pipe Line Columbus	Highway 30	Columbus	NE	68601
T-47-NE-3601	Kaneb Pipe Line Geneva	U S Highway 81	Geneva	NE	68361
T-47-NE-3602	Williams Pipe Line Doniphan	12275 South US Hwy 281	Doniphan	NE	68832
T-47-NE-3603	Conoco Lincoln Products	Route 1	Roca	NE	68430
T-47-NE-3605	Williams Pipe Line Lincoln	2000 Saltillo Road	Roca	NE	68430
T-47-NE-3606	Kaneb Pipe Line Norfolk	Highway 81	Norfolk	NE	68701
T-47-NE-3607	Kaneb Pipe Line North Platt	Rural Route Four	North Platte	NE	69101
T-47-NE-3608	Williams Pipe Line Omaha	Seventh & Yates Street	Omaha	NE	68103
T-47-NE-3609	Conoco Pipeline Sidney	Rural Route 1	Sidney	NE	69162
T-47-NE-3610	Kaneb Pipe Line Osceola	Rural Route 1	Osceola	NE	68651
T-02-NH-1050	Sprague Energy Newington	River Rd.	Newington	NH	03801
T-02-NH-1054	Sprague Energy Portsmouth	Gosseling Rd.	Portsmouth	NH	03801
T-02-NH-1056	Irving Oil Corp. Mainway	50 Preble Way	Portsmouth	NH	03801
T-04-NH-1057	Sprague Energy Newington	Avery Lane	Newington	NH	03801
T-22-NJ-1500	Amerada Hess - Bayonne	Lower Hook Road	Bayonne	NJ	07002
T-22-NJ-1501	Coastal Oil Bayonne	Foot of East Fifth Street	Bayonne	NJ	07002
T-22-NJ-1502	Amerada Hess - Newark Delanny	1111 Delanny St.	Newark	NJ	07105
T-22-NJ-1505	Amerada Hess - Bogota	238 West Fort Lee Road	Bogota	NJ	07503
T-22-NJ-1506	Amoco Oil Carteret Terminal	760 Roosevelt Avenue	Carteret	NJ	07008
T-22-NJ-1508	Amerada Hess - Edgewater	615 River Road	Edgewater	NJ	07020
T-22-NJ-1511	Koch Fuels Gloucester City	Across Delaware River from PA	Gloucester City	NJ	08030
T-22-NJ-1512	Tosco Tremley PT	Foot of Southwood Ave	Linden	NJ	07036
T-22-NJ-1513	CITGO Linden	4801 South Wood Avenue	Linden	NJ	07036
T-22-NJ-1514	Bayway Refining Co	1100 US Highway One	Linden	NJ	07036
T-22-NJ-1515	Gulf Oil Linden	2600 Marshes Dock Road	Linden	NJ	07036
T-22-NJ-1516	Mobil Oil Linden	South Wood Avenue	Linden	NJ	07036
T-22-NJ-1518	Amerada Hess - Newark Doremus	148-182 Doremus Ave.	Newark	NJ	07105
T-22-NJ-1519	B P Oil Newark	Building 350 Coastel St	Port Newark	NJ	07114
T-22-NJ-1520	Getty Terminal Newark	86 Doremus Rd	Newark	NJ	07105
T-22-NJ-1521	Motiva Enterprises LLC	909 Delaney Street	Newark	NJ	07105
T-22-NJ-1522	Stratus Petroleum Newark	678 Doremus Ave	Newark	NJ	07105
T-22-NJ-1523	Sun Newark	436 Doremus Avenue	Newark	NJ	07105
T-22-NJ-1524	B P Oil Paulsboro	303 Mantua Avenue	Paulsboro	NJ	08066
T-22-NJ-1525	GATX Terminals Paulsboro	3rd St & Billingsport Road	Paulsboro	NJ	08066
T-22-NJ-1526	Valero Refining Company - New Jersey.	800 Billingsport	Paulsboro	NJ	08066
T-22-NJ-1528	Amerada Hess - Pennsauken	One Derousse Avenue	Pennsauken	NJ	08110
T-22-NJ-1530	Amerada Hess - Perth Amboy	State Street	Perth Amboy	NJ	08861
T-22-NJ-1531	Chevron USA Perth Amboy	1200 State St	Perth Amboy	NJ	08861
T-22-NJ-1533	CITGO Petty's Island	Route 36 & Deleware River	Pennsauken	NJ	08110
T-22-NJ-1534	Sun Piscataway	1028 Stelton Road	Piscataway	NJ	08854
T-22-NJ-1535	Amerada Hess - Port Reading	Cliff Road	Port Reading	NJ	07064
T-22-NJ-1536	Amerada Hess - Secaucus	35 Meadowlands Parkway	Secaucus	NJ	07094

TCN	Terminal Name	Address	City	State	Zip
T-22-NJ-1537	Shell Oil - Sewaren	115 State Street	Sewaren	NJ	07077-0188
T-22-NJ-1538	Shell Oil Sewaren	111 State Street	Sewaren	NJ	07077-1440
T-22-NJ-1540	Gulf Oil Thorofare	358 Kings Highway	Thorofare	NJ	08086
T-22-NJ-1542	Mobil Oil Trenton	2785 Lamberton Road	Trenton	NJ	08611
T-22-NJ-1544	Coastal Eagle Point Westville	U S Route 130	South Westville	NJ	08093
T-22-NJ-1545	Amerada Hess - Woodbridge	Smith Street & Convery Blvd.	Perth Amboy	NJ	08861
T-22-NJ-1547	Duck Island Terminal Inc.	1463 Lamberton Road	Trenton	NJ	08677
T-22-NJ-1548	SLF, Inc. T/a Consumers Oil	1473 Lamberton Road	Trenton	NJ	08611
T-85-NM-4251	Chevron USA Albuquerque	3200 Broadway SE within city	Albuquerque	NM	87105
T-85-NM-4252	Conoco Albuquerque	4036 Broadway Southeast	Albuquerque	NM	87105
T-85-NM-4253	Diamond Albuquerque	State Road 303 SW	Albuquerque	NM	87105
T-85-NM-4254	Phillips 66 Albuquerque	6356 State Road 47 S W	Albuquerque	NM	87105
T-85-NM-4255	Equilon Enterprises LLC	3209 Broadway Southeast	Albuquerque	NM	87105
T-85-NM-4256	Navajo Refining Artesia	US Highway 82, Drawer 159	Artesia	NM	88210
T-85-NM-4257	Giant Refining - Bloomfield	# 50 County Road 4990	Bloomfield	NM	87413
T-85-NM-4258	Giant Refining - Ciniza	I-40 Exit 39	Jamestown	NM	87347
T-85-NM-4259	S T Services Alamogordo	6026 Hwy 54 South	Alamogordo	NM	88310-0109
T-86-NM-4261	USA Petroleum Southwest Terminal	U.S. 10 & NM St. Rd. 29	Road Forks	NM	88045
T-88-NV-4350	Calnev Pipe Line Las Vegas	5049 N Sloan	Las Vegas	NV	89115
T-88-NV-4353	Kinder Morgan - Sparks	301 Nugget Avenue	Sparks	NV	89431
T-88-NV-4354	Time Oil Sparks	525 Nugget Avenue	Sparks	NV	89431
T-88-NV-4358	Berry-Hinckley Terminal, Inc.	275 Nugget Ave	Sparks	NV	89431
T-88-NV-4359	Rebel Oil Las Vegas	5054 N Sloane Lane	Las Vegas	NV	89115
T-88-NV-4360	Berry Hinckley Terminal-Sparks	147 South Stanford Way	Sparks	NV	89431
T-11-NY-1301	Amoco Oil Brooklyn	125 Apollo St.	Brooklyn	NY	11222
T-11-NY-1302	Metro Terminals Brooklyn	498 Kingsland Avenue	Brooklyn	NY	11222
T-11-NY-1303	Tosco Pipeline Plainview	150 Fairchild Avenue	Plainview	NY	11803
T-11-NY-1304	Motiva Enterprises LLC	25 Paidge Ave.	Brooklyn	NY	11222
T-11-NY-1305	Mobil Oil Inwood	464 Doughty Blvd	Inwood	NY	11696
T-11-NY-1306	Coastal Oil Flushing	31-70 College Point Blvd	Flushing	NY	11354
T-11-NY-1307	Castle Astoria	500 Mamaroneck Avenue	Harrison	NY	10528
T-11-NY-1308	Amerada Hess - Brooklyn	722 Court Street	Brooklyn	NY	11231
T-11-NY-1309	Mobil Oil Glenwood Landing	Shore & Glenwood Rd	Glenwood Landing	NY	11547
T-11-NY-1310	Tosco Pipeline Holtsville	586 Union Ave	Holtsville	NY	11742
T-11-NY-1311	Getty Terminal-Long Island	30-23 Greenpoint Ave.	Long Island City	NY	11101
T-11-NY-1312	Motiva Enterprises LLC	74 East Avenue	Lawrence	NY	11559
T-11-NY-1313	Bayside Fuel Oil Depot Corp.	One North 12th Street	Brooklyn	NY	11211
T-11-NY-1315	RAD Operating Oceanside	7 Hampton Road	Oceanside	NY	11572
T-11-NY-1316	Bayside Fuel Oil Depot Corp	510 Sackett Street	Brooklyn	NY	11214
T-11-NY-1317	Lewis Oil Port Washington	65 Shore Road	Port Washington	NY	11050
T-11-NY-1318	Tosco - Riverhead	212 Sound Shore Road	Riverhead	NY	11901
T-11-NY-1319	Tosco Pipeline East Setauket	19 Bell Meade Road	East Setauket	NY	11733
T-11-NY-1323	Ditmas Oil Associates Inc	364 Maspeth Avenue	Brooklyn	NY	11211
T-11-NY-1324	Carbo Industries Inc	1 Bay Blvd	Lawerence	NY	11559
T-11-NY-1325	Bayside Fuel Oil Corp.	1100 Grand Street	Brooklyn	NY	11211
T-11-NY-1326	Bayside Fuel Oil Depot	1776 Shore Parkway	Brooklyn	NY	11214
T-11-NY-1329	Bay Terminals of Rockaway, Inc.	75-02 Astel Blvd.	Rockaway	NY	11692
T-11-NY-1330	Lefferts Oil Terminal	Bldg. 140 JFK Inter'l Airport	Jamaica	NY	11430
T-11-NY-1331	A. R. Fuels, Inc.	2125 Mill Ave.	Brooklyn	NY	11234
T-11-NY-1332	Bayside Fuel Oil Corporation	537 Smith Street	Brooklyn	NY	11231
T-11-NY-1460	Mobil Oil Cold Spring Harbor	95 Shore Road	Cold Spring	NY	11724
T-13-NY-1352	Castle Port Morris Terminals	290 Locust Avenue	Bronx	NY	10454-2023
T-13-NY-1353	Stuyvesant Fuel Service-Bronx	1040 East 149th Street	Bronx	NY	10455
T-13-NY-1354	Getty Terminal Bronx	4301 Boston Post Road	Bronx	NY	10466
T-13-NY-1355	Mobil Oil Port Mobil	4101 Arthur Kill Rd	Staten Island	NY	10309
T-13-NY-1356	Amoco Oil Mount Vernon	40 Canal St.	Mount Vernon	NY	10550
T-13-NY-1357	Fred M Schildwachter & Sons	1400 Ferris Place	Bronx	NY	10461
T-13-NY-1358	Meenan Peekskill	Roa Hook rd	Peekskill	NY	10566
T-13-NY-1359	Panco Equipment Corp	Main St Box 659	Stoney Point	NY	10980
T-13-NY-1360	Westmore Fuel Co Inc	2 Purdy Ave	Port Chester	NY	10573
T-13-NY-1361	West Vernon Petroleum Corp	701 S Columbus Ave	Mount Vernon	NY	10550
T-13-NY-1362	GATX Staten Island	500 Western Ave	Staten Island	NY	10302
T-13-NY-1363	A Tarricone Yonkers	91 Alexander St.	Yonkers	NY	10701
T-13-NY-1364	Commander Oil Corporation	240 East Shore Road	Great Neck	NY	11022
T-13-NY-1365	Castle North Terminals, Inc.	11 River Street	Sleepy Hollow	NY	10591
T-14-NY-1400	Agway Petroleum Albany	184 Port Rd	Albany	NY	12202
T-14-NY-1401	Cibro Petroleum Prod Albany	Port of Albany	Albany	NY	12202
T-14-NY-1402	Citgo Petroleum Corp Glenmont	495 River Road	Glenmont	NY	12077
T-14-NY-1403	Mobil Oil Albany	50 Church Street	Albany	NY	12202
T-14-NY-1404	Petroleum Fuel Albany	54 Riverside Avenue	Rensselaer	NY	12144
T-14-NY-1405	Sears Petroleum & Transport Co	Route 144 552 River Road	Glenmont	NY	12077
T-14-NY-1406	Stratus Petroleum Green Isle	1 Osgood Ave.	Green Island	NY	12183

TCN	Terminal Name	Address	City	State	Zip
T-14-NY-1409	Agway Petroleum Corp. Milton	Sands Ave.	Milton	NY	12547
T-14-NY-1411	Coastal Oil Newburgh	Hudson River	Newburgh	NY	12551
T-14-NY-1413	Mobil Oil Newburgh	20 River Road	Newburgh	NY	12551
T-14-NY-1414	Sun Refining New Windsor	49 River Road	New Windsor	NY	12553
T-14-NY-1415	Amerada Hess - Rensselaer	River Road E Greenbush	Rensselaer	NY	12144
T-14-NY-1416	Bray Terminals Rensselaer	50 Riverside Drive	Rensselaer	NY	12144
T-14-NY-1417	Sprague Energy Rensselaer	Riverside Avenue, PO Box 215	Rensselaer	NY	12144
T-14-NY-1418	Getty Terminal Rensselaer	49 Riverside Avenue	Rensselaer	NY	12144-0151
T-14-NY-1420	Sun Rensselaer	58 Riverside Avenue	Rensselaer	NY	12144
T-14-NY-1421	Amerada Hess - Roseton	590 River Road	Newburgh	NY	12550
T-14-NY-1422	Effron Fuel Oil Co	154 Garden St	Poughkeepsie	NY	12601
T-16-NY-1450	Stratus Petro Baldwinsville	7431 Hillside Road	Baldwinsville	NY	13027
T-16-NY-1451	Mobil Oil Binghamton	3301 Old Vestal Rd	Vestal	NY	13850
T-16-NY-1452	Amerada Hess - Rochester - Cairn	22 Cairn St.	Rochester	NY	14611
T-16-NY-1453	Coastal Oil New York, Inc.	3121 Shippers Road	Vestal	NY	13851
T-16-NY-1454	CITGO Vestal	3212 Old Vestal Road	Vestal	NY	13850
T-16-NY-1455	Sun Binghamton	4324 Watson Boulevard	Johnson City	NY	13790
T-16-NY-1456	Agway Petroleum Corp. Brewerton	Rt. 37 River Road	Brewerton	NY	13029
T-16-NY-1457	United Refining Tonawanda	4545 River Road	Tonawanda	NY	14150
T-16-NY-1458	Mobil Oil Buffalo	625 Elk St.	Buffalo	NY	14210
T-16-NY-1459	Noco Energy Corp	700 Grand Island Blvd	Tonawanda	NY	14151-0086
T-16-NY-1461	IPT, LLC, INC.	End of Riverside Extension	Rennselaer	NY	12144
T-16-NY-1462	Agway Petroleum Corp. Geneva	West River Road	Geneva	NY	14456
T-16-NY-1463	Agway Petroleum Corp. Marcy	9586 River Road	Marcy	NY	13403
T-16-NY-1464	Amerada Hess - Marcy	9570 River Rd.	Marcy	NY	13403
T-16-NY-1465	Bray Terminals Marcy	9660 River Rd	Marcy	NY	13403
T-16-NY-1468	Agway Petroleum Rochester	754 Brooks Ave.	Rochester	NY	14619
T-16-NY-1469	Amerada Hess - Rochester Lyell	1975 Lyell Avenue	Rochester	NY	14606
T-16-NY-1470	Griffith Oil-Rochester	335 McKee Rd	Rochester	NY	14611
T-16-NY-1471	Griffith Oil Co., Inc. Big Flats	3351 Rt. 352	Big Flats	NY	14814
T-16-NY-1472	Mobil Oil Rochester	675 Brooks Avenue	Rochester	NY	14619
T-16-NY-1473	Sun Rochester	1840 Lyell Avenue	Rochester	NY	14606
T-16-NY-1474	United Refining Rochester	1075 Chili Avenue	Rochester	NY	14624
T-16-NY-1476	Amerada Hess - Warners	6700 Herman Rd.	Warners	NY	13164
T-16-NY-1480	Mobil Oil Syracuse	502 Solar Street	Syracuse	NY	13261
T-16-NY-1482	Sun Syracuse	540 Solar Street	Syracuse	NY	13204
T-16-NY-1484	Sun Tonawanda	3733 River Road	Tonawanda	NY	14150
T-16-NY-1486	Mobil Oil Utica	37 Wurz Avenue	Utica	NY	13502
T-16-NY-1487	Sears Oil Marcy Terminal	9788 River Road	Marcy	NY	13403
T-16-NY-1488	Agway Petroleum Corp. Vestal	3113 Shippers Rd.	Vestal	NY	13851
T-16-NY-1489	Amerada Hess Corp. Vestal	440 Prentice Road	Vestal	NY	13850
T-16-NY-1492	Alaskan Oil Co. - Baldwinsville	7437 Hillside Road	Baldwinsville	NY	13027
T-16-NY-1493	Mohawk Valley Oil Co. Marcy	9678 River Road	Marcy	NY	13403
T-16-NY-1494	Alaskan Oil- Rochester	1935 Lyell Avenue	Rochester	NY	14606
T-16-NY-1495	Kingston Oil Supply-Port Ewen	North Broadway	Port Ewen	NY	12166
T-16-NY-1496	Kingston Oil Supply- Catskill	End Lower Main St.	Catskill	NY	12414
T-16-NY-1497	Walter Davenport & Son	625 Sawkill Rd.	Kingston	NY	12401
T-16-NY-1498	Riverstar - Highland	42 River Rd.	Highland	NY	12528
T-16-NY-1499	Warex Terminals Corp-Newburgh	1 South Water Street	Newburgh	NY	12550
T-31-OH-3100	MAPLLC Cincinnati	4015 River Road	Cincinnati	OH	45204
T-31-OH-3101	MAPLLC Columbus	3855 Fisher Road	Columbus	OH	43228
T-31-OH-3102	MAPLLC Heath	840 Heath Road	Heath	OH	43056
T-31-OH-3103	MAPLLC Marietta	Old Rt 7 & Moores Junction	Marietta	OH	45750
T-31-OH-3104	B P Oil Cincinnati	930 Tennessee Avenue	Cincinnati	OH	45229
T-31-OH-3105	B P Oil Columbus	303 North Wilson Road	Columbus	OH	43204
T-31-OH-3106	B P Oil Dayton	621 Brandt Pike	Dayton	OH	45404
T-31-OH-3107	Clark Rfg Columbus	4033 Fisher Road	Columbus	OH	43228
T-31-OH-3108	B P Oil Sciotoville	106 Harding Ave	Portsmouth	OH	45662
T-31-OH-3110	Transmontaigne Terminaling Marietta	RT 7 & Milerun Road	Marietta	OH	45750
T-31-OH-3111	Midwest Terminal Columbus	3866 Fisher Rd	Columbus	OH	43228
T-31-OH-3112	MAPLLC Columbus	4125 Fisher Rd	Columbus	OH	43228-1021
T-31-OH-3113	MAPLLC Lebanon	999 West State Rt.122	Lebanon	OH	45036
T-31-OH-3114	Equilon Enterprises LLC	3651 Fisher Rd.	Columbus	OH	43228
T-31-OH-3115	Equilon Enterprises LLC	801 Brandt Pike	Dayton	OH	45404
T-31-OH-3116	Sun Columbus	3499 West Broad Street	Columbus	OH	43204
T-31-OH-3117	Sun Dayton	1708 Farr Drive	Dayton	OH	45404
T-31-OH-3118	TEPPCO Lebanon	2700 Hart Road	Lebanon	OH	45036
T-31-OH-3119	TEPPCO	3590 Yankee Rd.	Middletown	OH	45043
T-31-OH-3120	CITGO - Dublin	6433 Cosgray Road	Dublin	OH	43016
T-31-OH-3121	CITGO - Dayton	1800 Farr Drive	Dayton	OH	45404
T-31-OH-3122	Boswell Oil Company	5 W 4th St Floor 2500	Cincinnati	OH	45202
T-34-OH-3140	MAPLLC Refinery Canton	2408 Gamfrinus Rd SW	Canton	OH	44706

TCN	Terminal Name	Address	City	State	Zip
T-34-OH-3142	Aurora Terminal & Trans	1519 S Chillicothe Rd	Aurora	OH	44202
T-34-OH-3143	B P Oil Canton	807 Hartford Southeast	Canton	OH	44707
T-34-OH-3144	B P Oil Cleveland	4850 E 49th Street	Cuyahoga Hts	OH	44125
T-34-OH-3145	B P Oil Lorain	12545 S Avon Belden Rd	Grafton	OH	44044
T-34-OH-3146	B P Oil Lima	817 West Vine Street	Lima	OH	45804
T-34-OH-3147	B P Oil Tiffin	197 Wall Street	Tiffin	OH	44883
T-34-OH-3148	B P Oil Toledo	2450 Hill Avenue	Toledo	OH	43607
T-34-OH-3149	Delta Fuels Toledo	1820 South Front	Toledo	OH	43605
T-34-OH-3150	Fleet Supplies	250 Mahoning Ave	Cleveland	OH	44101-5831
T-34-OH-3151	MAPLLC Brecksville	10439 Brecksville Road	Brecksville	OH	44141-3395
T-34-OH-3152	MAPLLC Lima	2990 South Dixie Highway	Lima	OH	45804-3721
T-34-OH-3153	MAPLLC Oregon	4131 Seaman Road	Oregon	OH	43616-2448
T-34-OH-3154	MAPLLC Steubenville	28371 Kingsdale Road	Steubenville	OH	43952-4318
T-34-OH-3155	MAPLLC Youngstown	1140 Bears Den Road	Youngstown	OH	44511
T-34-OH-3156	Equilon Enterprises LLC	246 N. Cleveland Ave.	Mogadore	OH	44260
T-34-OH-3157	Equilon Enterprises LLC	2201 W. Third Street	Cleveland	OH	44113-2589
T-34-OH-3158	Equilon Enterprises LLC	1500 W. Buckeye Rd.	Lima	OH	45804
T-34-OH-3159	Sun Akron	999 Home Avenue	Akron	OH	44310
T-34-OH-3160	Sun Cleveland	3200 Independence Road	Cleveland	OH	44105
T-34-OH-3161	Sun Toledo	1601 Woodville Road	Toledo	OH	43605
T-34-OH-3162	Sun Company Youngstown	6331 Southern Boulevard	Youngstown	OH	44512
T-34-OH-3164	CITGO - Tallmadge	1595 Southeast Avenue	Tallmadge	OH	44278
T-34-OH-3165	CITGO - Oregon	1840 Otter Creek Road	Oregon	OH	43616-7676
T-34-OH-3166	MAPLLC Bellevue	Rural Route 4	Bellevue	OH	44811
T-34-OH-3167	B P Oil Niles	1001 Youngstown Warren Rd	Niles	OH	41446-4620
T-34-OH-3168	Amoco Oil Aurora	1521 Chillicothe Rd	Aurora	OH	44202
T-34-OH-3169	Clark Rfg Toledo	2844 Summit St	Toledo	OH	43611
T-34-OH-3170	Clark Rfg-Brecksville	10346 Brecksville Rd	Brecksville	OH	44141
T-34-OH-3173	TransMontaigne Terminaling	15982 U.S Rte 127 EW	Bryan	OH	43506
T-34-OH-3174	Transmontaigne Terminaling - E Liverpool.	425 River Rd.	East Liverpool	OH	43920-0000
T-73-OK-2600	Total Petroleum Ardmore	Hwy 142 Bypass	Ardmore	OK	73401
T-73-OK-2606	Williams Pipeline Enid	1401 North 30th Street	Enid	OK	73701
T-73-OK-2608	Conoco Jenks	Route Two	Jenks	OK	74037
T-73-OK-2609	Phillips 66 Laverne	U S 283	Laverne	OK	73848
T-73-OK-2610	Koch Hydrocarbin	US 81	Medford	OK	73759
T-73-OK-2612	Conoco Oklahoma City	4700 NE Tenth	Oklahoma City	OK	73111
T-73-OK-2613	Williams Pipeline Co Okla City	251 N Sunny Lane	Del City	OK	73117
T-73-OK-2614	Equilon Enterprises LLC	951 N. Vickie	Oklahoma City	OK	73117
T-73-OK-2616	Williams Pipeline Oklahoma Cty	1250 S High St	Oklahoma City	OK	73129
T-73-OK-2617	Conoco Ponca City	South Highway 60	Ponca City	OK	74601
T-73-OK-2618	Sinclair Pipeline Shawnee	39101 MacArthur Road	Shawnee	OK	74802
T-73-OK-2620	Sinclair Pipeline Tulsa	1307 W 35th St	Tulsa	OK	74107
T-73-OK-2621	Sun Tulsa	1700 South Union	Tulsa	OK	74102
T-73-OK-2622	Williams Pipeline Tulsa	2120 S 33rd Ave	Tulsa	OK	74107
T-73-OK-2623	Diamond Shamrock Turpin	Hwy 64 & Junction Rt 2	Turpin	OK	73950
T-73-OK-2624	Gary Williams Energy Corp	906 South Powell	Wynnewood	OK	73098
T-93-OR-4452	Tidewater Terminal Umatilla	535 Port Avenue	Umatilla	OR	97882
T-93-OR-4453	Toscos Coos Bay	2640 North Bayshore	Coos Bay	OR	97420
T-93-OR-4454	SFPP LP Eugene	1765 Prairie Road	Eugene	OR	97402
T-93-OR-4455	ARCO Portland Terminal	9930 NW St Helens Rd	Portland	OR	97231
T-93-OR-4456	Chevron USA Portland	5531 Northwest Doane Street	Portland	OR	97210
T-93-OR-4457	GATX Terminals Portland	11400 NW St Helen's Road	Portland	OR	97283
T-93-OR-4458	McCall Oil Portland	5480 NW Front Ave	Portland	OR	97210
T-93-OR-4459	Mobil Portland	9420 Northwest St Helen's Rd	Portland	OR	97231
T-93-OR-4460	GATX Portland	5880 NW St Helen's Road	Portland	OR	97210
T-93-OR-4461	Equilon Enterprises LLC	3800 NW St. Helen's Road	Portland	OR	97210
T-93-OR-4462	Time Oil Portland St Helens	9100 NW St Helen's Road	Portland	OR	97231
T-93-OR-4463	Time Oil Portland Burgard	12005 North Burgard Street	Portland	OR	97203
T-93-OR-4464	Toscos Portland	5528 Northwest Doane	Portland	OR	97210
T-23-PA-1700	Agway Petroleum Corp. - Macungie	Buckeye Road	Macungie	PA	18062
T-23-PA-1701	Mobil Oil Allentown	1134 North Quebec Street	Allentown	PA	18103
T-23-PA-1702	Farm & Home Oil Co. - Macungie	Buckeye Road	Macungie	PA	18062
T-23-PA-1703	Gulf Oil - Dupont	674 Suscon Rd	Pittston Township	PA	18641
T-23-PA-1704	Carlos R Leffler Inc Macungie	5088 Shippers Lane	Macungie	PA	18062
T-23-PA-1705	Petron Oil Corporation	One Ward Street	Chester	PA	19013
T-23-PA-1706	Petroleum Products - Avoca	801 Suscon Rd.	Avoca	PA	18641
T-23-PA-1707	Petroleum Products Du Pont	Suscon Road	Avoca	PA	18641
T-23-PA-1708	Carlos R Leffler Inc S Spring	Mountain Home Road	Sinking Spring	PA	19608
T-23-PA-1709	Montour Oil Service	112 Broad St	Montoursville	PA	17754
T-23-PA-1710	Sun Exton	601 East Lincoln Hwy	Exton	PA	19341
T-23-PA-1711	Sun - Fullerton	2480 Main St	Whitehall	PA	18052

TCN	Terminal Name	Address	City	State	Zip
T-23-PA-1713	Mobil Oil Harrisburg	5140 Paxton Street	Harrisburg	PA	17111
T-23-PA-1714	Petroleum Products Harrisburg	3300 Industrial Road	Harrisburg	PA	17110
T-23-PA-1715	Petroleum Products Harrisburg	RD #5 Texaco Drive	Mechanicsburg	PA	17055
T-23-PA-1716	Petroleum Products Highspire	900 Eisenhower Blvd	Middletown	PA	17057
T-23-PA-1717	Coastal Oil New York Inc	Sylvan Dell Rd	South Williamsport	PA	17701
T-23-PA-1718	Mobil Oil Malvern	8 South Malin Rd	Malvern	PA	19406
T-23-PA-1720	Sun Kingston	60 S Wyoming Avenue	Edwardsville	PA	18704-3102
T-23-PA-1721	Mobil Oil Lancaster	1360 Manheim Pike	Lancaster	PA	17604
T-23-PA-1722	Sun Malvern	Lincoln Hwy & Malin Road	Malvern	PA	19355
T-23-PA-1724	Petroleum Products-Mechanicsbu	Sinclair Rd	Mechanicsburg	PA	17055
T-23-PA-1725	Gulf Oil Mechanicsburg	5125 Simpson Ferry Rd	Mechanicsburg	PA	17055
T-23-PA-1726	Sun Mechanicsburg	5145 Simpson Ferry Road	Mechanicsburg	PA	17055-3626
T-23-PA-1727	Sun Montello	Fritztown Road	Sinking Spring	PA	19608
T-23-PA-1728	Petroleum Prod Northumberland	Rt 11 North RD 1	Northumberland	PA	17857
T-23-PA-1729	Sun Northumberland	Rt 11 North Rd 1	Northumberland	PA	17857
T-23-PA-1730	Amerada Hess - Philadelphia	1630 South 51st Street	Philadelphia	PA	19143
T-23-PA-1731	Amoco Oil Philadelphia	63rd & Passyunk Avenue	Philadelphia	PA	19153
T-23-PA-1732	Bayway Refining Co. - Phila	G Street & Hunting Park Ave.	Philadelphia	PA	19124
T-23-PA-1733	Pipeline Petroleum-MaCungie	Shippers Lane	Macungie	PA	18062
T-23-PA-1734	Exxon USA Philadelphia	6850 Essington Avenue	Philadelphia	PA	19153
T-23-PA-1735	Artex Inc	Rt 54 & Lakeview Rd	Barnesville	PA	18214
T-23-PA-1736	Sun Philadelphia	2700 W Passyunk Avenue	Philadelphia	PA	19145
T-23-PA-1737	Maritank Phila Inc	67th & Schuylkill River	Philadalphia	PA	19153
T-23-PA-1738	Pickelner Fuel Company Inc	210 Locust St	Williamsport	PA	17701
T-23-PA-1739	Travel Ports of America Inc	Rt 11 & Cemetary Rd	Beach Haven	PA	18601
T-23-PA-1740	Montour Oil Service-Harrisburg	80 South 40th St.	Harrisburg	PA	17111
T-23-PA-1741	Montour Oil Service-Montoursville	Rt I-180/Warrensville	Montoursville	PA	17754
T-23-PA-1742	Petroleum Products-Sinking Spr	Mountain Home Rd	Sinking Spring	PA	19608
T-23-PA-1743	Carlos R Leffler Inc	Sylvan Dell Road	South Williamsport	PA	17701
T-23-PA-1744	Sun Tamaqua	Tuscarora State Park Rd	Tamaqua	PA	18252
T-23-PA-1745	C R Leffler Tuckerton	4030 Pottsville Pike	Reading	PA	19605
T-23-PA-1746	Sun Twin Oaks	4041 Market Street	Aston	PA	19014
T-23-PA-1747	Sun Company Inc (R&M)	9th Green St	Marcus Hook	PA	19061
T-23-PA-1748	Gulf Oil Whitehall	2451 Main Street	Whitehall	PA	18052
T-23-PA-1749	Gulf Oil Williamsport	Sylvan Dell Rd	Williamsport	PA	17703
T-23-PA-1751	Sun Willow Grove	3290 Sunset Lane	Hatboro	PA	19040
T-23-PA-1752	Berks Fuel Storage Inc-Reading	130 Whitman Road	Reading	PA	19605
T-23-PA-1753	Meenan Oil Co Tullytown	113 Main Street	Tullytown	PA	19007
T-23-PA-1754	C R Leffler New Kingston	236 Locust Pt Road	New Kingston	PA	17702
T-23-PA-1755	Major Oil-Philadelphia	501 E. Hunting Park Ave.	Philadelphia	PA	19124
T-23-PA-1756	F C Haab Co Inc	Schuylkill River & Morris Rd	Philadelphia	PA	19145
T-23-PA-1757	Sun Company Inc (R&M)	Hewes Ave & Philadelphia Pike	Marcus Hook	PA	19061
T-23-PA-1758	Getty Oil - Highspire	911 Eisenhower Blvd.	Highspire	PA	17034
T-23-PA-1759	Louis Dreyfus Energy-Phila	58th St. & Schuylkill River	Philadelphia	PA	19142
T-23-PA-1763	Two River Terminal-Duncannon	27 Chevron Drive	Duncannon	PA	17020
T-23-PA-1764	American Refining Bradford	77 North Kendall Ave.	Bradford	PA	16701
T-25-PA-1760	Buckeye Tank Term Coraopolis	520 Narrows Run Road	Coraopolis	PA	15108
T-25-PA-1761	Sun Delmont	Route 66 North	Delmont	PA	15626
T-25-PA-1762	Boswell Oil Co Dravosburg	702 Washington Avenue	Dravosburg	PA	15034
T-25-PA-1765	Petroleum Products-E. Freedom	Old Rte US 220	East Freedom	PA	16637
T-25-PA-1767	Petroleum Products Eldorado	Burns Avenue	Altoona	PA	16602
T-25-PA-1768	MAPLLC Floreffe	204 Glass House Road	Floreffe	PA	15025
T-25-PA-1769	B P Oil Greensburg	Rural Delivery 6	Greensburg	PA	15601
T-25-PA-1771	American Refining Indianola	State Route 910	Indianola	PA	15051
T-25-PA-1773	MAPLLC Petroleum-Midland	Rt. 68	Midland	PA	15059
T-25-PA-1776	Exxon USA Pittsburgh	2760 Neville Road	Pittsburgh	PA	15225
T-25-PA-1777	Gulf Oil Pittsburgh	400 Grand Ave	Pittsburgh	PA	15225
T-25-PA-1778	Gulf Oil Pittsburgh/Delmont	Route 22	Delmont	PA	15626
T-25-PA-1779	Pennzoil Products Pittsburgh	54th Street and AVRR	Pittsburgh	PA	15201
T-25-PA-1780	Motiva Enterprises LLC	Nine Thorn Street	Coraopolis	PA	15108
T-25-PA-1781	Sun Pittsburgh	5733 Butler Street	Pittsburgh	PA	15201
T-25-PA-1782	Pennzoil Products Rouseville	Two Main Street	Rouseville	PA	16344
T-25-PA-1783	United Refining Warren	15 Bradley St	Warren	PA	16365
T-25-PA-1785	Gulf Oil Altoona	6033 Sixth Avenue	Altoona	PA	16602
T-25-PA-1788	Sun Altoona	Route 764 Sugar Run Road	Altoona	PA	16601
T-25-PA-1789	Sun Vanport	Route 68 & Division Lane	Vanport	PA	15009
T-25-PA-1790	Guttman Oil Belle Vernon	200 Speers Road	Belle Vernon	PA	15012
T-25-PA-1791	Sun Blawnox	Freeport Road & Boyd Avenue	Pittsburgh	PA	15238
T-25-PA-1792	B P Oil Coraopolis	Access State Route 51	Coraopolis	PA	15108
T-05-RI-1200	Getty Terminal Providence	Dexter Rd & Massasoit Ave	East Providence	RI	02914
T-05-RI-1201	Sprague Energy Providence	144 Allens Avenue	Providence	RI	02903
T-05-RI-1202	Bishop Terminal Services LLC	130 Terminal Rd	Providence	RI	02905

TCN	Terminal Name	Address	City	State	Zip
T-05-RI-1203	Capital Terminal Company	100 Dexter Road	East Providence	RI	02914
T-05-RI-1204	Northeast Petroleum	170 Allens Avenue	Providence	RI	02903
T-05-RI-1205	Motiva Enterprises LLC	520 Allens Avenue	Providence	RI	02905
T-05-RI-1206	Bishop Terminal Services LLC	35 Terminal Road	Providence	RI	02905
T-05-RI-1207	Mobil Oil East Providence	1001 Wampanoag Trail	East Providence	RI	02915
T-06-RI-1208	Inland Fuel Terminal Inc.	25 State Ave.	Tiverton	RI	02878
T-57-SC-2050	Amerada Hess - Belton	Highway 20 North	Belton	SC	29627-0250
T-57-SC-2051	Louis Dreyfus - Belton	Hwy 20 North	Belton	SC	29627-0647
T-57-SC-2052	Louis Dreyfus - Spartanburg	680 Delmar Road	Spartansburg	SC	29302
T-57-SC-2053	MAPLLC Oil Belton	14315 State Rt. 20	Belton	SC	29627-0488
T-57-SC-2054	Allied Terminals - Charleston	1500 Greenleaf St.	Charleston	SC	29405-9308
T-57-SC-2059	Amoco Oil Inc. North - Augusta	Sweet Water Road	North Augusta	SC	29841-6397
T-57-SC-2060	Charter Term Co - North Augusta	221 Laurel Lake Drive	North Augusta	SC	29841
T-57-SC-2061	B P Oil - North Augusta	Access Highway 36	North Augusta	SC	29841-6427
T-57-SC-2062	Phillips Pipeline - N Augusta	Highway 36 & Sweetwater	North Augusta	SC	29841-6669
T-57-SC-2063	Williams Energy Ventures - Augus	222 Sweetwater Road	North Augusta	SC	29841
T-57-SC-2064	Amerada Hess - N Charleston	5150 Virginia Ave.	North Charleston	SC	29406-5227
T-57-SC-2066	MAPLLC North Charleston	5165 Virginia Ave	Charleston	SC	29406-3616
T-57-SC-2067	Amerada Hess - Spartanburg	Old Union Road	Spartansburg	SC	29304-5021
T-57-SC-2068	Amoco Oil Spartanburg	Old Union Rd Route 4	Spartansburg	SC	29304-3059
T-57-SC-2071	Crown Central Spartansburg	400 Delmar Rd	Spartansburg	SC	29304
T-57-SC-2074	Phillips Pipeline Spartanburg	200 Nebo Street	Spartansburg	SC	29302
T-57-SC-2075	Motiva Enterprises LLC	300 Delmar Road	Spartanburg	SC	29302
T-57-SC-2076	Southern Facility - Spartanburg	2430 Pine Street Ext	Spartansburg	SC	29302
T-57-SC-2077	CITGO Petroleum - Spartanburg	2590 Southport Road	Spartansburg	SC	29302
T-46-SD-3550	Kaneb Pipe Line Aberdeen	Hwy 281	Aberdeen	SD	57401
T-46-SD-3551	Kaneb Pipe Line Mitchell	Hwy 38	Mitchell	SD	57301
T-46-SD-3552	Kaneb PipeLine Rapid City	3225 Eglin Street	Rapid City	SD	57701
T-46-SD-3553	Amoco Oil Sioux Falls	3751 S Grange	Sioux Falls	SD	57105
T-46-SD-3554	Williams Pipeline Sioux Falls	5300 west 12th Street	Sioux Falls	SD	57107
T-46-SD-3555	Williams Pipeline Watertown	1000 17th Street S E	Watertown	SD	57201
T-46-SD-3556	Kaneb Pipe Line Wolsey	US Hwy 14 & 281	Wolsey	SD	57384
T-46-SD-3557	Kaneb Pipe Line Yankton	Star Rte 50	Yanton	SD	57078
T-46-SD-3558	Williams Pipe Line Canton	RR #1 Box 12 A	Canton	SD	57013
T-62-TN-2200	Amoco Oil Chattanooga	4235 Jersey Pike	Chattanooga	TN	37416
T-62-TN-2201	Chevron USA Chattanooga	4716 Bonny Oaks Drive	Chattanooga	TN	37416
T-62-TN-2202	CITGO Chattanooga	4233 Jersey Pike	Chattanooga	TN	37416
T-62-TN-2203	Truman Arnold Memphis	1237 Riverside	Memphis	TN	38106
T-62-TN-2204	Lion Oil Nashville	90 Van Buren St	Nashville	TN	37208
T-62-TN-2205	MAPLLC Chattanooga	817 Pineville Road	Chattanooga	TN	37405
T-62-TN-2206	Louis Dreyfus Chattanooga	5800 St Elmo Avenue	Chattanooga	TN	37409
T-62-TN-2207	Benton Oil Service, Inc.	4211 Cromwell Rd.	Chattanooga	TN	37421
T-62-TN-2208	Southern Facility Chattanooga	4326 Jersey Pike	Chattanooga	TN	37416
T-62-TN-2209	Amoco - Chattanooga	710 Manufacturers Road	Chattanooga	TN	37405
T-62-TN-2211	Amoco Oil Knoxville	5101 Middlebrook Pike NW	Knoxville	TN	37921
T-62-TN-2213	CITGO Knoxville	2409 Knott Road	Knoxville	TN	37921
T-62-TN-2214	Cummins Terminals Knoxville	4715 Middlebrook Pike	Knoxville	TN	37921-5532
T-62-TN-2215	Exxon USA Knoxville	5009 Middlebrook Pike	Knoxville	TN	37921
T-62-TN-2216	B P Oil Knoxville	1908 Third Creek Road	Knoxville	TN	37921
T-62-TN-2217	MAPLLC Oil Knoxville	2601 Knott Road	Knoxville	TN	37950-0094
T-62-TN-2218	Motiva Enterprises LLC	5001 Middlebrook Pike NW	Knoxville	TN	37921
T-62-TN-2219	Southern Facility Knoxville	4801 Middlebrook Pike	Knoxville	TN	37921
T-62-TN-2221	Louis Dreyfus Knoxville	1720 Island Home Avenue	Knoxville	TN	37920
T-62-TN-2225	Exxon USA Memphis	454 Wisconsin Avenue	Memphis	TN	38106
T-62-TN-2226	Lion Oil Memphis	1023 Riverside	Memphis	TN	38106
T-62-TN-2227	MAPCO Petroleum Memphis		Memphis	TN	38109
T-62-TN-2228	Petroleum Fuel Memphis	1232 Riverside	Memphis	TN	38106
T-62-TN-2231	Amoco Oil Nashville	1441 51st Avenue North	Nashville	TN	37209
T-62-TN-2232	MAPLLC Nashville	Five Main Street	Nashville	TN	37213
T-62-TN-2233	CITGO Nashville	720 South Second Street	Nashville	TN	37213
T-62-TN-2234	Cumberland Terminals Nashville	7260 Centennial Boulevard	Nashville	TN	37209
T-62-TN-2236	Exxon USA Nashville	1741 Ed Temple Blvd	Nashville	TN	37208
T-62-TN-2237	B P Oil Nashville	1409 51st Ave	Nashville	TN	37209
T-62-TN-2238	MAPLLC Nashville	2920 Old Hydes Ferry Road	Nashville	TN	37218-3129
T-62-TN-2240	Williams Energy Ventures-Nashv	1609 63rd Avenue North	Nashville	TN	37209
T-62-TN-2241	Motiva Enterprises LLC	1717 61st & Centennial Bvld.	Nashville	TN	37209
T-62-TN-2242	Kerr-McGee Nashville	180 Anthes Avenue	Nashville	TN	37210
T-62-TN-2243	Cummins Terminal-Knoxville	5100 Middlebrook Pike	Knoxville	TN	37921-5532
T-74-TX-2658	Mobil Oil Hearne	Highway 6 South	Hearne	TX	76705
T-74-TX-2702	Motiva Enterprises LLC	Highway 6 South	Hearne	TX	77859
T-74-TX-2703	CITGO Victoria	1708 North Ben Jordan Blvd	Victoria	TX	77901
T-74-TX-2705	Motiva Enterprises LLC	420 South Lacy drive	Waco	TX	76705

TCN	Terminal Name	Address	City	State	Zip
T-74-TX-2706	Koch Refining Austin	9011 Johnny Morris Rd	Austin	TX	78724
T-74-TX-2707	Koch Refining Waco	2017 Kendall Lane	Waco	TX	76705-3366
T-74-TX-2709	CITGO Brownsville	11001 South Port Road	Brownsville	TX	78520
T-74-TX-2710	Equilon Enterprises LLC	6767 Gateway West	El Paso	TX	79926
T-74-TX-2711	CITGO Oil Corpus Christi	2505 N Port Ave	Corpus Christi	TX	78401
T-74-TX-2713	CITGO Bryan	1714 Finfeather Road	Bryan	TX	77801
T-74-TX-2715	Diamond Laredo	13380 S Unitec	Laredo	TX	78044
T-74-TX-2716	CITGO Corpus Christi	1308 Oak Park Street	Corpus Christi	TX	78407
T-74-TX-2718	Coastal Oil Corpus Christi	1300 Cantwell	Corpus Christi	TX	78407
T-74-TX-2719	Diamond Corpus Christi	2700 Texaco Road	Corpus Christi	TX	78403
T-74-TX-2720	SW Refining Corpus Christi	1700 Nueces Bay Boulevard	Corpus Christi	TX	78469
T-74-TX-2721	Koch Refining Corpus Christi	Suntide Road	Corpus Christi	TX	78403
T-74-TX-2724	Chevron USA El Paso	6501 Trowbridge	El Paso	TX	79905
T-74-TX-2726	Navajo Refining El Paso	1000 Eastside Road	El Paso	TX	79915
T-74-TX-2728	Coastal Oil Falfurrias	Three Mi North on US Hwy 281	Falfurrias	TX	78355
T-74-TX-2729	Diamond Harlingen	4.5 miles east on highway 106	Harlingen	TX	78550
T-74-TX-2731	Coastal Oil Placedo	2 Mi S of Placedo Hwy 87	Placedo	TX	77977
T-74-TX-2733	Fina Oil Port Arthur Hwy 366	Highway 366 and 32nd Street	Port Arthur	TX	77640
T-74-TX-2737	CITGO - San Antonio	4851 Emil Road	San Antonio	TX	78219
T-74-TX-2738	Coastal Oil San Antonio	4719 Corner Parkway #2	San Antonio	TX	78219
T-74-TX-2739	Diamond San Antonio	10619 Highway 281 South	San Antonio	TX	78221
T-74-TX-2740	Exxon USA San Antonio	3214 North Pan Am Expressway	San Antonio	TX	78219
T-74-TX-2742	Koch Refining San Antonio	498 and Pop Gun	San Antonio	TX	78219
T-74-TX-2745	Motiva Enterprises LLC	510 Petroleum Drive	San Antonio	TX	78219
T-74-TX-2747	Diamond Three Rivers	301 Leroy Street	Three Rivers	TX	78071
T-74-TX-2748	Conoco Tye	I-20 West Exit 278	Tye	TX	79563
T-74-TX-2749	CITGO Waco	1600 South Loop Dr	Waco	TX	76705
T-74-TX-2750	Ultramar - Diamond Shamrock	4200 J.C. Vera Montes	El Paso	TX	79936
T-75-TX-2650	Diamond Abernathy	Highway 54	Abernathy	TX	79311
T-75-TX-2651	Fina Oil Abilene	Highway 277 North	Abilene	TX	79604
T-75-TX-2652	Pride Abilene	Hwy 277 N Industrial District	Abilene	TX	79604
T-75-TX-2653	Diamond Amarillo	4200 West Cliffside	Amarillo	TX	79124
T-75-TX-2654	Phillips 66 Amarillo	4300 Cliffside Dr	Amarillo	TX	79142
T-75-TX-2655	Phillips 66 Arlington	12401 Calloway Cemetery Road	Euless	TX	76040
T-75-TX-2656	Fina Oil Big Spring	East IS-20 & Refinery Rd	Big Springs	TX	79721
T-75-TX-2659	Truman Arnold Caddo Mills		Caddo Mills	TX	75505
T-75-TX-2660	Exxon USA Dallas	1201 East Airport Freeway	Irving	TX	75062
T-75-TX-2661	Mobil Oil Dallas	4200 Singleton Boulevard	Dallas	TX	75212-3433
T-75-TX-2662	Motiva Enterprises LLC	3900 Singleton Blvd.	Dallas	TX	75212
T-75-TX-2664	Koch Refining Euless	Highway 157 and Trinity Blvd	Euless	TX	76040
T-75-TX-2665	Pride Aledo	I 20 in Willow Park	Aledo	TX	76008
T-75-TX-2666	Chevron USA Fort Worth	2525 Brennan Street	Fort Worth	TX	76106
T-75-TX-2667	CITGO Fort Worth	301 Terminal Road	Fort Worth	TX	76106
T-75-TX-2668	Mobil Oil Fort Worth	3600 North Sylvania	Fort Worth	TX	76111
T-75-TX-2669	Motiva Enterprises LLC	3200 N. Sylvania	Fort Worth	TX	76111
T-75-TX-2671	Conoco Southlake	3100 Highway 26 West	Grapevine	TX	76051
T-75-TX-2672	Fina Oil Southlake	3000 Highway 26 West	Grapevine	TX	76051
T-75-TX-2674	Phillips 66 Lubbock	Clovis Road and Flint Avenue	Lubbock	TX	79408
T-75-TX-2676	Conoco Mount Pleasant	1503 West Ferguson	Mount Pleasant	TX	75455
T-75-TX-2678	Mobil - Center	Hwy 87 South	Center	TX	75935
T-75-TX-2679	Chevron USA Midland	1100 North County Rd 1160	Midland	TX	79702
T-75-TX-2680	Diamond Southlake	1700 Hwy 26	Grapevine	TX	76051
T-75-TX-2681	La Gloria Oil Tyler	425 McMurry Drive	Tyler	TX	75702
T-75-TX-2682	Diamond Sunray	9 Mi NE of Dumas TX on FM 119	Sunray	TX	79086
T-75-TX-2683	Fina Oil Wichita Falls	Old Charlie & Sinclair Blvd	Wichita Falls	TX	76307
T-75-TX-2684	Conoco Wichita Falls	1214 North Eastside	Wichita Falls	TX	76304
T-75-TX-2685	Shell Odessa Refining-Odessa	2700 S Grandview	Odessa	TX	79760
T-75-TX-2686	Pride San Angelo	4008 U S Hwy 67N	San Angelo	TX	76905
T-75-TX-2687	Motiva Enterprises LLC	Farm Road 9	Waskom	TX	75692
T-75-TX-2688	Mobil Oil Waskom	9 South	Waskom	TX	75692
T-75-TX-2690	DFLP Terminal	12625 Calloway Cemetary Rd	Euless	TX	76040
T-76-TX-2780	Petro-United Terminals Bayport	11666 Port Road	Seabrook	TX	77586
T-76-TX-2782	Motiva Enterprises LLC	1320 West Shaw St.	Pasadena	TX	77501
T-76-TX-2783	Clark Refining and Marketing	9406 West Port Arthur Rd	Beaumont	TX	77705
T-76-TX-2784	Chevron USA Product Co. Big Sandy	Highway 155 and Sabine River	Big Sandy	TX	75755
T-76-TX-2785	Motiva Enterprises LLC	401 West 19th Street	Port Arthur	TX	77640
T-76-TX-2787	UNOCAL Beaumont	Hwy 366	Nederland	TX	77627
T-76-TX-2788	GATX Galena Park	906 Clinton Drive	Galena Park	TX	77547
T-76-TX-2789	Chevron USA Galena Park	12523 American Petroleum Rd	Galena Park	TX	77547
T-76-TX-2791	Specified Fuels and Chemicals LLC	1201 S Sheldon Rd	Channelview	TX	77530-0429
T-76-TX-2792	Amerada Hess - Galena Park	12901 American Petroleum Rd	Galena Park	TX	77547
T-76-TX-2794	CITGO Houston	12325 North Fwy at Greens Rd	Houston	TX	77060

TCN	Terminal Name	Address	City	State	Zip
T-76-TX-2795	Coastal Oil Houston	11650 Almeda Road Loop 610	Houston	TX	77045
T-76-TX-2798	Mobil Oil Beaumont	Route 4	Beaumont	TX	77705
T-76-TX-2799	Jetera Fuels Houston	17617 Aldine-Westfield Road	Houston	TX	77073
T-76-TX-2800	Lyondell-CITGO Refining	12000 Lawndale	Houston	TX	77002
T-76-TX-2801	Fina Oil Port Arthur 32nd	Hwy 366 & 32nd St	Port Arthur	TX	77642
T-76-TX-2803	Motiva Enterprises LLC	2661 Stevens Street	Houston	TX	77226
T-76-TX-2806	Valero Refining Co. - Texas (Houston)	9701 Manchester	Houston	TX	77262
T-76-TX-2808	Exxon USA North Houston	8700 North Freeway	Houston	TX	77037
T-76-TX-2809	GATX Pasadena	530 North Witter	Pasadena	TX	77506
T-76-TX-2811	Phillips Pipeline Pasadena	100 Jefferson Street	Pasadena	TX	77501
T-76-TX-2812	Exxon USA South Houston	10501 East Almeda	Houston	TX	77051
T-76-TX-2813	Phillips 66 Sweeny	Hwys 35 & 36 at West Columbia	Sweeny	TX	77480
T-76-TX-2814	S T Services Texas City	201 Dock Road	Texas City	TX	77590
T-76-TX-2815	Intercontinental Terminals Co.	1943 Battleground Rd.	Deer Park	TX	77536-0698
T-87-UT-4200	Flying J North Salt Lake	333 West Center St	North Salt Lake	UT	84054-0180
T-87-UT-4202	Amoco Oil Salt Lake City	474 West 900 N	Salt Lake City	UT	84103
T-87-UT-4203	Chevron USA Salt Lake City	2351 North Tenth West	Salt Lake City	UT	84110
T-87-UT-4204	Salt Lake Terminal Company	245 East 1100 North	North Salt Lake City	UT	84054
T-87-UT-4205	Crysen Refining Woods Cross	2355 South 1100 West	Woods Cross	UT	84087-0298
T-87-UT-4206	Phillips 66 Woods Cross	393 South 800 West	Woods Cross	UT	84087-1435
T-54-VA-1650	Amerada Hess - Chesapeake	4030 Buell Street	Chesapeake	VA	23324
T-54-VA-1651	Amoco Oil Chesapeake	428 Barnes Road	Chesapeake	VA	23324
T-54-VA-1652	CITGO Chesapeake	110 Freeman Street	Chesapeake	VA	23324
T-54-VA-1653	Conoco - Chesapeake	502 Hill Street	Chesapeake	VA	23324
T-54-VA-1654	Exxon USA Chesapeake	4115 Buell Street	Chesapeake	VA	23324
T-54-VA-1655	Bagwell Oil Onancock	33 Market	Onancock	VA	23417
T-54-VA-1656	Louis Dreyfus Chesapeake	7600 Halifax Lane	Chesapeake	VA	23324
T-54-VA-1657	Primary Corp Deepwater	3302 Deepwater Terminal Rd	Richmond	VA	23234
T-54-VA-1658	S T Services Dumfries	18000 Cockpit Point Road	Dumfries	VA	22026
T-54-VA-1659	Amoco Oil Fairfax	9601 Colonial Avenue	Fairfax	VA	22031
T-54-VA-1660	Global Petro	3790 Pickett Road	Fairfax	VA	22031
T-54-VA-1661	CITGO Fairfax	9600 Colonial Avenue	Fairfax	VA	22031
T-54-VA-1662	Motiva Enterprises LLC	3800 Pickett Road	Fairfax	VA	22030
T-54-VA-1663	Mobil Oil Manassas	10315 Ballsford Road	Manassas	VA	23109
T-54-VA-1664	Amerada Hess - Montvale	Route 460	Montvale	VA	24122
T-54-VA-1665	Amoco Petroleum - Montvale	1070 Oil Terminal Rd	Montvale	VA	24122
T-54-VA-1666	Chevron Products Co - Montvale	1147 Oil Terminal Rd	Montvale	VA	24122
T-54-VA-1668	Southern Facilities-Montvale	U S Highway 460, PO Box 113	Montvale	VA	24122
T-54-VA-1669	Koch Fuels Newport News	801 Terminal Ave	Newport News	VA	23607
T-54-VA-1670	Crown Central Newington	8211 Terminal Road	Newington	VA	22122
T-54-VA-1671	Exxon USA Newington	8200 Terminal Road	Newington	VA	22122
T-54-VA-1672	Primary Corp Bickerstaff	413 Bickerstaff Rd	Richmond	VA	23231-0000
T-54-VA-1673	Crown Central Norfolk	801 Butt Street	Chesapeake	VA	23324
T-54-VA-1674	Mobil Oil Norfolk	Halifax Lane	Chesapeake	VA	23324
T-54-VA-1677	Amoco Oil Richmond	1636 Commerce Road	Richmond	VA	23224
T-54-VA-1678	Chevron USA Richmond	700 Goodes Street	Richmond	VA	23224
T-54-VA-1679	CITGO Richmond	Third & Maury Street	Richmond	VA	23224
T-54-VA-1680	Crown Central Richmond	4405 E Main	Richmond	VA	23231
T-54-VA-1681	Exxon USA Richmond	2000 Trenton Avenue	Richmond	VA	23234
T-54-VA-1682	First Energy Corporation	Second & Maury Streets	Richmond	VA	23224
T-54-VA-1683	Southern Facilities - Richmond	4110 Deepwater Terminal Road	Richmond	VA	23234
T-54-VA-1684	Williams Energy Ventures-Richm	204 East First Avenue	Richmond	VA	23224
T-54-VA-1685	Motiva Enterprises LLC	5801 Petersburg Pike	Richmond	VA	23234
T-54-VA-1687	Louis Dreyfus Richmond	1314 Commerce Road	Richmond	VA	23224-7510
T-54-VA-1688	Exxon USA Roanoke	835 Hollins Road Northeast	Roanoke	VA	24012
T-54-VA-1689	MAPLLC Oil Roanoke	5287 Terminal Road	Roanoke	VA	24014-4033
T-54-VA-1690	Motiva Enterprises LLC	5280 Terminal Road SW	Roanoke	VA	24014
T-54-VA-1691	Motiva Enterprises LLC	U.S. Highway 460	Montvale	VA	24122
T-54-VA-1692	Shell Oil Springfield	8206 Terminal Road	Lorton	VA	22079
T-54-VA-1693	S T Services Virginia Beach	North Landing Road	Virginia Beach	VA	23456
T-54-VA-1694	Amoco Oil Yorktown	Route 73 East Entrance	Yorktown	VA	23690
T-54-VA-1696	IMTT- Richmond, VA	5501 Old Osborne Turnpike	Richmond	VA	23231
T-91-WA-4400	Equilon Enterprises LLC	Marches Point Five Miles	Anacortes	WA	98221
T-91-WA-4401	Conoco Moses Lake	3 miles north of Moses Lake	Moses Lake	WA	98837
T-91-WA-4402	Northwest Terminaling Pasco	3000 Sacajawea Park Road	Pasco	WA	99301
T-91-WA-4404	Tosco Northwest Renton	2423 Lind Avenue Southwest	Renton	WA	98055
T-91-WA-4406	GATX Seattle	1733 Alaskan Way South	Seattle	WA	98134
T-91-WA-4408	Equilon Enterprises LLC	2555 13th Ave. S W	Seattle	WA	98134
T-91-WA-4409	Time Oil Seattle	2737 West Commodore Way	Seattle	WA	98199-1233
T-91-WA-4410	Conoco Spokane	6317 East Sharp Avenue	Spokane	WA	99206
T-91-WA-4411	Exxon USA Spokane	6311 East Sharp Avenue	Spokane	WA	99211
T-91-WA-4412	Tosco Northwest Spokane	3225 East Lincoln Road	Spokane	WA	99207

TCN	Terminal Name	Address	City	State	Zip
T-91-WA-4413	Tosco Northwest Tacoma	520 E D Street	Tacoma	WA	98421
T-91-WA-4414	Sound Refining Tacoma	2628 Marine View Drive	Tacoma	WA	98421
T-91-WA-4415	Superior Oil Tacoma	250 East D Street	Tacoma	WA	98401
T-91-WA-4416	Equilon Enterprises LLC	7370 Linderson Way SW	Tumwater	WA	98501
T-91-WA-4417	CENEX Vancouver	5420 Fruit Valley Road	Vancouver	WA	98660
T-91-WA-4418	ARCO Cherry Point Terminal	4519 Grandview	Blaine	WA	98231
T-91-WA-4419	Tesoro Alaska Petro Vancouver	2211 West 26th Street Ext	Vancouver	WA	98660
T-91-WA-4420	Tidewater Snake River	Tank Farm Road	Pasco	WA	99301
T-91-WA-4421	US Oil & Refining Co.	3001 Marshall Ave	Tacoma	WA	98421
T-91-WA-4422	Toscos Tacoma	516 East D Street	Tacoma	WA	98421
T-91-WA-4423	Tidewater Terminal Wilma	2950 Wilma Drive	North Clarkston	WA	99403
T-91-WA-4424	Pacific Northern Oil Corp	Pier 91 Bldg 19	Seattle	WA	98119
T-91-WA-4425	ARCO Seattle Terminal	1652 SW Lander St	Seattle	WA	95124
T-91-WA-4427	Tosco Northwest Co. - Ferndale	3901 Unic Rd.	Ferndale	WA	98248
T-39-WI-3061	Amoco Oil Green Bay	1124 North Broadway	Green Bay	WI	54303
T-39-WI-3062	Amoco Oil Milwaukee	9101 North 107th Street	Milwaukee	WI	53224
T-39-WI-3063	Amoco Oil Superior	2904 Winter Street	Superior	WI	54880
T-39-WI-3064	CENEX Chippewa Falls	2331 N Prairie View Rd	Chippewa Falls	WI	54729
T-39-WI-3065	CENEX McFarland	4103 Triangle St	McFarland	WI	53558
T-39-WI-3066	CITGO Green Bay	1391 Bylsby Avenue	Green Bay	WI	54303
T-39-WI-3067	CITGO McFarland	4606 Terminal Drive	McFarland	WI	53558
T-39-WI-3068	CITGO Milwaukee	9235 North 107th Street	Milwaukee	WI	53224
T-39-WI-3069	Terminal Oil Group Ltd	3910 Terminal Road	Madison	WI	53704
T-39-WI-3070	Halron Oil Company Inc	2020 N Quincy St	Green Bay	WI	54306
T-39-WI-3071	Koch Junction City	Junction US 10 & 34N	Junction City	WI	54443
T-39-WI-3072	Koch McFarland	4505 Terminal Drive	McFarland	WI	53558
T-39-WI-3073	Koch Milwaukee	9343 North 107th Street	Milwaukee	WI	53224
T-39-WI-3074	Koch Waupun	Route Two	Waupun	WI	53963
T-39-WI-3075	Green Bay Terminal	1031 Hurlbut Street	Green Bay	WI	54303
T-39-WI-3076	MAPLLC Milwaukee	9125 North 107th St	Milwaukee	WI	53224-1508
T-39-WI-3077	Mobil Oil Green Bay	410 Prairie Ave	Green Bay	WI	54303
T-39-WI-3078	Clark Rfg Green Bay	1445 Bylsby Ave	Green Bay	WI	54303
T-39-WI-3079	Mobil Oil Madison	4516 Sigglekow Road	McFarland	WI	53558
T-39-WI-3080	Murphy Oil Superior	2407 Stinson Ave	Superior	WI	54880
T-39-WI-3081	S T Services Milwaukee	1626 South Harbor Drive	Milwaukee	WI	53207-1020
T-39-WI-3082	Transmontaigne - Chippewa Fall	2553 North Prairie View Rd	Chippewa Falls	WI	54729
T-39-WI-3083	Center Terminal Co - Madison	4009 Triangle St Hwy 51 S	McFarland	WI	53558
T-39-WI-3084	US Oil Milwaukee	9135 North 107th Street	Milwaukee	WI	53224
T-39-WI-3086	U.S. Oil Milwaukee-North	9521 North 107th Street	Milwaukee	WI	53224
T-39-WI-3087	Williams Pipe Line Mosinee	2007 Old Highway 51	Mosinee	WI	54455
T-39-WI-3088	US Oil Madison	4402 Terminal Dr	Madison	WI	53558
T-39-WI-3089	U S Oil Green Bay West	1075 Hurlbut Ct	Green Bay	WI	54303
T-39-WI-3090	Clark Rfg Milwaukee	9451 North 107th Street	Milwaukee	WI	53224
T-39-WI-3091	U S Oil Green Bay East	1910 N Quincy St	Green Bay	WI	54302
T-54-WV-1697	MAPLLC Petro TriState-Kenova	237 23rd Street	Kenova	WV	25530-0000
T-55-WV-3181	Exxon USA Charleston	Standard St & MacCorkle Ave	Charleston	WV	25314
T-55-WV-3182	Pennzoil Products Charleston	1015 Barlow Dr	Charleston	WV	25333
T-55-WV-3183	Ergon West Virginia Inc.	Rt 2 South	Newell	WV	26050
T-55-WV-3184	Go-Mart St Albans	Oliver & Terminal Rd	St Albans	WV	25177
T-55-WV-3185	St Marys Refining	201 Barkwill St	St Mary's	WV	26170
T-55-WV-3186	Guttman Oil Star City	437 Industrial Ave	Star City	WV	26505
T-55-WV-3188	Baker Oil Co	US 60 Hughes Creek Rd	Hugheston	WV	25110
T-83-WY-4050	Conoco Sheridan	3404 Highway 87	Sheridan	WY	82801
T-83-WY-4051	Conoco Rock Springs	90 Foot Hill Blvd	Rock Springs	WY	82902
T-83-WY-4052	Little America Refining Casper	5100 E Hwy 20-26	Evansville	WY	82636
T-83-WY-4053	Kaneb Pipe Line Co - Cheyenne	1112 Parsley Blvd	Cheyenne	WY	82007
T-83-WY-4054	Sinclair Oil	East Lincoln Highway	Sinclair	WY	82334-0000
T-83-WY-4055	Frontier Refining Cheyenne	2700 East Fifth Street	Cheyenne	WY	82007
T-83-WY-4056	Wyoming Refining Newcastle	740 W Main	Newcastle	WY	82701
T-84-WY-4057	Hawk Point Terminal	9397 Highway 59 South	Gillette	WY	82717

[FR Doc. 99–11067 Filed 5–4–99; 8:45 am]

Billing Code 4830–01–F

federal register

Wednesday
May 5, 1999

Part II

Department of the Treasury

Fiscal Service

31 CFR Part 205

Rules and Procedures for Funds Transfers; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 205

RIN 1510–AA38

Rules and Procedures for Funds Transfers

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends regulations on rules and procedures for funds transfers which implement the Cash Management Improvement Act of 1990 (CMIA), as amended. CMIA governs the transfer of funds between the Federal Government and States under Federal assistance programs, and requires Federal agencies and States to minimize the amount of time between the transfer of Federal funds to a State and the payout of those funds by a State for program purposes. Under the regulations, the application of CMIA is limited to major Federal assistance programs. The purpose of this final rule is to revise the dollar thresholds used to define major Federal assistance program for purposes of the regulations in order to add flexibility and, thereby, make it easier for States to comply with the requirements of the regulations. This final rule does not make any substantive changes.

EFFECTIVE DATE: May 5, 1999.

ADDRESSES: Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, 401 14th Street, SW, Room 420, Washington, DC 20227. A copy of the final rule is being made available for downloading from the Financial Management Service's web site at the following address: http://www.fms.treas.gov/

FOR FURTHER INFORMATION CONTACT: Stephen K. Kenneally (Financial Program Specialist, Cash Management Policy and Planning Division) at (202) 874–6799; Cynthia L. Johnson (Director, Cash Management Policy and Planning Division) at (202) 874–6590; or Randall Lewis (Attorney-Advisor) at (202) 874–6680.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is authorized by the Cash Management Improvement Act of 1990 (''CMIA''), Public Law 101–453, as amended. *See* 31 U.S.C. 3335, 6501, and 6503. The purpose of the CMIA is to ensure greater efficiency, effectiveness, and equity in the exchange of funds between the Federal Government and the States for Federal assistance programs.

For major Federal assistance programs, States and the Financial Management Service (the ''Service'') negotiate Treasury-State Agreements which include the procedures used to determine the timing and amount of funds transfers. In the absence of an agreement, the Service is authorized to issue default procedures. In accordance with the CMIA, these funds transfer procedures are developed with the objective of minimizing the time between the transfer of cash from the Treasury and the payout of cash for program purposes by a State. Non-major Federal assistance programs generally are not addressed in Treasury-State Agreements, but are subject to requirements in Subpart B of Part 205 which limit funds transfers to the minimum amounts needed at the time of the request.

Under the current regulation, the distinction between major and non-major Federal programs is based on dollar thresholds contained in the Single Audit Act of 1984, Public Law 98–502. The Single Audit Act of 1984 used these thresholds to determine which Federal programs were subject to the substantive provisions of the Single Audit Act. In 1992, the Service adopted the Single Audit Act's thresholds as a means of meeting the CMIA's goals of efficient, effective, and equitable transfers of funds between the Federal Government and the States, while limiting the burden of implementing the CMIA. Use of these thresholds also eased implementation of the CMIA by incorporating a framework that was familiar to Federal agencies, States and auditors. *See* 57 FR 10102.

The Single Audit Act Amendments of 1996, Public Law 104–156, revised the thresholds and added risk-based criteria to the determination of major programs. 31 U.S.C. 7501 *et seq.* As a consequence, the thresholds published in Appendix A to Subpart A of Part 205 no longer are consistent with the thresholds used by States and their auditors for purposes of conducting Single Audits. Revising Appendix A to Subpart A of Part 205 by incorporating the new Single Audit Act thresholds allows States the option to keep their CMIA and Single Audit Act thresholds consistent.

However, in implementing the CMIA, the Service's primary concern is cash management. CMIA requires Federal agencies and States to minimize the amount of time between transfers of Federal funds to a State and the payout of those funds by States for program purposes. The risk-based criteria included in the Single Audit Act's new definition of major program address other risk management issues which are not related to cash management, and their inclusion in the CMIA definition of major Federal assistance program would not ensure that a majority of funds transferred are covered in Treasury-State agreements. For that reason, the Service is not incorporating the risk-based criteria into Part 205.

Regulatory Analysis

This rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Special Analyses

The Service is promulgating this final rule without opportunity for prior public comment, because the Service has determined notice and public procedure is unnecessary and contrary to the public interest. 5 U.S.C. 553(b)(3)(B).

This final rule makes only one change to Part 205; it revises the thresholds used in the definition of major Federal assistance programs for the purposes of CMIA. When FMS first published a Notice of Proposed Rulemaking (''NPRM'') implementing CMIA, it proposed the inclusion of provisions which, after a phase-in period, limited the mandatory application of CMIA to programs defined as major Federal assistance programs under the Single Audit Act of 1984. (57 FR 10102). The specific thresholds, which are based on the total amount of Federally funded State expenditures in a given year, were included in Appendix A to Subpart A of Part 205. After notice and an opportunity for comment, the Service retained the proposed definition of major Federal assistance program in the final rule published on September 24, 1992 (57 FR 44272).

As stated in the NPRM, the Single Audit Act thresholds were incorporated into Part 205 because they provide a consistent standard between the application of CMIA and the Single Audit Act. Use of the threshold also allows the Service to limit the administrative burden and costs of compliance, while still covering the majority of Federal program funds transferred to the States. This final rule does not change the substantive policy determinations underlying Part 205, it only makes technical changes to the thresholds included in the definition of major Federal assistance program which

add flexibility to the requirements of Part 205. Because the new thresholds are incorporated in a manner which allows for the application of either the existing thresholds or the new thresholds, there is no detrimental impact on States. For most States, the final rule reduces administrative burden and costs of compliance.

The Service has determined that good cause exists to make this final rule effective immediately upon publication, without the 30 day period between publication and the effective date contemplated by 5 U.S.C. 553(d). Because this final rule does not make any substantive changes to Part 205, but, instead, adds flexibility which may reduce the administrative burden and costs of compliance, making this final rule effective immediately is for the convenience of the States governed by Part 205.

List of Subjects in 31 CFR Part 205

Administrative practice and procedure, Electronic funds transfers, Grant programs, Intergovernmental relations.

Authority and Issuance

For the reasons set out in the preamble, the Service amends 31 CFR part 205 as follows:

PART 205—RULES AND PROCEDURES FOR FUNDS TRANSFERS

1. The authority citation for part 205 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321, 3335, 6501, 6503.

2. Appendix A to subpart A of part 205 is revised to read as follows:

Appendix A to Subpart A of Part 205—Definition of Major Federal Assistance Program

Beginning with State fiscal year 2000, ''Major Federal Assistance Program'' for State governments is defined by the following criteria:

Total expenditure of Federal financial assistance for all programs	Major Federal assistance program means any program that exceeds
Between $300,000 and $100 million inclusive	$300,000 or 3 percent of such total expenditures.
Over $100 million but less than or equal to $1 billion	$3 million or 0.30 percent of such total expenditures.
Over $1 billion but less than or equal to $2 billion	$4 million or 0.30 percent of such total expenditures.
Over $2 billion but less than or equal to $3 billion	$7 million or 0.30 percent of such total expenditures.
Over $3 billion but less than or equal to $4 billion	$10 million or 0.30 percent of such total expenditures.
Over $4 billion but less than or equal to $5 billion	$13 million or 0.30 percent of such total expenditures.
Over $5 billion but less than or equal to $6 billion	$16 million or 0.30 percent of such total expenditures.
Over $6 billion but less than or equal to $7 billion	$19 million or 0.30 percent of such total expenditures.
Over $7 billion but less than or equal to $10 billion	$20 million or 0.30 percent of such total expenditures.
Over $10 billion	$30 million or 0.15 percent of such total expenditures.

Dated: April 29, 1999.

Richard L. Gregg,

Commissioner.

[FR Doc. 99–11193 Filed 5–4–99; 8:45 am]

BILLING CODE 4810–35–P

federal register

Wednesday
May 5, 1999

Part III

Department of Education

Expanded Approval of ''Ability-to-Benefit'' Tests and Passing Scores; Notice

DEPARTMENT OF EDUCATION

Expanded Approval of ''Ability-to-Benefit'' Tests and Passing Scores

AGENCY: Department of Education.

ACTION: Notice of the expanded approval of ''ability-to-benefit'' tests and passing scores for students with disabilities.

SUMMARY: The Secretary adopts, for students with disabilities, the list of ''ability-to-benefit'' tests and passing scores on those tests approved under section 484(d) of the Higher Education Act of 1965, as amended (HEA), and 34 CFR Part 668, Subpart J.

FOR FURTHER INFORMATION CONTACT: Lorraine Kennedy, U.S. Department of Education, 400 Maryland Avenue, S.W., Regional Office Building 3, Room 3045, Washington, D.C. 20202–5451. Telephone: (202) 708–8242. 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: On October 25, 1996, the Secretary published a notice in the **Federal Register** (61 FR 55542–55543) that provided a list of eight ''ability-to-benefit'' tests that the Secretary approved under section 484(d) of the HEA and the regulations that the Secretary promulgated to implement that section, 34 CFR Part 668, Subpart J. The notice also included approved passing scores for the approved tests.

In a notice published in the **Federal Register** of October 27, 1998, 63 FR 57539–57541, the Department added the American College Testing Service (ACT) test to the list of approved ability-to-benefit tests. The notice further provided that the nine listed tests were not yet approved for students with disabilities. As a result, for these students, an institution could continue to use ability-to-benefit tests that were approved as of June 30, 1996. However, if a student with disabilities, nevertheless, took and passed one of those nine tests, the Secretary would consider that the student had demonstrated the requisite ability-to-benefit for purposes of section 484(d) of the HEA.

The Secretary is now expanding the approval of those nine tests for use with students with disabilities provided that those tests are given in a manner that is consistent with the applicable requirements of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. This would include offering and administering the test in a time, place and manner that is accessible, including the provision of appropriate modifications and auxiliary aids and services. Examples of appropriate modifications and auxiliary aids and services include a change in the length of time of examination for individuals with learning disabilities and Brailled or large print examinations and answer sheets or qualified readers for individuals with visual impairments. In addition, because the regulations at 34 CFR Part 668, Subpart J, contain a special provision for the assessment of students with disabilities for whom no tests are reasonably available, if none of the nine approved tests can be given in a manner that is accessible to a person with disabilities, an institution must utilize the procedures under 34 CFR 668.149 which allow for testing under this alternative provision.

As stated in § 668.149, such a test is a modified test or testing procedure or instrument that has been scientifically developed specifically for the purpose of evaluating the ability to benefit from postsecondary training or education of students with a disability. It measures both basic verbal and quantitative skills at the secondary school level and reflects the student's skills and general learned abilities rather than the student's impairment.

As a result of the Secretary's expanded approval of the use of these tests for students with disabilities, as of the date of this notice, an institution may use one of the approved nine tests for these students provided that the test is administered in a manner that accommodates the students' disabilities. In addition, for sixty days after the date of this notice, an institution may also use any ability-to-benefit test that was approved as of June 30, 1996. However, after that sixtieth day, an institution must no longer use one of the latter type tests.

Note. Please note that the exception provided in the October 27, 1998 **Federal Register** notice remains in effect for students whose native language is not English and who are not fluent in English. That is, the tests that the Secretary has approved in this notice and the October 27, 1998 notice are not approved for those students, and institutions may continue to use ESL ability-to-benefit tests that were approved as of June 30, 1996 for those students. Nevertheless, if a student takes and passes one of the tests approved in this notice or the October 27, 1998 notice, the Secretary will consider that the student demonstrated the requisite ability-to-benefit for purposes of section 484(d) of the HEA.

List of Approved ''Ability-to-Benefit'' Tests and Passing Scores

1. *American College Testing (ACT): (English and Math) Passing Scores:* The approved passing scores on this test are as follows: English (14) and Math (15).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. James Maxey, Telephone: (319) 337–1100, Fax: (319) 337–1790.

2. *ASSET Program: Basic Skills Tests (Reading, Writing, and Numerical)—Forms B2 and C2.*

Passing Scores: The approved passing scores on this test are as follows: Reading (34), Writing (34), and Numerical (33).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. John D. Roth, Telephone: (319) 337–1030, Fax: (319) 337–1790.

3. *Career Programs Assessment (CPAT) Basic Skills Subtests Language Usage, Reading and Numerical)—Forms A, B, and C.*

Passing Scores: The approved passing scores on this test are as follows: Language Usage (43), Reading (44), and Numerical (42).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. John D. Roth, Telephone: (319) 337–1030, Fax: (319) 337–1790.

4. *COMPASS Subtests: Prealgebra/Numerical Skills Placement, Reading Placement, and Writing Placement.*

Passing Scores: The approved passing scores on this test are as follows: Prealgebra/Numerical (21), Reading (60), and Writing (31).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. John D. Roth, Telephone: (319) 337–1030, Fax: (319) 337–1790.

5. *Computerized Placement Tests (CPTs)/Accuplacer (Reading*

Comprehension, Sentence Skills, and Arithmetic).

Passing Scores: The approved passing scores on this test are as follows: Reading Comprehension (52), Sentence Skills (60), and Arithmetic (36).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: The College Board, 45 Columbus Avenue, New York, New York 10023–6992, Contact: Ms. Loretta M. Church, Telephone: (212) 713–8000, Fax: (212) 713–8063.

6. *Descriptive Tests: Descriptive Tests of Language Skills (DTLS) (Reading Comprehension, Sentence Structure and Conventions of Written English)—Forms M–K–3KDT and M–K–3LDT; and Descriptive Tests of Mathematical Skills (DTMS) (Arithmetic)—Forms M–K–3KDT and M–K–3LDT.*

Passing Scores: The approved passing scores on this test are as follows: Reading Comprehension (108), Sentence Structure (9), Conventions of Written English (309), and Arithmetic (506).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: The College Board, 45 Columbus Avenue, New York, New York 10023–6992, Contact: Ms. Loretta M. Church, Telephone: (212) 713–8000, Fax: (212) 713–8063.

7. *Test of Adult Basic Education (TABE): (Reading Total, Total Mathematics, Total Language)—Forms 5 and 6, Level A, Complete Battery and Survey Versions.*

Passing Scores: The approved passing scores on this test are as follows: Reading Total (768), Total Mathematics (783), Total Language (714).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are:

CTB/McGraw-Hill 20 Ryan Ranch Road, Monterey, California 93940–5703; Contact: Ms. Tina Gwaltney, Telephone: (831) 393–7749, Fax: (831) 393–7142.

8. *Test of Adult Basic Education (TABE): (Reading, Total Mathematics, Language)—Forms 7 and 8, Level A, Complete Battery and Survey Versions.*

Passing Scores: The approved passing scores on this test are as follows: Reading (559), Total Mathematics (562), Language (545).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are:

CTB/McGraw-Hill 20 Ryan Ranch Road, Monterey, California 93940–5703; Contact: Ms. Tina Gwaltney, Telephone: (831) 393–7749, Fax: (831) 393–7142.

9. *Wonderlic Basic Skills Test (WBST)—Verbal Forms VS–1 & VS–2, Quantitative Forms QS–1 & QS–2.*

Passing scores: The approved passing scores on this test are as follows: Verbal (200) and Quantitative (210).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: Wonderlic Personnel Test, Inc., 1509 N. Milwaukee Ave., Libertyville, IL 60048–1380; Contact: Mr. Victor S. Artese, Telephone: (800) 323–374, Fax: (847) 680–9492.

Duration of Approval

The Secretary approves each of these tests for five years from the date of the Secretary's written notice to the test publisher, unless the Secretary withdraws this approval or the publisher requests that approval of a test be withdrawn. In either case, the Secretary will publish a notice in the **Federal Register** indicating this change. Users are referred to the test publisher's technical manual for computing these scores.

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Note. The official version of this document is the document published in the **Federal Register**.

Dated: April 29, 1999.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

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Part IV

Federal Trade Commission

16 CFR Part 453

Request for Comments Concerning Trade Regulation Rule on Funeral Industry Practices; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 453

Request for Comments Concerning Trade Regulation Rule on Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the ''Commission'') is requesting public comments on its Trade Regulation Rule on Funeral Industry Practices (''the Funeral Rule'' or ''the Rule''). The Commission requests comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides. Also requested are comments on whether the Rule should be modified to broaden its scope to include non-traditional providers of funeral goods or services; revise or clarify the prohibition on casket handling fees; or prohibit non-declinable funeral fees. All interested persons are hereby given notice of the opportunity to submit written data, views and arguments concerning the Rule.

DATES: Written comments will be accepted until July 12, 1999.

ADDRESSES: Written comments should be identified as ''16 CFR Part 453'' and submitted to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW, Washington, DC 20580. The Commission requests that commenters submit the original plus five copies, if feasible. To enable prompt review and public access, all written comments should also be submitted, if possible, in electronic form. To submit in electronic form, provide the comment on either a 5¼″ or a 3½″ computer disk. The disk should be labeled with the commenter's name and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format). Alternatively, the Commission will also accept comments submitted to the following E-Mail address: ''*FUNERAL@ftc.gov*.'' Individual members of the public who will be filing comments need not submit multiple copies and need not submit their comments in electronic form.

All comments will be placed on the public record and will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, during normal business days from 8:30 a.m. to 5 p.m., at the Public Reference Room, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW Washington, DC 20580. In addition, comments will be posted on the Internet at the FTC's web site: ''*www.ftc.gov*''.

Notification of interest in the Public Workshop-Conference should be submitted in writing to Mercedes Kelley, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Myra Howard, (202) 326–2047, or Mercedes Kelley, (202) 326–3665, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The current request for comments on the Funeral Rule is part of the Commission's regulatory review program which has been implemented to review Rules and guides periodically. The regulatory review program seeks information about the costs and benefits of the Commission's Rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying Rules and guides that warrant modification or rescission.

A. Background

The Commission adopted the Trade Regulation Rule entitled Funeral Industry Practices (the ''Funeral Rule'') on September 24, 1982. It became fully effective on April 30, 1984.[1] The essential purposes of the Funeral Rule were to ensure that consumers receive information necessary to make informed purchasing decisions, and to lower existing barriers to price competition in the market for funeral goods and services.[2] Subsequently, the Funeral Rule was amended as a result of a regulatory review and amendment proceeding that began on December 9, 1987.[3] The Commission published the amended Funeral Rule on January 11, 1994.[4] The amendments to the Rule took effect July 19, 1994.

The Rule, as it stands today, specifies that it is an unfair or deceptive act or practice for a funeral provider to: (1) Fail to furnish consumers with accurate price information disclosing the costs of each funeral good or service used in connection with the disposition of dead bodies; (2) require consumers to purchase a casket for direct cremations; (3) condition the provision of any funeral good or service upon the purchase of any other funeral good or service; or (4) embalm the deceased for a fee without authorization. The Rule also specifies that it is a deceptive act or practice for funeral providers to misrepresent the legal or local cemetery requirements for: (1) Embalming; (2) caskets in direct cremations; (3) outer burial containers; or (4) any other funeral good or service, and to misrepresent that cash advance purchases are the same as the cost to the funeral provider when such is not the case. The Rule sets forth preventive requirements in the form of price and information disclosures to ensure funeral providers avoid engaging in the unfair or deceptive acts or practices described above.

B. Issues for Comment

This review is part of a regularly scheduled review which generally seeks information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying aspects of the Funeral Rule that warrant modification or rescission. Accordingly, the Commission is generally soliciting comments on, among other things, the economic impact of and the continuing need for the Funeral Rule; possible conflict between the Rule and state, local, or other federal laws; and the effect on the Rule of any technological, economic or other industry changes.

There are a number of other material issues on which the Commission is also seeking comment. The Commission recognizes that change is occurring in the funeral industry at a rapid pace and that several issues have arisen since the Rule was amended in 1994 which may warrant additional modification or rescission of the Funeral Rule.

First, the Funeral and Memorial Societies of America (''FAMSA''), has requested that the Commission consider making a number of amendments and additions to the Rule. Among these are: (1) The elimination of any non-declinable fee; (2) the addition of four items to the required itemization on the General Price List—namely, the price for private viewing without embalming, the price for body donation to a medical school, the price for the cremation process itself,[5] and the price for rental

[1] The Rule had two effective dates. The portions of the Rule that prohibit certain oral or written representations became effective on January 1, 1984. 48 FR 45537. The remainder of the Rule (the portions imposing affirmative obligations on funeral providers) became effective on April 30, 1984.

[2] 47 FR 42260.

[3] 52 FR 46706.

[4] 59 FR 1592.

[5] Despite the fact that § 453.1(g) of the Rule defines ''direct cremation'' as ''a disposition of

caskets; (3) a requirement that the cost of the cremation process be included in the charge for an immediate or ''direct'' cremation; (4) a requirement that any mark-up on cash advance items be disclosed with the actual amount to be charged; and (5) that the scope of the Rule be expanded to bring cemeteries, monument dealers, and casket sellers within coverage of the Rule.[6]

Second, members of Congress, industry representatives, and members of the general public have expressed concerns about the changing nature of the industry and the competition between traditional providers of funeral services and the non-traditional providers.

1. The Definition of ''Funeral Provider''

The Funeral Rule applies only to ''funeral providers.''[7] The Rule defines a funeral provider as ''any person, partnership or corporation that sells or offers to sell funeral goods *and* funeral services to the public.''[8] Accordingly, persons that sell or offer to sell *only* funeral goods or *only* funeral services are not considered ''funeral providers.'' In other words, the non-traditional members of the funeral industry, such as cemeteries and casket retailers, do not meet the definition of ''funeral provider'' and are thus not subject to the Rule's provisions. The Commission considered expanding the definition of funeral provider in the mandatory review that culminated in the 1994 amended Rule. At that time, the non-traditional sellers had only just begun to enter the market for funeral goods and services. Accordingly, the Commission determined not to expand coverage to other segments of the funeral industry at that time. Since then the Commission has stayed abreast of the increased entry of non-traditional entities into the sale of both funeral goods and services. As competition has been increasing in the sale of caskets and other funeral goods and services, the Commission believes that it is time to reconsider whether it would be in the public interest to expand the coverage of the Funeral Rule to include non-traditional providers of funeral goods and services. Therefore, the Commission solicits comments on whether it is now desirable to revise the Rule's definition of ''funeral provider.''

2. Casket Handling Fees Clarification

Section 453.4(b)(2)(i)(A) of the Rule mandates a specifically-worded disclosure informing the consumer that ''(y)ou may choose only the items you desire.'' The general purpose of this provision is to make it possible for consumers to freely select funeral goods and services. In other words, consumers should pay for only those goods and services they select. Funeral providers are required to ''unbundle'' their offerings and allow for selection of individual funeral goods and services.

When the Rule was amended in 1994, § 453(b)(2)(i)(A) was augmented by the addition of § 453.4(b)(1)(ii), which specifies that it is an unfair or deceptive practice for funeral providers to:

> Charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for: (1) Services of funeral director and staff, permitted by § 453.2(b)(4)(iii)(C); (2) other funeral services and funeral goods selected by the purchaser; and (3) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with § 453.3(d)(2).

Therefore, funeral providers are prohibited from charging any fee that is not for the services of the funeral director, or the items selected by the consumer. Placing such a limitation on permissible fees was specifically intended, in part, to prohibit a funeral provider from charging consumers a fee for using a casket purchased from some source other than that funeral provider. The Commission, in amending the Rule, determined that ''substantial 'casket handling fees' are imposed on consumers by a significant proportion of providers wherever third-party casket sellers exist, and, as a result, frustrate the Rule's 'unbundling' requirements and result in the reduction of potential competition.''[9] The Commission found that some providers implemented casket handling fees ''because of their competitive reluctance to shift overhead costs and profit from the casket mark-up to professional services fees,'' while other providers used handling fees as a ''direct response to third'party competition.''[10] The Commission determined that ''the Rule should require providers to recoup costs and profits lost to third-party casket sales in ways that do not violate the intent of the Rule's 'unbundling' provision.''[11]

Since the amendment of the Rule, the Commission is aware that some funeral providers may employ certain practices that may undermine the benefit to consumers and to competition intended by the Rule's unbundling provisions. Although the Rule limits permissible fees, it does not regulate the prices that funeral providers may charge, nor does it prohibit the offering of funeral packages.[12] Neither the Commission nor staff hitherto has interpreted the Rule to prohibit the offering of such packages at a discount—that is, offering combinations of funeral goods and services which, if purchased together, are offered at a lower price in aggregate than if the consumer was to purchase each good and service individually. Even though the Third Circuit has noted that the Commission, in drafting its casket handling fee prohibition, drew a distinction between a direct ''fee'' and a ''discount,''[13] as a practical matter, the distinction between a ''fee'' as it is used by the Rule, and a ''discount'', as offered by funeral providers, may be blurred. For example, the prices of itemized goods and services (appearing on the General Price List) may in some instances be inflated to the point of fictitiousness. Thus, virtually all consumers would choose to purchase ''discount packages,'' resulting in a situation where the discount package represents the *de facto* prices for the goods and services. Such a scenario may restrict consumer choice in a manner that frustrates the intended purpose of the Rule. Further, some members of the funeral industry have alleged that because such ''discount packages'' are often conditioned on the purchase of a casket, these packages are artificially constructed by certain funeral providers in order to eliminate competition in casket sales.

As a result of the differing views that have emerged in the funeral industry with respect to the reach of the casket handling fee prohibition and its effect on certain types of discount packaging, the Commission is concerned about the effectiveness of the casket handling fee prohibition. Even at the time of the 1994

human remains by cremation (*i.e.*, 'a heating process which incinerates human remains,' § 453.1(e)), without formal viewing, visitation, or ceremony with the body present,'' FAMSA suggests that some funeral providers may charge a fee for the actual cremation of a body that may not be reflected on the General Price List item price for a ''direct cremation'' under § 453.2(b)(4)(ii)(C).

[6] September 24, 1997 FAMSA letter.

[7] 16 CFR 453.1(i).

[8] *Id.* (Emphasis added). Funeral goods are, ''the goods which are sold or offered for sale directly to the public for use in connection with funeral services.'' Funeral services are, ''any services which may be used to: (1) Care for and prepare deceased human bodies for burial, cremation or other final disposition; and (2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.'' 16 CFR 453.(1)(h)&(j).

[9] 59 FR at 1604.

[10] *Id.*

[11] *Id.*

[12] ''You [the funeral provider] may still offer funeral packages, as long as they are offered in addition to, not in place of, itemized prices.'' *Complying with the Funeral Rule, a Business Guide Produced by the Federal Trade Commission (''Compliance Guide'')* at p. 24.

[13] *Pennsylvania Funeral Dirs. Ass'n., Inc.* v. *FTC*, 41 F.3d 81, 90 (3rd Cir. 1994) (noting that ''the FTC distinguishes direct handling fees from offering discounts to people who buy caskets from the funeral home'').

Funeral Rule amendment, the Commission staff report reflected a level of uncertainty regarding funeral packages as they relate to the casket handling fee prohibition when it stated:

> Of course, enforcement issues might arise if, as a result of those package prices, consumers' choices were being restricted or additional fees above the itemized cost of caskets or services were being assessed.[14]

Accordingly, the Commission specifically seeks comments on the casket handling fee prohibition, its effectiveness, and the impact it has had on consumers and funeral providers.

3. Non-declinable Fees Currently Allowed Under § 453.2(b)(4)(iii)(C)(1) or (C)(2)

As noted above, the only fee that funeral providers can require consumers to pay under the Funeral Rule is the fee for ''basic services.'' The ''basic services fee'' is defined as the charge for the services of the funeral director and staff.[15] The effect of this definition is to permit funeral directors to charge one, and only one, non-declinable fee to cover the basic services of the funeral director and staff. The Commission solicits comments on the efficacy of this provision in ensuring consumers the greatest amount of choice with respect to goods and services. The Commission also seeks comment on the effect of this provision upon funeral providers, and upon competition among them.

Revision of the ''General Price List''

4. Revision of the ''General Price List''

The Commission also seeks comments on revisions, additions or deletions that should be made to the required disclosures for the ''General Price List'' (as described in § 453.2(b)(4)), including those advanced by FAMSA, as described above.

C. Request for Comment

The Commission is interested in receiving data, surveys and other empirical evidence to support comments submitted in response to this Notice. Without limiting the scope of issues it is seeking comment on, the Commission is particularly interested in receiving comments and supporting data on the following questions:

(1) Is there a continuing need for the Funeral Rule?

(a) What benefits, if any, has the Rule provided to purchasers of funeral goods and services?

(b) Has the Rule imposed costs on purchasers?

(2) What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers?

(a) How would these changes affect the costs the Rule imposes on the funeral providers subject to its requirements?

(3) What significant burdens or costs, if any, including costs of compliance, has the Rule imposed on funeral providers subject to its requirements?

(a) Has the Rule provided benefits to such funeral providers?

(4) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on funeral providers subject to its requirements?

(a) How would these changes affect the benefits provided by the Rule?

(5) Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

(7) What significant burdens or costs, if any, including costs of compliance, has the Rule imposed on small funeral providers subject to its requirements?

(a) How do these burdens or costs differ from those imposed on larger funeral providers subject to the Rule's requirements?

(8) To what extent are the burdens or costs that the Rule imposes on small funeral providers similar to those that small funeral providers would incur under standard and prudent business practices?

(9) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on small funeral providers?

(a) How would these changes affect the benefits of the Rule?

(b) Would such changes adversely affect the competitive position of larger funeral providers?

(10) How, if at all, has the Rule affected the relative number of consumers who contact more than one funeral home before deciding which one to use?

(11) How, if at all, has the Rule benefitted consumers by:

(a) Alerting consumers to the importance of price information and ensuring that they obtain such information at the critical point of choosing a provider?

(b) Providing information about different purchase options?

(c) Protecting consumers from injurious misrepresentations?

(d) Requiring authorization prior to embalming?

(e) Prohibiting providers from conditioning the purchase of a wanted item on the purchase of an unwanted item?

(12) How have prices changed (in total and for specific funeral goods and services) since the Rule was amended in 1994? To what extent, if at all, are these changes attributable to the Rule?

(13) Have the relative prevalence of: (a) Ground burials; (b) cremations; (c) above-ground entombment; or (d) other dispositions, increased or decreased since the Rule was amended in 1994? To what extent, if at all, has the Rule influenced these changes?

(14) How, if at all, since the Rule was amended in 1994, have the following factors changed?

(a) The number, size, and type of providers of funeral goods and services in the industry?

(b) The ability of new providers, both traditional and non-traditional, to enter the industry?

(c) What types of non-traditional entrants have appeared in the industry, and how are they different from traditional providers?

(d) Mergers and other types of consolidation in the funeral industry?

(e) Profits of funeral industry members?

(15) How, if at all, has the Rule affected the cremation industry? Should the Rule be amended to include within its scope unfair and deceptive practices by crematories, if any?

(16) To what extent are providers of funeral goods and services complying with the Rule overall, and with each of its component requirements?

(17) What difficulties, if any, are providers of funeral goods and services experiencing in complying with the Rule?

(18) How has the National Funeral Directors Association's Funeral Rule Offenders Program (''FROP'') affected compliance with the Rule, if at all?

(19) Do consumers who receive itemized price information at the inception of the arrangements conference tend to spend less on funerals than those who receive such information later?

(20) Do consumers who make pre-need arrangements spend less on funerals than those who do not? If so, why? Does receiving price information at the inception of a pre-need arrangements conference contribute to decreased spending? Does it encourage or facilitate comparison shopping?

(21) Should the requirement that itemized price lists be given to

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[14] Final Staff Report, at 39 n. 76.

[15] 16 CFR 453,1(p). The *Compliance Guide*, at 15, explains, ''this basic services fee should include services that are common to virtually all forms of disposition or arrangements (offered), such as conducting the arrangements and coordinating the arrangements with the cemetery, crematory, or other third parties. The basic services fee should *not* include charges related to other items that must be separately listed on the General Price List and that the customer may decline to purchase.''

consumers at the beginning of discussions about funeral arrangements be modified? If so, how? What would be the relative costs and benefits of such a modified provision?

(22) Should the Commission expand the definition of ''funeral provider'' in order to bring non-traditional members of the funeral industry within the scope of the Funeral Rule's coverage? Are consumers being harmed by the current limitation on the scope of the Rule's coverage?

(a) What definition should be used to delineate those entities and individuals subject to the Funeral Rule?

(b) What are the costs and benefits of broader definitions?

(23) Should non-traditional providers of funeral goods and services be subject to only certain provisions of the Funeral Rule?

(a) If so, to which provisions should they be subject?

(24) Does the prohibition on more than one non-declinable fee reduce barriers to competition and increase consumer choice?

(a) Has this prohibition been effective to ensure that consumers can choose and pay for only the individual goods and services that they desire?

(b) Has this prohibition been effective to protect consumers' right to decline unwanted goods and services?

(c) What are the benefits conferred upon consumers or competition by this prohibition?

(d) What costs or other burdens has this provision imposed upon providers of funeral goods and services?

(25) What new fees, prices, goods or services have emerged in the sale of funeral goods and services, since the Rule was amended in 1994?

(26) Have the 1994 amendments been effective in prohibiting casket handling fees? If so, what benefits or costs have resulted from these amendments?

(27) How widespread is it for funeral providers to offer substantial discounts on funeral packages that include a casket from the funeral home?

(a) To what extent does such discounting tend to restrict consumers' choices?

(28) Should the requirement for a General Price List be modified? If so, how?

(a) Are there any new fees, prices, goods or services which should be added to the General Price List requirements?

1. Should the Rule require that the price of private viewing without embalming be included on the General Price List?

2. Should the Rule require that the price of donating a body to a medical school be included on the General Price List?

3. Are the Rule's requirements (§ 453.2(b)(4)(ii)(C)) to disclose on the General Price List the price for direct cremation effective to prevent deception regarding the amount a consumer will pay to have a funeral provider dispose of a body by cremation? Should the Rule also include an express requirement that the disclosed price of ''direct cremation'' include the actual price to have a body cremated?

4. Should the Rule require that the price of renting a casket in connection with a cremation be included on the General Price List?

(b) Are there any fees, prices or services which should be deleted from the General Price List?

(c) Are there any other revisions that should be made to the current provisions in the General Price List?

(d) For any change made in response to this question, what, if any, would be the costs and benefits to consumers and to funeral providers?

(29) The Rule applies to both pre-need and at-need funeral arrangements. Should pre-need and at-need consumers be treated differently? If so, why?

(c) Can a funeral provider readily distinguish between a pre-need and an at-need customer or will this complicate compliance with the Rule?

(30) Are there widespread unfair or deceptive practices occurring with respect to the pre-arrangement of and pre-payment for funerals by consumers? What are these practices? How could these practices be remedied? Are these remedies within the Commission's authority and jurisdiction? Would the benefits to consumers likely to result from such remedies outweigh the likely costs to funeral providers or other industry members?

D. Invitation to Comment

In reviewing the Funeral Rule, Commission staff will consider all comments submitted by July 12, 1999. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission regulations, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. In addition, comments will be placed on the Internet at the FTC's web site: <*http://www.ftc.gov*>.

E. Public Workshop Conference

Commission staff will conduct a Public Workshop Conference to discuss written comments received in response to this Request for Comments. The purpose of this conference is to afford Commission staff and interested parties a further opportunity to openly discuss and explore issues raised during the Rule Review, and, in particular, to examine publicly any areas of significant controversy or divergent opinions that are raised in the written comments. Commission staff will consider the views and suggestions made during the conference, in conjunction with the written comments, in formulating its final recommendation to the Commission concerning the review of the Funeral Rule.

Commission staff will select a limited number of parties, from among those who submit written comments and express an interest in participating in the workshop conference, to represent the significant interests affected by the Rule Review. These parties will participate in an open discussion of the issues. It is contemplated that the selected parties might ask and answer questions based on their respective comments. In addition, the conference will be open to the general public. Members of the general public who attend the conference may have an opportunity to make a brief oral statement presenting their views on issues raised in the Rule Review. Oral statements of views by members of the general public will be limited to a few minutes in length. The time allotted for these statements will be determined on the basis of the time allotted for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements.

Written submissions of views, or any other written or visual materials, will not be accepted during the conference. The discussion will be transcribed and the transcription placed on the public record.

The conference will be held in the fall. A forthcoming announcement will provide the exact date(s) and location. Parties interested in participating must notify the Commission staff by July 12, 1999.

List of Subjects in 16 CFR Part 453

Funerals, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–11260 Filed 5–4–99; 8:45 am]

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federal register

Wednesday
May 5, 1999

Part V

Federal Emergency Management Agency

44 CFR Parts 59 and 61

National Flood Insurance Program (NFIP); Inspection of Insured Structures by Communities; Proposed Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59 and 61

RIN 3067–AC79

National Flood Insurance Program (NFIP); Inspection of Insured Structures by Communities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish an inspection procedure under the National Flood Insurance Program (NFIP) to help verify that structures in a community comply with the community's floodplain management ordinance and to ensure that property owners pay flood insurance premiums commensurate with their flood risk. The proposed inspection procedure would require owners of insured buildings to obtain an inspection from community floodplain management officials as a condition of renewing the Standard Flood Insurance Policy (SFIP) on the building. FEMA proposes to undertake the inspection procedure on a pilot project basis only in two communities, Monroe County, Florida and the incorporated Village of Islamorada located in Monroe County. We would make any decision to implement the inspection procedure in other NFIP participating communities outside of Monroe County, Florida only after completing the pilot inspection procedure within the selected communities and after an evaluation to determine the procedure's effectiveness.

DATES: Please send comments on or before July 6, 1999.

ADDRESSES: Please send your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Don Beaton, Federal Emergency Management Agency, Federal Insurance Administration, 202–646–3442, (facsimile) 202–646–4327 or Lois Forster, Federal Emergency Management Agency, Mitigation Directorate, 202–646–2720, (facsimile) 202–646–2577.

SUPPLEMENTARY INFORMATION:

Background

Congress created the National Flood Insurance Program (NFIP) in 1968 to provide Federally supported flood insurance coverage, which generally had not been available from private insurance companies. The program is based on an agreement between the Federal Government and each floodprone community that chooses to participate in the program. FEMA makes flood insurance coverage available to property owners provided that a community adopts and enforces floodplain management regulations that meet or exceed the minimum requirements of the NFIP set forth in part 60 of the NFIP Floodplain Management Regulations (44 CFR part 60).

Goal to reduce flood losses. A major goal of the NFIP is to reduce flood losses by implementing floodplain management regulations that protect new and substantially improved construction in floodprone areas from flood damages. Without community oversight of building activities and development in the floodplain, the best efforts of some to reduce flood losses could be undermined or destroyed by the careless building of others. Community enforcement of a floodplain management ordinance is critical in protecting a building from future flood damages, in reducing taxpayer funded disaster assistance, and also in keeping flood insurance rates affordable.

We base the NFIP flood insurance rates for new construction on the degree of the flood risk reflected by the flood risk zone on the Flood Insurance Rate Map (FIRM) that we produce for the community. Flood insurance rates also take into account a number of other factors including the elevation of the lowest floor above or below the Base Flood Elevation (the elevation of the 100-year flood frequency), type of building, number of floors, and the existence of a basement or an enclosure.

Inspection procedure. We intend to undertake the inspection procedure on a pilot project basis in Monroe County and the Village of Islamorada, Florida. The Village was formerly part of unincorporated Monroe County, and incorporated as a separate community in January 1998. We would require that areas in Monroe County that incorporate and become a separate community on or after January 1, 1999 to participate in the inspection procedure as a condition of joining the NFIP. The purpose of the proposed inspection procedure is to provide an additional means for the pilot communities to identify whether post-FIRM structures, i.e., those structures built after the effective date of the FIRM, are in compliance with the community's floodplain management ordinance. The proposed inspection procedure would also enable FEMA to verify that structures insured under the NFIP are properly rated. Post-FIRM construction is charged an actuarial rate that must fully reflect the risk of flooding. Because Post-FIRM construction is actuarially rated, buildings constructed in compliance with community floodplain management regulations pay flood insurance premiums based on rates that are in most cases significantly lower than rates charged for buildings built in violation of these requirements.

We would make a decision whether to implement the inspection procedure in other NFIP participating communities outside of Monroe County, Florida only after the pilot inspection procedure is complete within the selected communities and we complete an evaluation to determine the procedure's effectiveness.

Selection of Communities To Participate in the Pilot Inspection Procedure

We selected Monroe County and the Village of Islamorada, Florida for the proposed pilot inspection procedure due to unique circumstances in these communities and their willingness to participate in this procedure. The proposed inspection procedure would apply only to NFIP post-FIRM insured buildings in the Special Flood Hazard Areas (SFHAs) of Monroe County and the Village of Islamorada that are possible violations of the communities' floodplain management ordinance. Areas designated as SFHAs on the FIRMs are based on a flood that would have a one-percent chance of being equaled or exceeded in any given year (the 100-year flood). One-percent annual chance floods are shown on the FIRMs as A Zones or V Zones.

Susceptibility of the area to flooding. Monroe County, Florida is the southernmost county in the State of Florida and the continental United States and includes the islands of the Florida Keys. The Village of Islamorada is located in Monroe County, Florida and is a separate NFIP participating community. The entire portion of the County that is located on the mainland Florida peninsula, along with the islands located in Biscayne Bay and the northern part of Florida Bay, are a part of the Everglades National Park. Most of the development in Monroe County is located in the Florida Keys. Almost the entire County, including the Village of Islamorada, could be inundated by the base flood or 100-year flood (a flood having a one percent chance of being equaled or exceeded in any given year). We have identified velocity zones (V Zones), SFHAs associated with wave action, along the coastline of Monroe

County and the Village of Islamorada and designated the remaining portion of the SFHAs A Zones. Only portions of Key Largo, Cotton Key, and Upper Matecumbe Key have areas with ground elevations high enough to be outside of the SFHA.

FEMA findings in Monroe County. In August 1995, we conducted a Community Assistance Visit (CAV) in Monroe County, Florida. At that time, the Village of Islamorada was not incorporated and was still part of Monroe County. The purpose of a CAV is to assess an NFIP community's floodplain management program and to provide whatever assistance the community needs to administer its floodplain management ordinance effectively when program deficiencies or violations are identified. One of the more serious problems that we identified through the 1995 CAV was the widespread use of the enclosed area below the lowest floor of elevated buildings for uses other than parking, access, or storage. CAVs that we conducted in 1982 and 1987 also identified the use of enclosed areas below elevated buildings as living space as a problem.

NFIP floodplain management regulations. Under the NFIP Floodplain Management Regulations at 44 CFR 60.3, all new construction and substantial improvements of structures in A Zones on the community's FIRM that have fully enclosed areas below the lowest floor of an elevated building can only be used for parking, access, or storage. The enclosed area must be designed to include openings to equalize hydrostatic flood pressure on exterior walls by allowing for the automatic entry and exit of floodwaters [44 CFR 60.3(c)(5)]. In V Zones, new construction and substantial improvements must have the space below the lowest floor either free of obstruction or constructed with open wood lattice-work, insect screening, or non-supporting breakaway walls, intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. The area below the lowest floor of an elevated building in V Zones can only be used for parking, access, or storage.

In addition, owners must build the area below the lowest floor of an elevated building using flood resistant materials and must use construction methods and practices that minimize flood damages. Owners must also build with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Flood damages potential. Allowing uses other than parking, access, or storage in the enclosed area below the Base Flood Elevation significantly increases the flood damage potential to the area below the lowest floor of the elevated building. Improperly constructed enclosure walls and utilities can tear away and damage the upper portions of the elevated building exposing the building to greater damage. Improperly constructed enclosures can also result in flood forces being transferred to the elevated portion of the building with the potential for catastrophic damage. If a flood disaster occurs, the impact will go beyond the building itself. If the ground level enclosure is finished with living spaces, there is an increased risk to lives. Residents who live in these ground level enclosures may not be fully aware of the flood risk. Along with significant flood damages to the building and the potential for loss of life, the community, the State, and the Federal Government will face costly outlays for flood fighting and rescue operations, response, and recovery as well as taxpayer funded disaster assistance.

Limited flood insurance coverage. Because the area below the lowest floor of an elevated building has a greater exposure to flood waters, there is limited coverage in this area for elevated post-FIRM buildings, as provided for in the Standard Flood Insurance Policy (SFIP) under Article 6—Property Not Covered. This provision of the SFIP, effective since October 1, 1983, limits coverage for enclosures, including personal property contained therein. However, we provide coverage for enclosures below the elevated floors of elevated buildings for essential building elements, namely, sump pumps, well water tanks and pumps, oil tanks, furnaces, hot water heaters, clothes washers and dryers, freezers, air conditioners, heat pumps, electrical junction and circuit breaker boxes, elevators, natural gas tanks, pumps or tanks related to solar energy, cisterns, and stairways and staircases attached to the building. Also, foundation elements that support the building are insurable under the NFIP. We do not cover such items as finished enclosure walls, floors, ceilings, and personal property such as rugs, carpets, and furniture.

In 1983, we limited the coverage for enclosed areas below elevated buildings and in basement areas due to the financial losses we experienced when we provided full coverage in these areas. In order to provide insurance coverage for the items that we exclude under the SFIP, we would have to charge significantly higher insurance rates, which would make flood insurance on the building and its contents unaffordable for many property owners.

In spite of the limited coverage afforded for these enclosed areas, they affect the rating of the policy. As previously mentioned in ''Flood damages potential'', flood forces can be transferred to the elevated portion of the building causing severe damages. This damage potential is recognized in the rates by adding rate loadings based on the size of the enclosure and whether the enclosure contains covered machinery or equipment. The proposed inspection procedure will ensure that the policyholders with buildings that have enclosures are paying premiums commensurate with their flood risk.

Floodplain management criteria. The limitation of flood insurance coverage for the enclosed area of an elevated building is consistent with the NFIP floodplain management criteria. These criteria limit the use of the enclosed space to parking, access, and storage, require use of flood resistant materials, require openings in foundation walls in A Zones, require the area below the lowest floor of an elevated building in V Zones to be free of obstruction, and require that mechanical, electrical, and utility equipment be designed or located to prevent flood waters from entering or accumulating within the components. Buildings built in compliance with NFIP floodplain management criteria will have minimal damage potential to the building and its contents.

Factors affecting compliance determinations. There are several factors that have limited Monroe County's ability to determine whether a building with an enclosure complies with the County's floodplain management ordinance. It is often difficult from the street to determine whether the enclosed area below an elevated building contains uses other than parking, access, or storage. Although the County can seek consent and approval of the owner to inspect their property, the community has had limited success in identifying violations using this method. The volume of possible violations is also a contributing factor in the community's ability to address this problem. Monroe County estimates that there are several thousand buildings with illegal enclosures below the lowest floor of an elevated building. Furthermore, a provision in Florida law exempts ''owner-occupied family

residences'' from the administrative warrant inspection procedure provided under State law for identifying building-safety issues. Under Florida State law, entry by local officials into owner-occupied single family homes without consent of the owner requires a search warrant, which is extremely difficult to obtain. Consequently, the community has had little success in identifying possible violations so that it could then require actions to remedy the violations to the maximum extent possible.

Monroe County agreement to participate. Given these circumstances, Monroe County indicated its interest in participating in the inspection procedure. In January 1997, a Monroe County Citizen's Task Force, which was appointed by the Monroe County Board of County Commissioners to address the issue of illegal enclosures below the lowest floor of an elevated building, recommended establishment of a procedure to require an inspection and a compliance report before the renewal of a flood insurance policy. On June 11, 1998, the Board of County Commissioners of Monroe County, Florida, passed a resolution that requested FEMA to establish an inspection procedure for the County as a means of verifying that insured buildings in the SFHA under the NFIP comply with the County's floodplain management ordinance.

Village of Islamorada's agreement to participate. The Village of Islamorada incorporated as a separate community within Monroe County in January 1998 and became a participating NFIP community on October 1, 1998. The Village of Islamorada encompasses four of the Florida Keys that would have been included as part of the inspection procedure in Monroe County. Because of possible illegal enclosures in the Village of Islamorada, the community indicated its interest in participating in the pilot inspection procedure in a letter dated September 24, 1998, in its application to join the NFIP.

Continuing community responsibilities. Nothing that would be established through this proposed pilot inspection procedure would modify Monroe County or the Village of Islamorada's responsibility under the NFIP to enforce their floodplain management ordinance. That responsibility includes new construction and substantial improvements within the SFHAs pertaining to non-insured buildings or to insured buildings in which an inspection was not obtained by the policyholder. We intend that the proposed inspection procedure assist Monroe County and the Village of Islamorada materially in identifying and correcting violations. We do not intend that this procedure be a substitute or alternative for these communities to enforce provisions within their own laws or ordinances. When Monroe County and the Village of Islamorada identify violations, they would continue to have the responsibility to remedy the violations to the maximum extent possible for all buildings in the SFHA.

Awareness program for interested people. We envision that we, Monroe County, and the Village of Islamorada will coordinate efforts to conduct an awareness program with property owners, mortgage lenders, real estate agents, insurance agents, appraisers, and local officials on this inspection procedure.

We would make any decision to implement the inspection procedure in other NFIP participating communities outside of Monroe County, Florida only after completing the pilot inspection procedure within the selected communities and after an evaluation to determine how effective the procedure is in achieving NFIP building compliance. The evaluation would examine the level of effort required for the communities, insurance companies, and us to implement the procedure, how many non-compliant structures are brought into compliance, and whether the procedure enabled us to determine whether structures insured under the NFIP are properly rated.

Description of the Pilot Inspection Procedure

The proposed rule would establish a pilot inspection procedure that would be built around the flood insurance policy renewal process and would apply only to NFIP insured buildings in SFHAs in Monroe County and the Village of Islamorada. The proposed inspection procedure would require owners of insured buildings to obtain an inspection from local officials and submit an inspection report as a condition of renewing flood insurance on the building.

Proposed Endorsement. Flood insurance policies with renewal effective dates on and after the implementation date of the pilot inspection procedure would contain the endorsement established in proposed Appendices (A)(4), (A)(5), and (A)(6) of 44 CFR part 61. The endorsement would provide that an inspection by the community may be required before a subsequent renewal of the flood insurance policy. Policies issued as new policies after the effective date for implementing the pilot inspection procedure would also contain the endorsement established in proposed Appendices (A)(4), (A)(5), and (A)(6). The proposed endorsement would amend all flood insurance policies (pre-FIRM and post-FIRM) on buildings in Monroe County and the Village of Islamorada, Florida. The proposed changes to the SFIP would revise the Voidance, Reduction or Reformation of the Coverage provision and the Policy Renewal provision. A notice describing the purpose of the inspection procedure would accompany the new endorsement to the SFIP regarding the inspection procedure.

Procedure established under new section. Under a new section, 44 CFR 59.30, the proposed rule would establish criteria for implementing a pilot inspection procedure in the selected community. Monroe County and the Village of Islamorada previously indicated their interest to participate in the inspection procedure. Based upon the communities' willingness to participate in the pilot inspection procedure, the Associate Director for Mitigation and the Federal Insurance Administrator would establish a starting date and termination date based on the recommendation of the FEMA Regional Director in consultation with Monroe County and the Village of Islamorada.

Information we would provide. We would provide Monroe County and the Village of Islamorada a list of pre-FIRM and post-FIRM policies in SFHAs to use in implementing the inspection procedure before the effective date for implementing the pilot inspection procedure. We would also provide a list of any policies issued as new policies after the effective date for implementing the pilot inspection procedure to the appropriate community.

Community reviews. The communities would agree to undertake a review of the pre-FIRM polices and provide a list of insured buildings in SFHAs to FEMA that were incorrectly identified as a pre-FIRM building because they were built or substantially improved on or after the effective date of the initial FIRM. We would provide the list of buildings that may be incorrectly rated as pre-FIRM to the insurers for possible rerating under the post-FIRM rating rules. The communities would also agree to undertake a review of all insured post-FIRM buildings in SFHAs, including those incorrectly identified as pre-FIRM, to determine whether the building is a possible violation of the community's floodplain management ordinance and provide this list to us. We would expect the community to identify possible violations of insured post-FIRM buildings in SFHAs from a visual street

inspection of the building, from tax records and other documents on file in the community pertaining to the property, and through other community procedures.

We would also expect the communities to review the list of pre-FIRM and post-FIRM flood insurance policy information before the effective date established for implementing the inspection procedure.

Coordination of timeframe for inspections. We would coordinate with each community to determine the appropriate timeframe to implement the inspection procedure to give each community adequate time to complete the inspections and undertake enforcement actions. Our determination would be based on the number of pre-FIRM and post-FIRM policies in each community's SFHAs and the number of potential inspections and enforcement actions the community may need to undertake.

Public notice. Before the effective date for implementing the pilot inspection procedure, Monroe County and the Village of Islamorada would have to provide adequate public notice. This notice would take the form of an announcement in a prominent local newspaper and other community notices as appropriate. The Associate Director for Mitigation and the Federal Insurance Administrator would publish a notice in the **Federal Register** that an inspection procedure is to be undertaken on a pilot project basis. This notice would provide the reason and the starting date and the termination date for implementing the inspection procedure.

Notice to policyholders. For those buildings identified by Monroe County and the Village of Islamorada as possible violations, the insurer would send a notice to policyholders approximately 6 months before the policy expiration date. This notice would state that the policyholder must obtain an inspection from the community and submit the results of the inspection as part of the renewal of the flood insurance policy by the end of the renewal grace period (30 days after date of the policy expiration). The insurer would send a reminder notice to the policyholder with the Renewal Notice about 45 to 60 days before the policy expires.

Property inspection. The policyholder would be responsible for contacting the community to arrange for an inspection. The community would inspect the building to determine whether it complies with the community's floodplain management ordinance and document its findings in an inspection report. The community would provide two copies of the inspection report to the property owner. The community would use its copy of the inspection report to begin enforcement actions on a building identified as violating the community's floodplain management ordinance.

Renewal of flood insurance after inspection. If the policyholder obtained a timely inspection and sent the community's inspection report and the renewal premium payment to the insurer by the end of the renewal grace period, the insurer would renew the flood insurance policy whether or not the building has been identified as a violation by the community. The insurer would review the flood insurance policy for rerating. If the building was not properly rated to reflect the building's risk of flooding, the policy would be rerated to reflect that risk.

Community enforcement. If the community's inspection did not find a violation, the community would take no other action. However, if the community inspected the building and identified a violation under its floodplain management ordinance, the community would have to undertake an enforcement action to remedy the violation to the maximum extent possible. For each violation identified, the community would have to demonstrate to us that it is undertaking all possible actions to remedy the violation. If, after one year, the community demonstrated that it has taken all enforcement actions within its authority to remedy the violation to the maximum extent possible, including a notice to the property owner to remedy the violation and appropriate legal action, and the property owner had not corrected the violation, the community would submit a declaration of a violation and request a denial of flood insurance under 44 CFR 73, Implementation of Section 1316 of the National Flood Insurance Act of 1968.

Failure to obtain a community inspection. If the policyholder did not obtain an inspection and submit an inspection report with the renewal payment by end of the renewal grace period (30 days after date of expiration), the flood insurance policy would not be renewed. We would establish a procedure for the insurer to send appropriate notices to the insured, to the agent, and to the mortgagee that the flood insurance policy expired and cannot be re-issued without the community inspection report. All flood insurance policies that were not renewed under the inspection procedure would be identified on a list of ineligible properties for the sale of flood insurance that would be sent to insurers that write and service NFIP flood insurance policies. Flood insurance policies sold on buildings ineligible in accordance with the proposed inspection procedure would be void in accordance with the proposed SFIP endorsement. If a property owner subsequently obtained an inspection from the community and an inspection report was submitted with the premium payment at the time the property owner applies for a flood insurance policy, a new policy would be issued on the building.

National Environmental Policy Act

We are currently reviewing this proposed rule under the requirements of 44 CFR 10, Environmental Considerations, and under the mandates of the National Environmental Policy Act. We will make a determination whether we need an environmental assessment or environmental impact statement before we publish the final rule.

Executive Order 12898, Environmental Justice

We are also reviewing this proposed rule under E.O. 12898, Environmental Justice, and will make appropriate determinations before publishing the final rule.

Executive Order 12866, Regulatory Planning and Review

We are submitting this proposed rule to the Office of Management Budget for review under sec. 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735. We will make a determination whether this is a significant regulatory action before we publish the final rule.

Paperwork Reduction Act

We have submitted the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We prepared an Information Collection Request (ICR) and you may obtain a copy from Muriel Anderson by mail at FEMA, 500 C Street, SW., room 316, Washington, DC 20472, by email at *muriel.anderson@fema.gov*, or by calling (202) 646–2625. Highlights of the ICR follow.

Purpose of the proposed rule. The proposed rule would establish an inspection procedure in Monroe County and the Village of Islamorada that would be built around the flood insurance policy renewal process. The purpose of the inspection procedure and need for the community inspection report is:

• To help the communities of Monroe County and the Village of Islamorada, Florida, verify and document that post-FIRM structures in their communities comply with the community's floodplain management ordinance; and

• To ensure that property owners pay flood insurance premiums commensurate with their flood risk due to their increased exposure to flood damages.

The requirement that a community inspect a building as a condition of renewing the flood insurance policy on the building would *only* apply to NFIP insured buildings in Special Flood Hazard Areas that the communities identify as possible violations. The Special Flood Hazard Areas (SFHA) is an area that is based on a flood that would have a 1-percent chance of being equaled or exceeded in any given year, often referred to as the 100-year flood.

Estimated number of inspections. We expect a total of 2,000 to 4,000 respondents (policyholders) to obtain an inspection from their respective communities. This is the total estimated number of insured buildings that are possible violations of the community's floodplain management ordinance in both Monroe County and the Village of Islamorada. We estimate that Monroe County will inspect 500–700 insured buildings per year and the Village of Islamorada will inspect 200–400 insured buildings per year.

Previous OMB approval. The flood insurance renewal notice and flood insurance application have previously been approved by OMB (OMB 3067–0022).

NUMBERS AND TYPES OF RESPONSES, FREQUENCY, AND BURDEN HOURS

Number of respondents/type of response	Frequency of response	Burden hours	Total burden hours
4,000 policyholders to receive & read a notice that an inspection is required in order for the flood insurance policy to be renewed. These 4,000 policyholders will also receive a reminder notice about 45–60 days before the policy expires.	1	15 minutes (total for both notices).	1,000
4,000 policyholders contact respective community to arrange for an inspection of the property. Local official inspects the property with the policyholder or his/her designee. (Note: in any given year we expect several hundred policyholders to receive the notice and contact their community.) Compliant buildings should take less time to inspection compared to an insured building that is non-compliant.	1	1–2.5 hours**	10,000
4,000 policyholders submit a copy of the inspection report with the renewal premium payment	1	8 minutes	533
800 estimated no.of respondents that did not obtain an inspection. These respondents will be sent a notice at time of policy expiration that their flood insurance policy expired. (FEMA estimates that less than 20% of the 4,000 respondents will not obtain an inspection and as a result their flood insurance policy will not be renewed.)	1	8 minutes	107

*Total number of Burden Hours to implement the inspection procedure over a multi-year period: 11,640 hours.
Annual (one-time) total burden hours for each policyholder is approximately: 3 hours.
Total annual burden for approximately 500–700 inspections per year in Monroe County: 2,100 hours.
Total annual burden for approximately 200–400 inspections per year in the Village of Islamorada: 1,200 hours.

*We estimate that 2,000–4,000 buildings will need to be inspected over a several-year period. On an annual basis, we estimate that the communities will inspect 700–1,100 buildings each year.

**We estimate that the amount of time to contact the community to arrange for the inspection and for the *policy*holder or his/her designee to be available to let the community official into the building to conduct the inspection will range from 1 hour to 2.5 hours.

Community fees for permits and inspections. Communities generally charge a fee for permits and inspections as part of their administration of their zoning ordinance, building code, and floodplain management ordinance. We estimate that the cost per policyholder will range between $35 to $50.00 for each inspection, and that there may be expenses of about $15 per policyholder for telephone calls and arranging for someone to be available when the local officials inspect the building, for an estimated average cost of $65.00 per policyholder.

Total annual cost burden to respondents. For approximately 700 to 1,100 inspections per year, the total annual cost burden to respondents is estimated to range between $45,500 and $71,500. This information collection places no greater burden on small business or other small entities than that required of any other policyholder in Monroe County and the Village of Islamorada.

Community inspection report critical to effective implementation. The community inspection report is critical to the effective implementation of the proposed inspection procedure. Without the inspection procedure, the Village of Islamorada and Monroe County would continue to have limited ability to inspect properties for illegal enclosures that violate their floodplain management ordinance. Allowing uses other than parking of vehicles, building access, or storage in the enclosed area below the Base Flood Elevation significantly increases the flood damage potential to the building, and there is an increased risk to lives.

Premium rates commensurate with flood risk. The increase in flood damage potential to the building must be recognized in the rates by adding rate loadings based on the size of the enclosure. Collection of information from the policyholder in this inspection procedure will help ensure that policyholders are paying premiums commensurate with their flood risk.

Consultation with the communities; use of existing inspection documents. We consulted with Monroe County and Village of Islamorada officials on the type of existing building inspection reports they currently use to implement their floodplain management ordinance and we determined that the current community inspection documents could be used for purposes of implementing the inspection procedure and for purposes of determining whether the building needs to be rerated.

Starting and ending dates; coordination. After we publish the final rule on the inspections, we will work closely with local officials from Monroe County and the Village of Islamorada to establish a start and end dates for the inspections. We will also coordinate and provide assistance to local officials from both communities in preparation of and during implementation of the inspection procedure. We anticipate

that the County and Village will apply the inspection procedure over a several-year period.

Confidentiality. Confidentiality is provided under the Privacy Act. The information collection will not be disclosed outside the Federal Emergency Management Agency except to the servicing office, acting as the government's fiscal agent, to the policyholders insurer, any mortgagee named on the policy, and to other routine users.

Request for your comments. We ask for your comments on our need for this information, the accuracy of our burden estimates, and any methods you can suggest for minimizing the burden on respondents, including automated collection techniques. Please send comments on the Information Collection Request to the Information Collection Officer, FEMA, 500 C Street, SW., room 316, Washington, DC 20472, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, marked ''Attention: Desk Officer for FEMA.'' Please include the ICR number in your correspondence. Since OMB must make a decision about the ICR between 30 and 60 days after May 5, 1999, OMB should receive your comments by June 4, 1999 to assure that your comments will have full effect. We will respond in the final rule to any OMB or public comments on the information collection requirements contained in this proposed rule.

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 subsections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 59 and Part 61

Flood insurance, reporting, and recordkeeping requirements.

Accordingly, we propose to amend 44 CFR Parts 59 and 61 as follows:

PART 59—GENERAL PROVISIONS

The authority citation for Part 59 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Part 59 is amended by adding a new subpart C consisting of § 59.30 to read as follows:

Subpart C—Pilot Inspection Program

§ 59.30 A Pilot Inspection Procedure

(a) *Purpose*. This section sets forth the criteria for implementing a pilot inspection procedure in Monroe County and the Village of Islamorada, Florida. These criteria will also be used to implement the pilot inspection procedure in any area within Monroe County, Florida that incorporates on or after January 1, 1999 and is eligible for the sale of flood insurance. The purpose of this inspection procedure is to provide the communities participating in the pilot inspection procedure with an additional means to identify whether structures built in Special Flood Hazard Areas (SFHAs) after the date of the effective Flood Insurance Rate Map (FIRM) comply with the community's floodplain management regulations. The pilot inspection procedure will also assist us, FEMA, in verifying that structures insured under the National Flood Insurance Program's Standard Flood Insurance Policy are properly rated.

(b) *Procedures and requirements for implementation*. Each community must establish procedures and requirements for implementing the pilot inspection procedure consistent with the criteria established in this section.

(c) *Inspection Procedure.*

(1) The Associate Director for Mitigation and the Federal Insurance Administrator will establish the starting date and the termination date for implementing the pilot inspection procedure upon the recommendation of the Regional Director, who will consult with each community.

(2) Before the starting date of the inspection procedure, each community must publish a notice in a prominent local newspaper and publish other notices as appropriate. The Associate Director for Mitigation and the Federal Insurance Administrator will publish a notice in the **Federal Register** that the community will undertake an inspection procedure. Published notices will include the purpose for implementing the inspection procedure and the effective period of time that the inspection procedure will cover.

(3) The communities participating in the pilot inspection procedure must review a list of all pre-FIRM and post-FIRM flood insurance policies in SFHA to confirm that the start of construction or substantial improvement of insured pre-FIRM buildings occurred on or before December 31, 1974, and identify possible violations of insured post-FIRM buildings. The community will provide to FEMA a list of insured buildings incorrectly rated as pre-FIRM and a list of insured post-FIRM buildings that the community identifies as possible violations.

(4) In the communities that undertake the pilot inspection procedure, all new and renewed flood insurance policies that become effective on and after the date that we and the community establish for the start of the inspection procedure will contain an endorsement to the Standard Flood Insurance Policy that an inspection may be necessary before a subsequent policy renewal [see Part 61 Appendices A(4), (5), and (6)].

(5) For a building identified as a possible violation under paragraph (3) of this subsection, the insurer will send a notice to the policyholder that an inspection is necessary in order to renew the policy and that the policyholder must submit a community inspection report as part of the policy renewal process, which includes the payment of the premium. The insurer will send this notice about 6 months before the Standard Flood Insurance Policy expires.

(6) If a policyholder receives a notice under paragraph (C)(5) of this section that an inspection is necessary in order to renew the Standard Flood Insurance Policy the following applies:

(i) If the policyholder obtains an inspection from the community and the policyholder sends the community inspection report to the insurer as part of the renewal process, which includes the payment of the premium, the insurer will renew the policy and will verify the flood insurance rate, or

(ii) If the policyholder does not obtain and submit a community inspection report the insurer will not renew the policy.

(7) For insured post-FIRM buildings that the community inspects and determines to violate the community's floodplain management regulations, the community must demonstrate to FEMA that the community is undertaking measures to remedy the violation to the maximum extent possible. Nothing in this section modifies the community's responsibility under the NFIP to enforce adequately floodplain management regulations that meet the minimum requirements in § 60.3 for all new construction and substantial improvements within the community's SFHAs. The community's responsibility also includes the insured buildings where the policyholder did not obtain an inspection report, and non-insured buildings that this procedure does not cover.

(d) *Restoration of flood insurance coverage.* Insurers will not provide new flood insurance on any building if a property owner does not obtain a community inspection report or if the property owner obtains a community inspection report but does not submit the report with the renewal premium payment. Flood insurance policies sold on a building ineligible in accordance with paragraph (c)(6)(ii) are void under the Standard Flood Insurance Policy inspection endorsements [44 CFR Part 61, Appendices (A)(4), (A)(5), and (A)(6)]. When the property owner applies for a flood insurance policy and submits a completed community inspection report by the community with an application and renewal premium payment, the insurer will issue a flood insurance policy.

3. We amend Part 61 by adding Appendix A(4) to Part 61 as follows:

Appendix A (4) to Part 61

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy Endorsement to Dwelling Form

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B. The provisions of this endorsement replace the provisions of Article 9 of the Standard Flood Insurance Policy, Dwelling Form, *only* in applicable policies in Monroe County and the Village of Islamorada, Florida].

Article 9—General Conditions and Provisions

A. *Pair and Set Clause:* If you lose an article that is part of a pair or set, we will have the option of paying you an amount equal to the cost of replacing the lost article, less depreciation, or an amount that represents the fair proportion of the total value of the pair or set that the lost article bears to the pair or set.

B. *Concealment, Fraud:* We will not cover you under this *policy*, which will be void, nor can this *policy* be renewed or any new *flood* insurance coverage be issued to you if:

1. You have sworn falsely, or willfully concealed or misrepresented any material fact; or

2. You have done any fraudulent act concerning this insurance (see paragraph F.1.d. below); or

3. You have willfully concealed or misrepresented any fact on a ''Recertification Questionnaire,'' that causes us to issue a *policy* to you based on a premium amount that is less than the premium amount that would have been payable by you were it not for the misstatement of fact (see paragraph G. below).

C. Other Insurance. If a loss covered by this *policy* is also covered by other insurance whether collectible or not, except insurance in the name of the *Condominium Association* issued pursuant to the Act, we will pay only the proportion of the loss that the limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss.

If there is other insurance in the name of the *Condominium Association* covering the same property covered by this *policy*, this insurance will be excess over the other insurance.

D. *Amendments, Waivers, Assignment*: This *policy* cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this *policy* can constitute a waiver of any of our rights. Except in the case of 1. a contents only *policy*, and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy*, in writing, is allowed upon transfer of title.

E. *Cancellation of Policy By You: You may cancel this policy* at any time but a refund of premium money will only be made to you when:

1. You cancel because you have transferred ownership of the described *building* or *unit* to someone else. In this case, we will refund to you, once we receive your written request for *cancellation* (signed by you), the excess of premiums paid by you that apply to the unused portion of the *policy*'s term, pro rata but with retention of the *expense constant* and the *Federal policy fee*.

2. You cancel a *policy* having a term of 3 years, on an anniversary date, and the reason for the *cancellation* is:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and we have received a written concurrence in the *cancellation* from any mortgagee of which we have actual notice; or

b. You have extinguished the insured mortgage debt and are no longer required by the mortgagee to maintain the coverage.

Refund of any premium, under this subparagraph 2., will be pro rata but with retention of the *expense constant* and the *Federal policy fee.*

3. You cancel because we have determined that your property is not, in fact, in a *special hazard area*; and you were required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to the *Act*; and the lender or Federal agency no longer requires the retention by you of the coverage. In this event, if no claims have been paid or are pending, your premium payments will be refunded to you in full, according to our applicable regulations.

F. *Voidance, Reduction or Reformation of the Coverage By Us:*

1. *Voidance:* This *policy* will be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss for which you may receive compensation under the *policy*;

c. If, during the term of the *policy*, the participation in the *National Flood Insurance Program* of the community in which your property is located ceases, in which case the *policy* will be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and will not be renewed.

If the voided *policy* included 3 *policy* years in a contract term of 3 years, you will be entitled to a pro rata refund of any premium applicable to the remainder of the *policy's* term;

d. If you or your agent have:

(1) Sworn falsely, or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy*, in which case this entire *policy* will be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an *application* for or renewal or endorsement of a *policy* issued to you in a prior year and affects the rating of or premium amount received for this *policy*. Refunds of premiums, if any, will be subject to offsets for our administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy*;

e. The premium you submit is less than the minimum set forth in 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *policy* is void from its inception date.

f. You have not submitted a community inspection report, cited in ''G. *Policy Renewal*'' below that was required in a notice sent to you in conjunction with the community inspection procedure established under *National Flood Insurance Program* Regulations (44 CFR 59.30).

2. *Reduction of Coverage Limits or Reformation:* If the premium payment received by us is not sufficient (whether evident or not) to purchase the amount of coverage requested by an application, renewal, endorsement, or other form and paragraph F.1.d. does not apply, then the *policy* will be deemed to provide only such coverage as can be purchased for the entire term of the *policy*, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by us before a loss and we can determine the amount of insufficient premium from information in our possession at the time of our discovery of the insufficient premium, we will give a notice of additional premium due, and if you remit and we receive the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by you within 30 days from the date we give you written notice of additional premium due, the *policy* will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by us at the time of a loss under the *policy*, we will give a notice of premium due, and if you *remit* and we *receive* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by you within 30 days from the date we give you written notice of additional premium due, the *policy* will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy*, we will give a notice of additional premium due and the right of reformation will continue in force for the benefit only of the mortgagee or trustee, up to the amount of your indebtedness, for 30 days after written notice to the mortgagee or trustee.

G. *Policy Renewal:* The term of this *policy* begins on its inception date and ends on its *expiration date*, as shown on the declarations page that is attached to the *policy*. We are under no obligation to:

1. Send you any renewal notice or other notice that your *policy* term is coming to an end and the receipt of any such notice by you will not be deemed to be a waiver of this provision on our part.

2. Assure that *policy* changes reflected in endorsements submitted by you during the *policy* term and accepted by us are included in any renewal notice or new *policy* that we send to you. *Policy* changes includes the addition of any increases in the amounts of coverage.

This *policy* will not be renewed and the coverage provided by it will not continue into any successive *policy* term unless the renewal premium payment, and when applicable, the community inspection report referred to below, is received by us at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy*, subject to *Article 9*, paragraph F. above. If the renewal premium payment, and when applicable, the community inspection report referred to below, is mailed by certified mail to the *National Flood Insurance Program* before the *expiration date*, it will be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during the 30-day period even if the loss occurs before the renewal premium payment, and when applicable, the community inspection report referred to below, is received within the required 30 days. In all other cases, this *policy* will end as of the *expiration date* of the last *policy* term for which the premium payment, and when applicable, the community inspection report referred to below, was timely received at the office of the *National Flood Insurance Program* and, in that event, we will not be obligated to provide you with any *cancellation*, termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy*, you may be requested during the *policy* term to recertify, on a Recertification Questionnaire we will provide you, the rating information used to rate your most recent *application* for or renewal of insurance.

Your community has been approved by the Federal Emergency Management Agency to participate in a special inspection procedure set forth in National *Flood* Insurance Regulations (44 CFR 59.30) that requires the submission of a community inspection report completed by local officials as one condition for *policy* renewal. As a property owner in such a community, you may be required to submit such an inspection report by a community official certifying whether your insured property is in compliance with the community's floodplain management ordinance. You will be notified in writing of this requirement approximately 6 months before your renewal date and again at the time your renewal bill is sent.

Notwithstanding your responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by us before the expiration of the *policy* being renewed, we have established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding our business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to you at the address appearing on your most recent *application* or other appropriate form (received by the *National Flood Insurance Program* before the mailing of the renewal notice by us), does, in all respects for purposes of the *National Flood Insurance Program*, presumptively establish delivery to you for all purposes irrespective of whether you actually received the notice.

However, if we determine that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner that we determine could preclude the likelihood of its being actually and timely received by you before the due date for the renewal premium, the following procedures will be followed:

If you or your agent notified us, not later than 1 year after the date on which the payment of the renewal was due, of a nonreceipt of a renewal notice before the due date for the renewal premium, which we determine was attributable to the above circumstance, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal will occur and the *policy* will remain as an expired *policy* as of the *expiration date* prescribed on the *policy*.

H. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, we will not be liable for loss occurring while the hazard is increased by any means within your control or knowledge.

I. *Alterations and Repairs:* You may, at any time and at your own expense, make alterations, additions and repairs to the insured property, and complete structures in the course of construction.

J. *Requirements in Case of Loss:* Should a *flood* loss occur to your insured property, you must:

1. Notify us in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it; and

3. Within 60 days after the loss, send us a proof of loss, which is your statement as to the amount you are claiming under the *policy* signed and sworn to by you and furnishing us with the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. Your interest in the property damaged (for example, ''owner'') and the interest, if any, of others in the damaged property;

d. The *actual cash value* or replacement cost, whichever is appropriate, of each damaged item of insured property and the amount of damages sustained;

e. Names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount you claim is due under this *policy* to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy*; and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. Cooperate with our adjuster or representative in the investigation of the claim;

5. Document the loss with all bills, receipts, and related documents for the amount being claimed;

6. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you to complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

In completing the proof of loss, you must use your own judgment concerning the amount of loss and the justification for that amount.

The adjuster is not authorized to approve or disapprove claims or tell you whether your claim will be approved by us.

7. We may, at our option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event you will be required to sign and, at our option, swear to an adjuster's report of the loss that includes information about your loss and the damages sustained, which is needed by us in order to adjust your claim.

8. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal Laws.

K. *Our Options After a Loss:* Options we may, in our sole discretion, exercise after loss include the following:

1. *Evidence of Loss:* If we specifically request it, in writing, you may be required to furnish us with a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values* or replacement cost (whichever is appropriate), amounts of loss claimed, and any written plans and specifications for repair of the damaged property that you can make reasonably available to us.

2. *Examination Under Oath and Access to Insured Property Ownership Records and Condominium Documents:* We may require you to:

a. Show us, or our designee, the damaged property, to be examined under oath by our designee and to sign any transcripts of such examinations; and

b. At such reasonable times and places as we may designate, permit us to examine and make extracts and copies of any policies of property insurance insuring you against loss; and the deed establishing your ownership of the insured real property; and the *condominium* documents including the Declarations of the *condominium*, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other *condominium* documents if you are a *unit* owner in a *condominium building*; and all books of accounts, bills, invoices and other vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Replace*: We may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving you notice of our intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph J.3. above.

4. *Adjustment Options*: We may adjust loss to any insured property of others with the owners of such property or with you for their account. Any such insurance under this policy will not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

L. *When Loss Payable*: Loss is payable within 60 days after you file your proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between us and you expressed in writing or by the filing with us of an award as provided in paragraph N. below.

If we reject your proof of loss in whole or in part, you may accept such denial of your claim, or exercise your rights under this *policy*, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

M. *Abandonment*: You may not abandon damaged or undamaged insured property to us. However, we may permit you to keep damaged, insured property (''salvage'') after a loss and we will reduce the amount of the loss proceeds payable to you under the *policy* by the value of the salvage.

N. *Appraisal*: If at any time after a loss, we are unable to agree with you as to the *actual cash value* or, if applicable, replacement cost of the damaged property so as to determine the amount of loss to be paid to you, then, on the written demand of either one of us, each of us will select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers will first select a competent and disinterested umpire; and failing, after 15 days, to agree upon such umpire, then, on your request or our request, such umpire will be selected by a judge of a court of record in the State in which the insured property is located. The appraisers will then appraise the loss, stating separately replacement cost, *actual cash value* and loss to each item; and, failing to agree, will submit their differences, only, to the umpire. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with us will determine the amount of *actual cash value* and loss or, should this *policy*'s replacement cost provisions apply, the amount of replacement cost and loss. Each appraiser will be paid by the party selecting him or her and the expenses of appraisal and umpire will be paid by both of us equally.

O. *Loss Clause*: If we pay you for damage to property sustained in a *flood* loss, you are still eligible, during the term of the *policy*, to collect for a subsequent loss due to another *flood*. Of course, all loss arising out of a single, continuous *flood* of long duration will be adjusted as one *flood* loss.

P. *Mortgage Clause*: (Applicable to *building* coverage only and effective only when the *policy* is made payable to a mortgagee or trustee named in the *application* and declarations page attached to this *policy* or of whom we have actual notice before the payment of loss proceeds under this *policy*).

Loss, if any, under this *policy*, will be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, will not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this *policy*; provided, that in case the mortgagor or owner will neglect to pay any premium due under this *policy*, the mortgagee or trustee will, on demand, pay the same.

Provided, also, that the mortgagee or trustee will notify us of any change of ownership or occupancy or increase of hazard that will come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy*, it will be noted thereon and the mortgagee or trustee will, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* will be null and void.

If we cancel this *policy*, it will continue in force for the benefit only of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and will then cease, and we will have the right, on like notice, to cancel this agreement.

Whenever we will pay the mortgagee or trustee any sum for loss under this *policy* and will claim that, as to the mortgagor or owner, no liability therefor existed, we will, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment will be made, under all securities held as collateral to the mortgage debt, or may, at our option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and will thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation will impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

Q. *Mortgagee Obligations*: If you fail to render proof of loss, the named mortgagee or trustee, upon notice, will render proof of loss in the form herein specified within 60 days thereafter and will be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

R. *Conditions for Filing a Lawsuit*: You may not sue us to recover money under this *policy* unless you have complied with all the requirements of the *policy*. If you do sue, you must start the suit within 12 months from the date we mailed you notice that we have denied your claim, or part of your claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss.

S. *Subrogation*: Whenever we make a payment for a loss under this *policy*, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you

must pay us back first before you may keep any of that money.

T. *Continuous Lake Flooding*: Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible(s) or the maximum payable under the *policy* for any one *building* loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

1. To make no further claim under this *policy*;

2. Not to seek renewal of this *policy*; and

3. Not to apply for any *flood* insurance under the Act for property at the property location of the insured *building*.

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph T. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

U. *Duplicate Policies Not Allowed*: Property may not be insured under more than one *policy* issued under the Act. When we find that duplicate policies are in effect, we will by written notice give you the option of choosing which *policy* is to remain in effect under the following procedures:

1. If you choose to keep in effect the *policy* with the earlier effective date, we will by the same written notice give you an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If you choose to keep in effect the *policy* with the later effective date, we will by the same written notice give you the opportunity to add the coverage limits of the earlier *policy* to those of the later *policy*, as of the effective date of the later *policy*.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or your insurable interests, whichever is less.

We will make a refund to you, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect. For purposes of this paragraph U., the term ''effective date'' means the date coverage that has been in effect without any lapse was first placed in effect.

In addition to the provisions of this paragraph U. for increasing *policy* limits, the usual procedures for increasing *policy* limits, by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* you choose to keep in effect.

3. We amend Part 61 by adding Appendix A(5) to Part 61 as follows:

Appendix A(5) to Part 61

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy
Endorsement to General Property Form

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B. The provisions of this endorsement replace the provisions of Article 8 of the Standard Flood Insurance Policy, General Property Form, *only* in applicable policies in Monroe County and the Village of Islamorada, Florida].

Article 8—General Conditions and Provisions

A. *Pair and Set Clause*: If there is loss of an article that is part of a pair or set, the measure of loss will be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss will not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud*: This *policy* will be void, nor can this *policy* be renewed or any new *flood* insurance coverage be issued to the Insured if any person insured under *Article 1*, paragraph A., whether before or after a loss, has:

1. Sworn falsely, or willfully concealed or misrepresented any material fact; or

2. Done any fraudulent act concerning this insurance (See paragraph E.1.d. below); or

3. Willfully concealed or misrepresented any fact on a ''Recertification Questionnaire,'' which causes the Insurer to issue a *policy* based on a premium amount that is less than the premium amount that would have been payable were it not for the misstatement of fact (see paragraph F. below).

C. *Other Insurance:* If a loss covered by this *policy* is also covered by other insurance, whether collectible or not, the Insurer will pay only the proportion of the loss that the limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss, provided, if at the time of loss, there is other insurance *made available* under the Act, in the name of a *unit* owner that provides coverage for the same loss covered by this *policy*, this *policy's* coverage will be primary and not contributing with such other insurance.

D. *Amendments and Waivers, Assignment:* This Standard *Flood* Insurance *Policy* cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action the Insurer takes under the terms of this *policy* can constitute a waiver of any of its rights. Except in the case of 1. a contents only *policy* and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy*, in writing, is allowed upon transfer of title.

E. *Voidance, Reduction or Reformation of the Coverage: 1. Voidance: This policy* will be void and of no legal force and effect if any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss;

c. If, during the term of the *policy*, the participation in the National Flood Insurance Program of the community in which the property is located ceases, in which case the *policy* will be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and will not be renewed.

If the voided *policy* included 3 *policy* years in a contract term of 3 years, the Insured will be entitled to a pro-rata refund of any premium applicable to the remainder of the *policy's* term;

d. If any Insured or its agent has:

(1) Sworn falsely; or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy*, in which case this entire *policy* will be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an application for or renewal or endorsement of a *policy* issued to the Insured in a prior year and affects the rating of or premium amount received for this *policy*. Refunds of premiums, if any, will be subject to offsets for the Insurer's administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy*;

e. The premium submitted is less than the minimum set forth in ≥ 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *Policy* is void from its inception date.

f. The insured has not submitted a community inspection report, cited in ''F. *policy Renewal*'' below and required in any notice that may have been sent to the Insured previously in conjunction with the community inspection procedure established under *National Flood Insurance Program* Regulations (44 CFR 59.30).

2. *Reduction of Coverage Limits or Reformation:* If the premium payment is not sufficient (whether evident or not) to purchase the amount of coverage requested

by an *application*, renewal, endorsement, or other form and paragraph E.1.d. does not apply, then the *policy* will be deemed to provide only such coverage as can be purchased for the entire term of the *policy*, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by the Insurer prior to a loss and the Insurer can determine the amount of insufficient premium from information in its possession at the time of its discovery of the insufficient premium, the Insurer will give a notice of additional premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide flood insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by the Insurer at the time of a loss under the *policy*, the Insurer will give a notice of premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy*, the Insurer will give a notice of additional premium due and the right of reformation will continue in force for the benefit only of the mortgagee or trustee, up to the amount of the Insured's indebtedness, for 30 days after written notice to the mortgagee or trustee.

F. *Policy Renewal:* The term of this *policy* begins on its inception date and ends on its *expiration date*, as shown on the *declarations page* that is attached to the *policy*. The Insurer is under no obligation to:

1. Send the Insured any renewal notice or other notice that the *policy* term is coming to an end and the receipt of any such notice by the Insured will not be deemed to be a waiver of this provision on the Insurer's part.

2. Assure that *policy* changes reflected in endorsements submitted during the *policy* term are included in any renewal notice or new *policy* sent to the Insured. *Policy changes* includes the addition of any increases in the amounts of coverage.

This *policy* will not be renewed and the coverage provided by it will not continue into any successive *policy* term unless the renewal premium payment, and when applicable, the community inspection report referred to below, is received by the Insurer at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy*, subject to paragraph E. above. If the renewal premium payment, and when applicable, the community inspection report referred to below, is mailed by certified mail to the Insurer before the *expiration date*, it will be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during the 30-day period even if the loss occurs before the renewal premium payment, and when applicable, the community inspection report referred to below, is received within the required 30 days. In all other cases, this *policy* will terminate as of the *expiration date*, of the last *policy* term for which the premium payment, and when applicable, the community inspection report referred to below, was timely received and, in that event, the Insurer will not be obligated to provide the Insured with any *cancellation*, termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy*, the Insured may be requested during the *policy* term to recertify, on a Recertification Questionnaire the Insurer will provide, the rating information used to rate the most recent *application* for or renewal of insurance.

The community in which the insured property is located has been approved by the Federal Emergency Management Agency to participate in a special inspection procedure set forth in *National Flood Insurance Program* Regulations (44 CFR 59.30) that requires the submission of a community inspection report completed by local officials as one condition for *policy* renewal. The Insured may be required to submit such an inspection report completed by a community official to certify whether the insured property is in compliance with the community's floodplain management ordinance. The Insured will be notified in writing of this requirement approximately 6 months before the renewal date and again at the time the renewal bill is sent.

Notwithstanding the Insured's responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by the Insurer before the expiration of the *policy* being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on its most recent *application* or other appropriate form (received by the Insurer before the mailing of the renewal notice), does, in all respects, for purposes of the *National Flood Insurance Program*, presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice.

However, *if* the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner that the Insurer determines could preclude the likelihood of its being actually and timely received by the Insured before the due date for the renewal premium, the following procedures will be followed:

If the Insured or its agent notified the Insurer, not later than 1 year after the date on which the payment of the renewal premium was due, of a nonreceipt of a renewal notice before the due date for the renewal premium, which the Insurer determines was attributable to the above circumstance, the Insurer will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal will occur and the *policy* will remain as an expired *policy* as of the *expiration date* prescribed on the *policy*.

G. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, the Insurer will not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured.

H. *Liberalization clause:* If during the period that insurance is in force under this *policy* or within 45 days before the inception date thereof, should the Insurer have adopted under the Act, any forms, endorsements, rules or regulations by which this *policy* could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance will inure to the benefit of the Insured as though such endorsement or substitution of form had been made. Any broadening or extension of this *policy* to the Insured's benefit will only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this *policy*.

I. *Alterations and Repairs*: The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in the course of construction.

J. *Cancellation of Policy by Insured*: The Insured may cancel this *policy* at any time but a refund of premium money will only be made when:

1. Except with respect to a *condominium building* or a *building* that has a *condominium* form of ownership, the Insured cancels because the Insured has transferred ownership of the insured property to someone else. In this case, the Insurer will refund to the Insured, once the Insurer *receives* the Insured's written request for *cancellation* (signed by the Insured) the excess of premiums paid by the Insured that apply to the unused portion of the *policy*'s term, pro rata but with retention of the *expense constant* and the *Federal policy fee*.

2. The Insured cancels a *policy* having a term of 3 years, on an anniversary date, and the reason for the *cancellation* is that:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and the Insurer has received a written concurrence in the *cancellation* from any mortgagee of which the Insurer has actual notice, or

b. The Insured has extinguished the insured mortgage debt and is no longer

required by the mortgagee to maintain the coverage. Refund of any premium, under this subparagraph 2., will be pro rata but with retention of the *expense constant* and the *Federal policy fee*.

3. The Insured cancels because the Insurer has determined that the property is not, in fact, in a *special hazard area*; and the Insured was required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to Public Law 93–234, section 102 and the lender or agency no longer requires the retention of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded in full, according to applicable *National Flood Insurance Program* regulations.

K. *Loss Clause*: Payment of any loss under this *policy* will not reduce the amount of insurance applicable to any other loss during the *policy* term that arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence will be deemed to constitute loss arising out of a single occurrence.

L. *Mortgage Clause*: (Applicable to *building* coverage only and effective only when the *policy* is made payable to a mortgagee or trustee named in the *application* and *declarations page* attached to this *policy* or of whom the Insurer has actual notice before the payment of loss proceeds under this *policy*.)

Loss, if any, under this *policy*, will be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, will not be invalidated:

1. By any act or neglect of the mortgagor or owner of the described property; nor

2. By any foreclosure or other proceedings or notice of sale relating to the property; nor

3. By any change in the title or ownership of the property; nor

4. By the occupation of the premises for purposes more hazardous than are permitted by this *policy*, provided, That in case the mortgagor or owner will neglect to pay any premium due under this *policy*, the mortgagee or trustee will, on demand, pay the same.

Provided, also, that the mortgagee or trustee will notify the Insurer of any change of ownership or occupancy of the *building* or increase of hazard that will come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy*, it will be noted thereon and the mortgagee or trustee will, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* will be null and void.

If this *policy* is cancelled by the Insurer, it will continue in force for the benefit of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and will then cease.

Whenever the Insurer will pay the mortgagee or trustee any sum for loss under this *policy* and will claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer will, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment will be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and will thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation will impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

M. *Mortgagee Obligations*: If the Insured fails to render proof of loss, the named mortgagee or trustee, upon notice, will render proof of loss in the form herein specified within 60 days thereafter and will be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

N. *Loss Payable Clause (Applicable to contents items only)*: Loss, if any, will be adjusted with the Insured and will be payable to the Insured and loss payee as their interests may appear.

O. *Requirements in Case of Loss*: Should a *flood* loss occur to the insured property, the Insured must:

1. Notify the Insurer in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that the Insurer may examine it; and

3. Within 60 days after the loss, send the Insurer a proof of loss, which is the Insured's statement as to the amount it is claiming under the *policy* signed and sworn to by the Insured and furnishing the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. The Insured's interest in the property damaged (for example, ''owner'') and the interests, if any, of others in the damaged property;

d. The *actual cash value* of each damaged item of insured property and the amount of damages sustained;

e. The names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount the Insured claims is due under this policy to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy*; and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. Cooperate with the Insurer's adjuster or representative in the investigation of the claim;

5. Document the loss with all bills, receipts, and related documents for the amount being claimed;

6. The insurance adjuster whom the Insurer hires to investigate the claim may furnish the Insured with a proof of loss form, and she or he may help the Insured to complete it. However, this is a matter of courtesy only, and the Insured must still send the Insurer a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help the Insured complete it. In completing the proof of loss, the Insured must use its own judgment concerning the amount of loss and the justification for the amount.

The adjuster is not authorized to approve or disapprove claims or to tell the Insured whether the claim will be approved by the Insurer.

7. The Insurer may, at its option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss that includes information about the loss and the damages needed by the Insurer in order to adjust the claim.

8. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal laws.

P. *Options After a Loss*: Options the Insurer may, in its sole discretion, exercise after loss include the following:

1. *Evidence of Loss*: If the Insurer specifically requests it, in writing, the Insured may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values*, amount of loss claims, and any written plans and specifications for repair of the damaged property that can reasonably be *made available* to the Insurer.

2. *Examination Under Oath and Access to the Condominium Association's Articles of Association or Incorporation, Property Insurance Policies, and Other Condominium Documents*: The Insurer may require the Insured to:

a. Show the Insurer, or its designee, the damaged property;

b. Be examined under oath by the Insurer or its designee;

c. Sign any transcripts of such examinations; and

d. At such reasonable times and places as the Insurer may designate, permit the Insurer to examine and make extracts and copies of any *condominium* documents, including the Articles of Association or Incorporation, Bylaws, rules and regulations, Declarations of the *condominium*, property insurance policies, and other *condominium* documents; and all books of accounts, bills, invoices and vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. Options to Repair or Replace: The Insurer may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable

time, on giving the Insured notice of the Insurer's intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph O. above.

4. *Adjustment Options*: The Insurer may adjust loss to any insured property of others with the owners of such property or with the Insured for their account. Any such insurance under this *policy* will not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

Q. *When Loss Payable*: Loss is payable within 60 days after the Insured files its proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insured and the Insurer in writing or by the filing with the Insurer of an award as provided in paragraph S. below.

If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of its claim, or exercise its rights under this *policy*, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

R. *Abandonment*: The Insured may not abandon damaged or undamaged insured property to the Insurer.

However, the Insurer may permit the Insured to keep damaged, insured property (''salvage'') after a loss and reduce the amount of the loss proceeds payable to the Insured under the *policy* by the value of the salvage.

S. *Appraisal:* In case the Insured and the Insurer will fail to agree as to the *actual cash value* of the amount of loss, then:

1. On the written demand of either the Insurer or the Insured, each will select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. The appraisers will first select a competent and disinterested umpire and failing, after 15 days, to agree upon such umpire, then on the Insurer's request or the Insured's request, such umpire will be selected by a judge of a court of record in the State in which the insured property is located.

3. The appraisers will then appraise the loss, stating separately *actual cash value* and loss to each item; and, failing to agree, will submit their differences, only, to the umpire.

4. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with the Insurer will determine the amount of actual cash value and loss.

5. Each appraiser will be paid by the party selecting him or her and the expenses of appraisal and umpire will be paid by both parties equally.

T. *Action Against the Insurer:* No suit or action on this policy for the recovery of any claim will be sustainable in any court of law or equity unless all the requirements of this *policy* will have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property will have been situated.

U. *Subrogation:* If of any payment under this *policy*, the Insurer will be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured will do nothing after loss to prejudice such rights; however, this insurance will not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

V. *Continuous Lake Flooding:* Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible(s) or the maximum payable under the *policy* for any one *building* loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. *Make no further claim* under this *policy;* and

2. *Not seek* renewal of this *policy;* and

3. *Not apply for any flood* insurance under the Act for property at the property location of the insured *building.*

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph V. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

W. *Duplicate Policies Not Allowed:* Property may not be insured under more than one *policy* issued under the Act. When the Insurer finds that duplicate policies are in effect, the Insurer will by written notice give the Insured the option of choosing which *policy* is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the *policy* with the earlier effective date, the Insurer will by the same written notice give the Insured an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If the Insured chooses to keep in effect the *policy* with the later effective date, the Insurer will by the same written notice give the Insured the opportunity to add the coverage limits of the earlier *policy* to those of the later *policy*, as of the effective date of the later *policy*.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or the Insured's insurable interest, whichever is less.

The Insurer will make a refund to the Insured, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect.

For purposes of this paragraph W., the term *effective date* means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph W. for increasing *policy* limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* the Insured chooses to keep in effect.

5. We amend Part 61 by adding Appendix A(6) as follows:

Appendix A(6) to Part 61

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy Endorsement to Residential Condominium Building Association Policy

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B. The provisions of this endorsement replace the provisions of Article 10 of the Standard Flood Insurance Policy, Residential Condominium Building Association Policy, *only* in applicable policies in Monroe County and the Village of Islamorada, Florida].

Article 10—General Conditions and Provisions

A. *Pair and Set Clause:* If there is loss of an article that is part of a pair or set, the measure of loss will be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss will not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud:* This *policy* will be void, nor can this *policy* be renewed or any new flood insurance coverage be issued to the Insured if any person insured under Article 1, paragraph A., whether before or after a loss, has:

1. Sworn falsely, or willfully concealed or misrepresented any material fact; or

2. Done any fraudulent act concerning this insurance (see paragraph E.1.d. below); or

3. Willfully concealed or misrepresented any fact on a ''Recertification Questionnaire,'' which causes the Insurer to issue a *policy* based on a premium amount that is less than the premium amount that would have been payable were it not for the misstatement of fact (see paragraph F. below).

C. *Other Insurance:* If a loss covered by this *policy* is also covered by other insurance, whether collectible or not, the Insurer will pay only the proportion of the loss that the limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss, provided, if at the time of loss, there is other insurance *made available* under the Act, in the name of a *unit* owner that provides coverage for the same loss covered by this *policy*, this *policy*'s coverage will be primary and not contributing with such other insurance.

D. *Amendments and Waivers, Assignment:* This Standard *Flood* Insurance *Policy* cannot be amended nor can any of its provisions be waived without the express written consent

of the Federal Insurance Administrator. No action the Insurer takes under the terms of this *policy* can constitute a waiver of any of its rights. Except in the case of 1. a contents only *policy* and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy*, in writing, is allowed upon transfer of title.

E. *Voidance, Reduction or Reformation of the Coverage:*

1. *Voidance:* This *policy* will be void and of no legal force and effect if any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss;

c. If, during the term of the *policy*, the participation in the *National Flood Insurance Program* of the community in which the property is located ceases, in which case the *policy* will be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and will not be renewed.

If the voided *policy* included 3 *policy* years in a contract term of 3 years, the Insured will be entitled to a pro-rata refund of any premium applicable to the remainder of the *policy's* term;

d. If any Insured or its agent has:

(1) Sworn falsely; or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy*, in which case this entire *policy* will be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an *application* for or renewal or endorsement of a *policy* issued to the Insured in a prior year and affects the rating of or premium amount received for this *policy*. Refunds of premiums, if any, will be subject to offsets for the Insurer's administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy*;

e. The premium submitted is less than the minimum set forth in 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *policy* is void from its inception date.

f. The Insured has not submitted a community inspection report, cited in ''F. *Policy Renewal*'' below that was required in a notice sent to the Insured previously in conjunction with the community inspection procedure established under *National Flood Insurance Program* Regulations (44 CFR 59.30).

2. Reduction of Coverage Limits or Reformation: If the premium payment is not sufficient (whether evident or not) to purchase the amount of coverage requested by an *application*, renewal, endorsement, or other form and paragraph E.1.d. does not apply, then the *policy* will be deemed to provide only such coverage as can be purchased for the entire term of the *policy*, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by the Insurer before a loss and the Insurer can determine the amount of insufficient premium from information in its possession at the time of its discovery of the insufficient premium, the Insurer will give a notice of additional premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by the Insurer at the time of a loss under the *policy*, the Insurer will give a notice of premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy*, the Insurer will give a notice of additional premium due and the right of reformation will continue in force for the benefit only of the mortgagee or trustee, up to the amount of the Insured's indebtedness, for 30 days after written notice to the mortgagee or trustee.

F. *Policy Renewal*: The term of this *policy* begins on its inception date and ends on its *expiration date*, as shown on the *declarations page* that is attached to the *policy*. The Insurer is under no obligation to:

1. Send the Insured any renewal notice or other notice that the *policy* term is coming to an end and the receipt of any such notice by the Insured will not be deemed to be a waiver of this provision on the Insurer's part.

2. Assure that *policy* changes reflected in endorsements submitted during the *Policy* term are included in any renewal notice or new *policy* sent to the Insured. *policy changes* includes the addition of any increases in the amounts of coverage.

This *policy* will not be renewed and the coverage provided by it will not continue into any successive *policy* term unless the renewal premium payment, and when applicable, the community inspection report referred to below, is received by the Insurer at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy*, subject to paragraph E. above. If the renewal premium payment, and when applicable, the community inspection report referred to below, is mailed by certified mail to the Insurer before the *expiration date*, it will be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during the 30-day period even if the loss occurs before the renewal premium payment, and when applicable, the community inspection report referred to below, is received within the required 30 days. In all other cases, this *policy* will terminate as of the *expiration date*, of the last *policy* term for which the premium payment, and when applicable, the community inspection report referred to below, was timely received and, in that event, the Insurer will not be obligated to provide the Insured with any *cancellation*, termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy*, the Insured may be requested during the *policy* term to recertify, on a Recertification Questionnaire the Insurer will provide, the rating information used to rate the most recent *application* for or renewal of insurance.

The community in which the insured property is located has been approved by the Federal Emergency Management Agency to participate in a special inspection procedure set forth in *National Flood Insurance Program* Regulations (44 CFR 59.30) that requires the submission of a community inspection report completed by local officials as one condition for *policy* renewal. The Insured may be required to submit such an inspection report completed by a community official certifying whether the insured property is in compliance with the community's floodplain management ordinance. The Insured will be notified in writing of this requirement approximately 6 months before the renewal date and again at the time the renewal bill is sent.

Notwithstanding the Insured's responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by the Insurer before the expiration of the *policy* being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on its most recent *application* or other appropriate form (received by the Insurer before the mailing of the renewal notice), does, in all respects, for purposes of the *National Flood Insurance Program*, presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice.

However, if the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner that the Insurer determines could preclude the likelihood of its being actually and timely received by the Insured before the due date for the renewal

premium, the following procedures will be followed:

If the Insured or its agent notified the Insurer, not later than 1 year after the date on which the payment of the renewal premium was due, of a nonreceipt of a renewal notice before the due date for the renewal premium, which the Insurer determines was attributable to the above circumstance, the Insurer will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

If we do not receive the renewal payment requested by reason of the second bill by the revised due date, no renewal will occur and the *policy* will remain as an expired *policy* as of the *expiration date* prescribed on the *policy*.

G. *Conditions Suspending or Restricting Insurance*: Unless otherwise provided in writing added hereto, the Insurer will not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured.

H. *Liberalization clause*: If during the period that insurance is in force under this *policy* or within 45 days prior to the inception date thereof, should the Insurer have adopted under the Act, any forms, endorsements, rules or regulations by which this *policy* could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance will inure to the benefit of the Insured as though such endorsement or substitution of form had been made. Any broadening or extension of this *policy* to the Insured's benefit will only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this *policy*.

I. *Alterations and Repairs*: The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in the course of construction.

J. *Cancellation of Policy By Insured*: The Insured may cancel this *policy* at any time but a refund of premium money will only be made when:

1. The Insured cancels a *policy* having a term of 3 years, on an anniversary date, and the reason for the *cancellation* is that:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and the Insurer has received a written concurrence in the *cancellation* from any mortgagee of which the Insurer has actual notice, or

b. The Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. Refund of any premium, under this subparagraph 1., will be pro rata but with retention of the *expense constant* and the *Federal policy fee*.

2. The Insured cancels because the Insurer has determined that the property is not, in fact, in a *special hazard area*; and the Insured was required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to Public Law 93–234, section 102 and the lender or agency no longer requires the retention of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded in full, according to applicable *National Flood Insurance Program* regulations.

K. *Loss Clause*: Payment of any loss under this *policy* will not reduce the amount of insurance applicable to any other loss during the *policy* term that arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence will be deemed to constitute loss arising out of a single occurrence.

L. *Mortgage Clause*: (Applicable to *building* coverage only and effective only when the *policy* is made payable to a mortgagee or trustee named in the *application* and *declarations page* attached to this *policy* or of whom the Insurer has actual notice prior to the payment of loss proceeds under this *policy*.)

Loss, if any, under this *policy*, will be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, will not be invalidated:

1. By any act or neglect of the mortgagor or owner of the described property; nor

2. By any foreclosure or other proceedings or notice of sale relating to the property; nor

3. By any change in the title or ownership of the property; nor

4. By the occupation of the premises for purposes more hazardous than are permitted by this *policy*, *provided*, that it in case the mortgagor or owner will neglect to pay any premium due under this *policy*, the mortgagee or trustee will, on demand, pay the same.

Provided, also, that the mortgagee or trustee will notify the Insurer of any change of ownership or occupancy of the *building* or increase of hazard that will come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy*, it will be noted thereon and the mortgagee or trustee will, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* will be null and void.

If this *policy* is cancelled by the Insurer, it will continue in force for the benefit of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and will then cease.

Whenever the Insurer will pay the mortgagee or trustee any sum for loss under this *policy* and will claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer will, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment will be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and will thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation will impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

M. *Mortgagee Obligations*: If the Insured fails to render proof of loss, the named mortgagee or trustee, upon notice, will render proof of loss in the form herein specified within 60 days thereafter and will be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

N. *Loss Payable Clause (Applicable to contents items only)*: Loss, if any, will be adjusted with the Insured and will be payable to the Insured and loss payee as their interests may appear.

O. *Requirements in Case of Loss*: Should a *flood* loss occur to the insured property, the Insured must:

1. Notify the Insurer in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that the Insurer may examine it; and

3. Within 60 days after the loss, send the Insurer a proof of loss, which is the Insured's statement as to the amount it is claiming under the *policy* signed and sworn to by the Insured and furnishing the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. The Insured's interest in the property damaged (for example, ''owner'') and the interests, if any, of others in the damaged property;

d. The *actual cash value* or replacement cost, whichever is appropriate, of each damaged item of insured property and the amount of damages sustained;

e. The names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount the Insured claims is due under this *policy* to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy*; and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. Cooperate with the Insurer's adjuster or representative in the investigation of the claim;

5. Document the loss with all bills, receipts, and related documents for the amount being claimed;

6. The insurance adjuster whom the Insurer hires to investigate the claim may furnish the Insured with a proof of loss form, and she or he may help the Insured to complete it. However, this is a matter of courtesy only, and the Insured must still send the Insurer a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help the Insured

complete it. In completing the proof of loss, the Insured must use its own judgment concerning the amount of loss and the justification for the amount.

The adjuster is not authorized to approve or disapprove claims or to tell the Insured whether the claim will be approved by the Insurer.

7. The Insurer may, at its option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss that includes information about the loss and the damages needed by the Insurer in order to adjust the claim.

8. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal laws.

P. *Options After a Loss:* Options the Insurer may, in its sole discretion, exercise after loss include the following:

1. *Evidence of Loss:* If the Insurer specifically requests it, in writing, the Insured may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values* or replacement cost (whichever is appropriate), amount of loss claims, and any written plans and specifications for repair of the damaged property that can reasonably be made available to the Insurer.

2. *Examination Under Oath and Access to the Condominium Association's Articles of Association or Incorporation, Property Insurance Policies, and Other Condominium Documents:* The Insurer may require the Insured to:

a. Show the Insurer, or its designee, the damaged property;

b. Be examined under oath by the Insurer or its designee;

c. Sign any transcripts of such examinations; and

d. At such reasonable times and places as the Insurer may designate, permit the Insurer to examine and make extracts and copies of any *condominium* documents, including the Articles of Association or Incorporation, Bylaws, rules and regulations, Declarations of the *condominium*, property insurance policies, and other *condominium* documents; and all books of accounts, bills, invoices and vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Replace:* The Insurer may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving the Insured notice of the Insurer's intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph O. above.

4. *Adjustment Options:* The Insurer may adjust loss to any insured property of others with the owners of such property or with the Insured for their account. Any such insurance under this *policy* will not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

Q. *When Loss Payable:* Loss is payable within 60 days after the Insured files its proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insured and the Insurer in writing or by the filing with the Insurer of an award as provided in paragraph S. below.

If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of its claim, or exercise its rights under this *policy*, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

R. *Abandonment:* The Insured may not abandon damaged or undamaged insured property to the Insurer.

However, the Insurer may permit the Insured to keep damaged, insured property (''salvage'') after a loss and reduce the amount of the loss proceeds payable to the Insured under the *policy* by the value of the salvage.

S. *Appraisal:* If at any time after a loss, the Insurer is unable to agree with the Insured as to the *actual cash value*—or, if applicable, replacement cost—of the damaged property so as to determine the amount of loss to be paid to the Insured, then:

1. On the written demand of either the Insurer or the Insured, each will select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. The appraisers will first select a competent and disinterested umpire and failing, after 15 days, to agree upon such umpire, then on the Insurer's request or the Insured's request, such umpire will be selected by a judge of a court of record in the State in which the insured property is located.

3. The appraisers will then appraise the loss, stating separately replacement cost, *actual cash value* and loss to each item; and, failing to agree, will submit their differences, only, to the umpire.

4. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with the Insurer will determine the amount of *actual cash value* and loss or, should this *policy's* replacement cost provisions apply, the amount of the replacement cost and loss.

5. Each appraiser will be paid by the party selecting him or her and the expenses of appraisal and umpire will be paid by both parties equally.

T. *Action Against the Insurer:* No suit or action on this *policy* for the recovery of any claim will be sustainable in any court of law or equity unless all the requirements of this *policy* will have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property will have been situated.

U. *Subrogation:* If of any payment under this *policy*, the Insurer will be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured will do nothing after loss to prejudice such rights; however, this insurance will not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

V. *Continuous Lake Flooding:* Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible(s) or the maximum payable under the *policy* for any one *building* loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. *Make no further claim* under this *policy;* and

2. *Not seek* renewal of this *policy;* and

3. *Not apply for any flood* insurance under the Act for property at the property location of the insured *building.*

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph V. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

W. *Duplicate Policies Not Allowed:* Property may not be insured under more than one *policy* issued under the Act. When the Insurer finds that duplicate policies are in effect, the Insurer will by written notice give the Insured the option of choosing which *policy* is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the *policy* with the earlier effective date, the Insurer will by the same written notice give the Insured an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If the Insured chooses to keep in effect the *policy* with the later effective date, the Insurer will by the same written notice give the Insured the opportunity to add the coverage limits of the earlier *policy* of those of the later *policy*, as of the effective date of the later *policy*.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or the Insured's insurable interest, whichever is less.

The Insurer will make a refund to the Insured, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect.

For purposes of this paragraph W., the term *effective date* means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions

of this paragraph W. for increasing *policy* limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* the Insured chooses to keep in effect.

Dated: April 8, 1999.

James L. Witt,

Director.

[FR Doc. 99–10396 Filed 5–4–99; 8:45 am]

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federal register

Wednesday
May 5, 1999

Part VI

The President

Proclamation 7189—Asian/Pacific American Heritage Month, 1999

Proclamation 7190—Older Americans Month, 1999

Proclamation 7191—Law Day, U.S.A., 1999

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Federal Register
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Wednesday, May 5, 1999

Presidential Documents

Title 3—

The President

Proclamation 7189 of April 30, 1999

Asian/Pacific American Heritage Month, 1999

By the President of the United States of America

A Proclamation

Seeking America's bright promise of freedom and fairness, millions of men and women of Asian and Pacific descent have immigrated to our Nation through the past 2 centuries to participate in our great experiment in democracy. Although they left behind their native lands and many of their loved ones, they carried in their hearts a rich and ancient history and a proud heritage.

Throughout the decades, the principles and cherished traditions of Asian and Pacific Americans have infused our way of life, and their diligence and determination have helped build and sustain our Nation. Asian immigrants and indigenous U.S. Pacific Islanders have made contributions to every facet of American life. Yet all too often, Asian immigrants and Pacific Islanders had to endure discrimination as our society struggled with its growing diversity. Overcoming prejudice and other hardships, these determined men and women have strengthened our society, our economy, and our national character in the process.

Asian and Pacific Americans today continue to make substantial contributions to our country and our culture, and this year's theme, ''Celebrating Our Legacy,'' calls on us to recognize our common human spirit. Scientists and researchers like David Ho untangle the mysteries of human biology; astronauts like Kalpana Chawla explore the heavens; human rights activists like Dith Pran inspire us with their courage and conviction; athletes like Michele Kwan dazzle us with their grace and endurance; and inspiring leaders like Daniel Inouye and Bill Lann Lee fight for justice and equality for all our people. These sons and daughters of Vietnam, India, China, Korea, Japan, Cambodia, Fiji, the Philippines, Thailand, and many other nations, as well as the islands of Guam, American Samoa, and Hawaii, have enriched every aspect of our society with their talents, intellect, and determination.

While our Nation has made enormous strides on the path to full equality and inclusion, our work is far from finished. My Administration has strived to empower the Asian and Pacific American community by working to strengthen our economy, enforce our civil rights laws, invest in health and education, and promote racial reconciliation. Thanks in part to our economic initiatives, the median household income for Asian and Pacific Americans has significantly increased since 1993, while the poverty rate has declined by more than 8 percent. We have launched a new initiative to end racial and ethnic health disparities, and we established the first-ever Office of Minority Health Research and Alternative Medicine at the National Institutes of Health. Working to renew our commitment to excellence in education, my Administration also has secured a 35 percent increase in funding for bilingual and immigrant education.

To honor the accomplishments of Asian and Pacific Americans and to recognize their many contributions to our Nation, the Congress, by Public Law 102–450, has designated the month of May as ''Asian/Pacific American Heritage Month.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 1999 as Asian/Pacific American Heritage Month. I call upon the people of the United States to observe this occasion with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, 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. 99–11475
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Presidential Documents

Proclamation 7190 of April 30, 1999

Older Americans Month, 1999

By the President of the United States of America

A Proclamation

As we look forward to the 21st century, we honor the millions of older Americans whose contributions have strengthened and sustained our Nation throughout the 20th century. These special citizens have led us through times of conflict, depression, peace, and prosperity and have witnessed firsthand the milestones that have defined this era as the ''American Century.'' This month, as we salute their achievements, let us also renew our commitment to preserve for older Americans a quality of life that will help them look ahead to the future with peace of mind.

In recent decades, extraordinary advances in science, technology, and medicine, as well as our increased awareness of the importance of good nutrition and physical fitness, have enabled Americans to live longer, healthier lives. Over the course of the past 100 years, the average American's life-span has lengthened by nearly three decades, with the percentage of older Americans in our population more than tripling. By the year 2030, one in five Americans will be aged 65 or older.

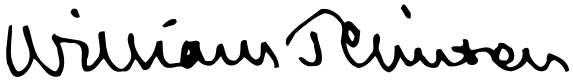
As we enter the new millennium with a strong economy and the first budget surpluses since the 1960s, we have a historic opportunity to embrace the challenges and possibilities of a society where men and women will lead longer, more active, more productive lives. My Administration is working to make the most of this opportunity by proposing to set aside more than 75 percent of any budget surplus over the next 15 years to protect Social Security and Medicare; and we will also work to increase our investment in the scientific and medical research and development programs that will continue to lengthen and improve the lives of Americans in the years to come. We must continue to support older Americans—as well as their caregivers and those who provide critical home and community-based services—through a strong, reauthorized Older Americans Act; and we must work to ensure that long-term care needs are met now and in the future.

The theme of this year's celebration, ''Honor the Past, Imagine the Future: Towards a Society for all Ages,'' reminds us of the profound debt of gratitude we owe to the generations of older Americans whose hard work, courage, faith, sacrifice, and patriotism helped to make this Nation great. Through turmoil and triumph, these Americans not only have defended our fundamental values of liberty, justice, and equality, but they also have handed down to younger generations the enduring traditions of community, family, and love of country that bind our society together.

Long life is a gift we must cherish and a wonderful opportunity and responsibility for which we must prepare. I urge all Americans to take time during this month to reaffirm our commitment, as individuals and as a Nation, to meet the challenges of an aging society. Working together, we can improve the lives of our older citizens, their families, and their caregivers and strive to ensure that all Americans enjoy healthy, financially secure, and productive lives.

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 May 1999 as Older Americans Month. I urge Government officials, business people, community leaders, educators, volunteers, and all the other people of the United States to celebrate the contributions older Americans have made throughout their lives to the progress of our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, 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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Presidential Documents

Proclamation 7191 of April 30, 1999

Law Day, U.S.A., 1999

By the President of the United States of America

A Proclamation

America's founders recognized that the rule of law is the greatest guarantor of freedom and justice, the crucial barricade protecting civilization from chaos, democracy from tyranny. Among the chief grievances they enumerated in the Declaration of Independence were that ''the present King of Great Britain . . . has refused his Assent to Laws, the most wholesome and necessary for the public Good. . . . He has made Judges dependent on his Will alone, for the Tenure of their Offices, and the Amount and Payment of their Salaries.''

The Constitution and Bill of Rights reflect our founders' reverence for and faith in the rule of law, and they stand as an enduring charter of freedom and equality that continues to protect our fundamental rights today. But only the passage of additional laws over time has fulfilled the promise of justice enshrined in that charter. Amendments abolishing slavery and guaranteeing due process and equal protection to everyone came only after the Civil War—nearly 80 years after the ratification of the Constitution. It took almost another century, and the courageous and persistent efforts of lawyers such as Thurgood Marshall, to establish that the equal protection clause prohibits governments from enforcing segregation in schools and other public arenas. Women did not gain the right to vote until the ratification of the 19th Amendment in 1920.

During the past 4 decades, our Nation has continued to pursue the ideals of justice and equality. President Kennedy and President Johnson fought to enact what would become the Civil Rights Act of 1964 and the Voting Rights Act of 1965, laws that safeguard the rights of citizens to vote, to work, to use public accommodations, and to attend school free from illegal discrimination. In 1967, President Johnson signed the Age Discrimination in Employment Act to protect older Americans against discriminatory treatment in their jobs.

In 1990, President Bush signed into law the Americans with Disabilities Act, landmark legislation that recognizes the right of people with disabilities to have equal opportunity for employment and equal access to public services. Building on the Americans with Disabilities Act, I announced a new initiative in January of this year to remove significant barriers that prevent people with disabilities from joining the work force. We will invest more than two billion dollars over the next 5 years to provide tax credits to offset critical and expensive transportation costs, increased funding for assistive technology research, and greater access to health care for people with disabilities.

In May of 1998, I was proud to sign Executive Order 13087, which amends Federal equal employment opportunity policy to prohibit discrimination based on sexual orientation in the Federal civilian work force. My Administration is working with congressional leaders to pass the Employment Non-Discrimination Act (ENDA), which would prohibit most private employers from firing good workers solely because they are gay or lesbian. And we must secure equal pay legislation to ensure that women and minority employees receive fair compensation for their work.

America's trust in the rule of law and our continuing quest for equality under the law have defined our history for more than 200 years. Now, as we look forward to a new century, we must renew our commitment to the spirit of our Constitution and the strong foundation of civil rights laws that guarantee both our freedom and our security. We must reaffirm our goal of building an America where all people have an equal opportunity to reach their full potential and where no American is denied his or her rights because of race, national origin, gender, sexual orientation, religious beliefs, or disability. By doing so, we will fulfill our founders' vision of a Nation where all citizens share equally in the blessings and protections of the law.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with Public Law 87–20 of April 7, 1961, do hereby proclaim May 1, 1999, as Law Day. I urge the people of the United States to consider anew how our laws protect our freedoms and contribute to our national well-being. I call upon members of the legal profession, civic associations, educators, librarians, public officials, and the media to promote the observance of this day with appropriate programs and activities. I also call upon public officials to display the flag of the United States on all government buildings throughout the day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, 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

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Presidential Documents

Proclamation 7192 of April 30, 1999

Loyalty Day, 1999

By the President of the United States of America

A Proclamation

Born in the twilight of the 18th century, our great Nation has grown and flourished, surviving a civil war, the Great Depression, two World Wars, and the Cold War to emerge at the dawn of the 21st century as the world's best hope for freedom. The success of that journey of challenge and change was no accident. In 1787, when our founders came together to sign the Constitution and ''secure the Blessings of Liberty,'' honor individual rights, and guarantee equality, they laid the foundations of a country that would inspire the lasting loyalty and love of its citizens.

The courage and sacrifice of generations of Americans who have served in our Armed Forces have sustained the vision of our Nation's founders. From the fields near Lexington and Concord to the skies over Belgrade, nearly 50 million citizens have placed themselves in harm's way to defend our freedom, promote our values, and advance our interests around the world. Many of them have died in the process, willing to make the ultimate sacrifice out of loyalty and devotion to our beloved country.

Millions of other generous men and women have proved their loyalty here at home. They have enriched the lives of their fellow Americans by volunteering in civic, religious, and school organizations. Throughout the decades, they have worked to expand America's promise of justice and equality to all our people, promoting civil rights, economic and educational opportunity, and political empowerment. In every era, they have worked to address this country's challenges and renew our legacy of citizen service. In doing so, they have strengthened our Nation from within and provided a symbol of hope around the world for those who seek refuge in a land where individual rights are revered and where their children can grow up in peace and freedom.

Recognizing the importance of loyalty to the continued strength of our country and success of our democracy, the Congress, by Public Law 85–529, has designated May 1 of each year as ''Loyalty Day.'' On this day, let us reflect with pride on our great country and remember with gratitude the contributions of the many loyal and courageous Americans who have given so much of themselves both at home and around the world to preserve our freedom.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 1, 1999, as Loyalty Day. I urge all Americans to recognize the heritage of American freedom, to honor the memory of those who have served and sacrificed in defense of that freedom, and to express our loyalty to our Nation through appropriate patriotic programs, ceremonies, and activities. I also call upon Government officials to display the flag of the United States in support of this national observance.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, 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

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